

# **Health and Safety Reform Bill**

Government Bill

As reported from the Transport and Industrial Relations Committee

## **Commentary**

### **Recommendation**

The Transport and Industrial Relations Committee has examined the Health and Safety Reform Bill and recommends by majority that it be passed with the amendments shown.

### **Introduction**

This omnibus bill seeks to reform New Zealand's work health and safety system by creating a new Act and amending several others. Parts 1 to 5 are intended to become the Health and Safety at Work Act, to provide a new framework for ensuring the health and safety of workers and workplaces. Part 6 of the bill seeks to amend several Acts, relating variously to hazardous substances, accident compensation, and protecting employees from discrimination for raising health and safety issues.

Current health and safety legislation is based on the employee/employer relationship. The bill would broaden this to include "workers" and "persons conducting a business or undertaking" (PCBUs). The proposed definition of "worker" is somebody who "carries out work in any capacity for a PCBU". It would include employees, contractors, trainees, those gaining work experience, and volunteers.

A PCBU would have a primary duty to ensure, so far as reasonably practicable, the health and safety of workers and others affected by its work. Workers would also have responsibilities regarding the health and safety of themselves and of those around them.

The engagement, participation, and representation of workers are central to the bill.

Clauses 25 to 27 acknowledge and clarify overlapping duties, for example among multiple contractors on a building site, or multiple suppliers.

The bill would repeal the Health and Safety in Employment Act 1992 and the Machinery Act 1950.

We understand that the proposed legislation is intended to be underpinned by regulations, approved codes of practice that provide detailed guidance, and safe work instruments.

### **Information about this legislation**

We recognise that the changes to health and safety law proposed by this bill are many, and that businesses and workers are interested to learn of the changes and the new requirements that will be placed on them. We want New Zealanders to receive full, accurate information about the bill's consequences for workplaces. We welcome and encourage the development of guidance and other material to accompany this legislation, and trust that it will be clear, accurate, and helpful to users. We expect that the development of regulations to accompany the bill will also help to clarify the practical implications of the obligations the bill imposes for specific industries and businesses.

We are aware that WorkSafe New Zealand has been publishing information on its website about the bill, and we encourage it to continue engaging and educating the public by this and other means. Such guidance will be particularly important for small PCBUs without dedicated health and safety staff.

### **Proposed amendments**

We have set out below our main recommendations, and those we believe would benefit from explanation. We recommend many other amendments, including minor, technical, and consequential amendments, and improvements to drafting. Some of them look more complicated than they are, such as our recommendation to move clauses 54 to 59, which relate to authorisations, into Part 5, new subpart 1A. Most are self-explanatory.

We consulted the Regulations Review Committee on the proposed regulation-making powers in the bill, and made changes where we considered it appropriate.

### **Commencement**

In clause 2(3), we recommend making 31 October 2017 the last date on which any element of the bill could come into force. Some of the hazardous substances elements of the bill in particular may need a long lead-time, as corresponding regulations will be needed.

We also recommend amending clause 2(1)(b) and inserting clause 2(1A) to allow certain hazardous substances amendments to come into effect the day after the Royal assent is granted. These provisions would improve the review and issuing of group standards, allow the Environmental Protection Authority (EPA) to undertake its new enforcement function by prescribing certain notices, meet international obligations regarding persistent organic pollutants, improve the EPA's method of public notifica-

tion, and prevent the public disclosure of sensitive information about applications for moving hazardous substances.

We recommend removing clause 2(1)(c), so that provisions relating to the transfer of EPA employees, contracts, and information to WorkSafe would not commence immediately after the Royal assent. This transfer should occur in tandem with the transfer of workplace hazardous substance controls from the existing to a new legislative framework.

### **Application to the Crown**

We recommend replacing clause 5 with new clauses 5 and 5A. This would make it clear that a Crown organisation could be a PCBU in its own right for the purposes of the bill. For other instruments of the Crown that are not Crown organisations or body corporates, the appropriate PCBU, for the purposes of the bill, would be the Crown itself.

### **Armed Forces**

We recommend changing the bill's application to the Armed Forces. We recommend inserting clause 6(1AA), to make it clear that nothing in the bill would require or permit anything that would prejudice the defence of New Zealand; and inserting clause 6(4) to require the Chief of Defence Force to promote the purpose of the bill to the greatest extent consistent with New Zealand's defence.

Under clause 6(2), the bill would not apply to members of the Armed Forces on operational service. We recommend amending clause 6(2)(a) to also prevent the bill applying to civilians working in support of the Armed Forces in an area of operational service. We also recommend amendment to improve the definition of "operational service" in clause 6(3).

We consider the bill should be brought into line with existing legislation that excludes members of the Armed Forces from requirements for employee engagement and participation. We recommend inserting clause 10A(1) to prevent members of the Armed Forces asking for health and safety representatives or health and safety committees under the bill. The Chief of Defence Force would be able to establish (or continue current) participation practices regarding health and safety that meet the specific requirements of the Armed Forces.

We recognise the Armed Forces' special need for discipline with respect to carrying out orders. We also recognise that prevailing assumptions about safety cannot be applied to many tasks routinely undertaken on active service. We recommend inserting clause 10A(2), so that a worker's right to cease unsafe work would not authorise a member of the Armed Forces to refuse to do work that they had been lawfully ordered to do.

## Intelligence and security

To help protect New Zealand's security, we recommend inserting clause 6A. Subclause (1) would give national security, national defence, and international relations priority over the requirements of the bill.

Under subclauses (2) and (3), specified provisions of the bill could be declared not to apply to, or to be modified in relation to, intelligence workers. Under subclause (4), such declarations could be made only with ministerial approval, and would be reviewable under subclause (7).

Subclause (6) would require the New Zealand intelligence community to promote the purpose of the bill to the greatest extent consistent with the maintenance of New Zealand's defence, security, and international relations.

We recommend inserting clause 180A and Schedule 2A to provide for the secure handling of classified information in legal proceedings.

## High-risk plant

We recommend amending clause 10(1) to ensure that the legislation would apply to every operator of high-risk plant, even if the operator were not a PCBU. This would widen the bill to include operators such as volunteers.

What constitutes high-risk plant would be set out in regulations. We would like to see amusement devices such as inflatable slides included; this would mean the bill would apply even if the operator were not a PCBU.

## Volunteers

Casual volunteers are treated differently from other employees in existing health and safety legislation; we consider this distinction should be maintained in the bill. We recommend amending clause 14, which defines "worker", by inserting subclause (3) to differentiate "volunteer workers" from casual volunteers. Paragraph (a) would define "volunteer workers" as those who work for a PCBU with its knowledge or consent on an "ongoing and regular" basis, and whose work is integral to the business or undertaking. Paragraph (b) would exclude all volunteers from the category of worker when they were undertaking specified voluntary activities:

- participating in fund-raising activities
- assisting an educational institute, sports club, or recreation club with sports or recreation
- assisting with activities for an educational institute outside its premises
- caring for another person in the volunteer's home.

Although casual volunteers and volunteers participating in the above activities would not be "volunteer workers" under the bill, their health and safety would be covered by a PCBU's duty to look out for the health and safety of other people affected by the conduct of its business or undertaking under clause 30(2).

We also recommend inserting new clause 10B so that Part 3 of the bill, which deals with worker engagement, does not apply to volunteer workers. This carries over the existing exclusion of volunteers from employment participation requirements. Volunteers could still raise health and safety matters with the organisations they volunteer for.

### **Volunteer associations**

Clause 13 excludes volunteer associations that do not employ any workers from the definition of a PCBU. We recommend changing clause 13(2) to make it clear that the exclusion would apply whether or not the volunteer association was incorporated.

### **Definitions of “risk” and “hazard”**

In clause 12, we recommend removing subclause (a) from the definition of “hazard”, and the entire definition of “risk”. We prefer the common meanings of “risk” and “hazard”, to encourage people to consider what risk means to them, in their particular circumstances. Subclause (b) of the definition of “hazard” should be retained. This is an area where clarity has been required in the past; we want to make it clear that someone’s behaviour can constitute a hazard.

### **Domestic violence**

Fear, fatigue, and other responses to domestic violence can cause hazardous behaviour by some workers.

We are aware that the Ministry of Social Development has produced resources for businesses and workers about the effects of domestic violence at work. We hope to see this issue also addressed in the guidance materials that are intended to accompany this bill. We encourage the ministry, businesses, and regulators such as WorkSafe to work to mitigate the effects of domestic violence on work health and safety.

### **Officers**

We recommend amending the definition of “officer” in clause 12, and moving it into new clause 13A to improve the structure of the bill. The designation “officer” should be confined to people in very senior governance roles, such as directors and chief executives. Subclause (b) of the definition as introduced includes those who make decisions affecting the whole or a substantial part of a PCBU’s business; we recommend narrowing this to those in positions that allow them to “exercise significant influence over the management of the business or undertaking”. We also recommend inserting clause 13A(d) to make it clear that those who merely advise or make recommendations would not themselves be officers.

Experts engaged to advise a PCBU on health and safety issues would not be considered officers of the PCBU in question. They might, however, themselves be a PCBU with duties under the bill, and specifically under clauses 30(1)(b) and 30(2). We note that there would also usually be a contractual relationship between a PCBU and such

an adviser, and in that case, the PCBU would have contractual remedies for any poor advice.

### **Statutory officers**

Broadly speaking, statutory officers are those who hold or perform the duties of an office established or conferred by an enactment. We recommend inserting a definition of “statutory officer” into clause 12, and inserting clause 13(1)(b)(iiia) to provide that statutory officers are not PCBUs if they are an officer or worker in the business or undertaking.

### **Personal protective equipment**

For the sake of clarity, we recommend inserting a definition of “personal protective equipment” into clause 12, and using the phrase where appropriate.

### **Worker must be an individual**

In clause 14, we recommend replacing the word “person” with “individual” to make it clear that a “worker” would always be a natural person, rather than a corporation or a group of people. We also recommend inserting into clause 12 a definition of “person” that would include corporations and groups of people as well as individuals.

### **Notifiable injuries, illnesses, incidents, and events**

Clause 18 defines “notifiable injury or illness”. In clause 18(1), we recommend amending paragraph (a) to make it clear that “immediate treatment” would not include first aid. Under paragraphs (b) and (c) respectively, an injury or illness would be notifiable if the worker required either hospitalisation for immediate treatment, or medical treatment within 48 hours of exposure to a substance. We recommend amending these paragraphs by adding the words “or would usually require” after the word “requires”, so that the paragraphs would apply whether or not the person was actually admitted to hospital or given medical treatment. This would mean that the illness or injury remained notifiable even if a worker refused treatment, or was too far away for hospitalisation, for example on a ship at sea.

We also recommend amending clause 18(1)(d) so that infections must be serious to be notifiable. We recommend deleting clause 18(1)(e) and referring instead to occupational zoonoses (diseases carried by animals) in clause 18(1)(d). We expect details on zoonoses to be published in guidance to accompany the bill.

In clause 19, we recommend narrowing the meaning of “notifiable incidents” to those that are uncontrolled or unplanned. This avoids inadvertently including activities that form part of the normal work of a business or undertaking.

We recommend amending clauses 20 and 215 to make it clear that a matter required to be notified must have arisen from work.

## **PCBU must not levy workers**

Clause 28 prohibits PCBUs from levying or charging a worker for health and safety arrangements. The PCBU must ensure that the appropriate equipment is available and worn, and the worker would have duties under clause 40 to wear it. However, clause 28(3) would exclude arrangements where a worker buys their own protective gear and is reimbursed by the PCBU. To ensure that such arrangements could continue, we recommend removing clause 28(3).

## **Duties of PCBUs**

We recommend moving (and renumbering, and in some cases, renaming) clauses 22 to 27 (which set out key principles relating to health and safety duties) from Part 1 to Part 2, bringing them closer to other provisions about such duties. We note that clauses 26 and 27 would still apply to the duties of PCBUs set out in Part 3 (worker engagement, participation, and representation).

Clause 26—which would become new clause 29D—would apply in situations where there was more than one duty holder; it would require each duty holder to discharge their duty to the extent to which they have the capacity to influence or control the matter. We recommend changing the phrase “capacity to influence or control” to “ability to influence and control”, to limit consideration of the duty holder’s influence and control to the actions that they would in practice be able to take.

Clause 27—which would become new clause 29E—would require people with overlapping duties to consult, co-operate and co-ordinate to ensure the overlapping duties were discharged. We recommend making it clear in new clause 29E that this duty would apply only to PCBUs and not to other duty-holders. We consider that PCBUs are best placed to discharge this duty so as to ensure good health and safety outcomes.

## **PCBU’s primary duty of care**

We recommend making clause 30(1)(a) clearer by making a PCBU’s primary duty to ensure health and safety apply simply to workers “who work for” the PCBU.

## **Accommodation**

Clauses 30(4) and 30(5) would protect workers’ health and safety in accommodation that is provided by the PCBU. We envisage these clauses applying to situations such as farm workers’ accommodation. We recommend amending clause 30(4)(b) so that these clauses would apply only if the occupancy were necessary for the work because other accommodation was not reasonably available. We note that the Residential Tenancies Act 1986 would also apply to this accommodation.

## **Self-employed workers**

We recommend moving clause 31 into clause 30. This would make it clear that a self-employed person was a PCBU with the primary duty of care, including the duty to ensure, so far as is reasonably practicable, their own health and safety at work.

## Workplace

We recommend amending the definition of “workplace” in clause 15 to include places where work is “being” carried out (for example, on a power pole), or is “customarily” carried out (for example, a workshop). This would make it clear that a workplace does not remain a workplace indefinitely, once work has been carried out there.

We recommend amending clauses 32 and 33, which set out the duties of PCBUs who manage or control workplaces, or fixtures, fittings, or plant at workplaces. We recommend making the language in these clauses active. The duties should apply to PCBUs who manage or control workplaces, fixtures, fittings, or plant in a practical sense, rather than PCBUs who merely have an ability to manage these things.

We also recommend inserting new subclause 1B into clause 32 to make it clear that for the purposes of subclause (1), a workplace includes farm buildings and structures necessary for the operation of the farm, and the areas immediately surrounding them, but not other parts of the farm when work is not being carried out there.

We note that some farmers deny access to recreational walkers because of concern about their liability for potential accidents. Our proposed amendment should encourage farmers to allow walkers on their land without being unduly concerned about their liability. We encourage the Walking Access Commission and WorkSafe to continue to publish information for walkers and landowners about their respective obligations in this area.

We also recommend inserting clauses 32(1A) and 33(1A), to make it clear that the duties in these clauses would not apply in respect of a person who was in the workplace for an unlawful purpose, including trespassing.

Clauses 138 and 185 (which relate to notices and inspections) refer to the person with “management or control” of the workplace. This could be the PCBU, but we would not want it to be interpreted to mean only the PCBU. We want to make sure it includes those who would be present and overseeing operations, such as a foreman on a construction site. We recommend making these clauses clearer by referring instead to the person “in charge” of the workplace.

## Local councils and school boards

We recommend amending clause 47 to make it clear that the limitation on liability that would apply to appointed or elected members of a local authority or a board of trustees would apply only while they were acting in that capacity. This would be useful when office holders had split responsibilities in relation to the same PCBU.

An elected local authority representative should not owe duties in relation to activities undertaken by a council-controlled organisation unless they are also an officer of that organisation. Then, they should have the officer duty when acting in their capacity as an officer of the council-controlled organisation. We recommend inserting in clause 39, new subclause (3) to make this clear.



### **Liability of unincorporated associations**

We recommend removing clause 48 as it is not consistent with New Zealand common law, which recognises that in some cases unincorporated bodies can be prosecuted.

### **Duty to preserve sites and notify events**

We recommend re-ordering clauses 51 to 53 to reflect more logically the steps in the process following a notifiable event: preserve the site; notify the event; keep records. We also recommend that the option in new clause 52(2) of notifying the regulator by fax be removed, as fax machines are no longer common.

Clause 53—which would become new clause 51—would require the preservation of a site where a notifiable event had occurred. We recommend making it clear in new clause 51(1) that the PCBU who managed or controlled the workplace would be responsible for preserving the site.

### **Engagement, worker participation, and representation**

We recommend removing clause 60, which is an outline of Part 3. As it contains no duties or obligations, it could create confusion. We believe that Part 3 should focus only on the overarching duties relating to engagement, worker participation, and representation.

Clause 62 sets out what would be required from PCBUs in engaging workers. Under clause 62(1)(a), relevant information about matters relating to work health or safety would have to be shared with workers. We recommend amending subclause (1)(a) to require this information to be shared in a timely manner.

We recommend amending clause 64(1) to make it clear that the duty to have worker participation practices would apply only to workers who carried out work for the business or undertaking.

Clauses 69 to 86 and 89 to 91 set out the procedural details for health and safety representatives and committees respectively. We recommend moving clauses 69 to 76, 78 to 86, and 89 to 91 into new Schedule 1A. This would raise the prominence of the two remaining duties in Part 3—to engage and to have effective practices—as the primary obligations on PCBUs. It would also help to make it clear that representatives and committees would not be required in some cases.

We recommend moving clause 88 into Part 3, subpart 2, as new clause 86A, thus combining the subparts relating to representatives and committees.

We also recommend inserting new clauses 7A to 7D into Schedule 1, so that existing participation systems could be transitioned.

### **Health and safety representatives**

Worker participation requirements should be flexible and simple to comply with, especially for smaller, low-risk businesses which could find more formal worker participation practices costly.

We recommend amending clause 65 by inserting new subclause (1A) to make it clear that when an election was requested for a health and safety representative, the PCBU would have to initiate one within a certain time. However, we also recommend inserting new subclause (3) to make it optional for PCBUs in low-risk sectors, with fewer than 20 workers, to hold an election. The amendment to clause 224(b)(iva) would allow high-risk sectors or industries to be specified in regulations. We note that any PCBU could organise an election on its own initiative, under clause 65(2).

We recommend making it clear in clause 65(4) that the obligation to hold an election would apply only in relation to the work group to which the worker belonged.

We recommend inserting clause 65(5) to make it an offence for a PCBU to fail to facilitate an election when required to do so, attracting the same penalties as failing to establish a health and safety committee.

To reduce unnecessary prescription and cost in worker participation practices, we recommend removing clause 77, which provides for deputy health and safety representatives. We recommend inserting new clause 6 into new Schedule 1A, to allow health and safety representatives to help and cover for each other. This would help to ensure that pertinent knowledge and experience was shared.

We have recommended moving clause 80 into new Schedule 1A, where it would become new clause 12. We recommend amending new clause 12(1)(a)(i) to allow health and safety representatives two days' paid leave each year to attend health and safety training. New clause 12(1)(a)(ii) would allow more days to be set by regulation for specific industries.

We recommend amending clause 224(b) by inserting subparagraph (ivc), to allow regulations to specify the number of days' paid leave that a PCBU must allow for health and safety representatives in specific industries. New Schedule 1A, clause 12(2) would provide for a "cap", to be set in regulations, on the total number of paid days' leave a PCBU would be required to allow health and safety representatives across its entire business or undertaking. We also recommend inserting clause 224(b)(ivb) to authorise the making of regulations to specify the cap.

Clause 5 of new Schedule 1A (previously clause 73 in the bill as introduced) would allow a health and safety representative to be accompanied or assisted by another person. We recommend amending this clause, to require that the person accompanying the representative comply with any reasonable procedures and requirements related to work health and safety. We also recommend amending subclauses (2) and (4) in clause 3 of Schedule 1A to require that prior reasonable notice be given to the PCBU that somebody will accompany the representative, unless the situation involved such a serious risk that prior notice was not practical.

We have recommended moving clauses 85 and 86 to new Schedule 1A, where they would become clauses 17 and 18. Under clause 17, a regulator would be able to remove a health and safety representative from office for not performing or exercising their functions or powers satisfactorily. Under clause 18, a representative could appeal to a District Court against such a decision.

We recommend inserting Schedule 1A, clause 17(2), which would require the regulator to notify the health and safety representative and the PCBU of its decision. We also recommend inserting Schedule 1A, clause 19, to allow the PCBU to request the regulator to use its discretion to remove a health and safety representative under clause 17. If the health and safety representative were not removed after such a request, the PCBU could appeal to a District Court under subclause (4).

### **Work groups**

We propose a number of changes to clause 66 to clarify the concept of work groups. We recommend amending subclause (2), to provide that a work group is, by default, all the workers in the business or undertaking.

When the default understanding of work group does not fit well with the structure of the business or undertaking, the PCBU should be able to determine alternative groupings of workers. We recommend inserting subclause (3) to this effect. If a PCBU decided to determine work groups under this option, it should have to do so appropriately rather than arbitrarily. We therefore recommend inserting subclause (4), requiring the PCBU to ensure that the workers are grouped in a way that

- most effectively enables representation of the health and safety interests of the workers, and
- has regard to the need for health and safety representatives to be accessible to those they represent.

We recommend inserting new subclause (5) into clause 66 to make it clear that, by agreement, two or more PCBUs could determine work groups comprising workers carrying out work for any PCBU that is party to the agreement.

We recommend inserting clause 66A to require PCBUs, when determining work groups, to also determine the number of health and safety representatives to be elected per work group. Subclause (1) would require PCBUs to determine how many health and safety representatives would be needed where the default work group arrangement was selected, and a minimum ratio of representatives to workers would be set out in regulations.

Subclause (2) would require a PCBU with a work group other than the default arrangement to determine the number of health and safety representatives per work group in accordance with any requirements prescribed in regulations.

### **Health and safety committees**

We have recommended replacing clause 88 with new clause 86A. New subclause (3) would exclude PCBUs in low-risk sectors with fewer than 20 workers from the requirement to respond to a request to establish a health and safety committee. However, we note that subclause (7) would allow a small, low-risk PCBU to establish a health and safety committee on its own initiative.

When a health and safety committee was asked for, a PCBU could either confirm that they would establish a committee (subclause 2), or could decline to do so on the basis

that its existing worker participation practices sufficiently met the requirements of the bill (new subclause 4). New subclause (5) would require PCBUs to give notice of such a decision to interested workers, within a reasonable time; and new subclause (6) would require PCBUs to state why they had not established a committee, and to advise workers that they might raise this under the issue resolution process set out in the bill.

### **Cessation of work**

We recommend inserting clause 109(2) to require the regulator, when asked to help resolve an issue relating to the cessation of work, to assist as soon as practicable after agreeing to do so.

### **Notices**

We recommend under Schedule 1, new clauses 7B(5) and (6), that existing health and safety representatives be required to undergo training before being allowed to issue provisional improvement notices or direct unsafe work to cease.

We recommend inserting clause 92(5) to require health and safety representatives to give their PCBU a copy of any provisional improvement notice they issue.

We recommend amending clause 139 to require notices such as improvement notices or prohibition notices to be displayed “as soon as practicable” rather than “as soon as possible” because the display of a notice is not so urgent as to require it to be given the highest possible priority. We also recommend inserting clause 139A to allow (but not require) inspectors to put up notices at the workplace where they considered this was advisable, such as places where the risk is imminent and notification is urgently required, or where it is not certain that the person to whom the notice is issued can or will display it as required.

### **Functions of the regulator**

We recommend amending clause 310(3), which would amend the functions of WorkSafe under the WorkSafe New Zealand Act 2013, to require WorkSafe’s published information to include information about its approach to enforcement and its performance standards for its investigation process. We recommend corresponding changes to clause 206, which sets out the proposed functions of regulators other than WorkSafe.

### **Enforceable undertakings**

Clause 145(2) would require the regulator to publish notices of any decision to accept an enforceable undertaking, and reasons for the decision. We consider that it is also important that court-ordered enforceable undertakings be publicised. We recommend inserting clause 174(6) to require the regulator to publish them on an internet site unless the court orders otherwise.

## **Prosecutions**

We recommend removing clause 164(2). It is unnecessary, as the Summary Proceedings Act 1957 governs proceedings when an infringement notice is issued.

### **Private prosecutions**

Clause 165 sets out the circumstances in which a prosecution can be brought by a person other than the regulator. We recommend changes to set out clearly the process that should operate where a prosecution has been brought under another enactment (not the bill) by another regulator. In such cases a private prosecutor would require the leave of the court to bring a prosecution under the bill.

We recommend changing the phrase “any possible defendant” in clause 165(1) to “any person”. This would mean that the potential defendant in a prosecution by a regulatory agency need not be a duty holder before the requirement to seek leave for private prosecution would be triggered.

New clause 165(3) provides that where a person applies for leave of the court to bring a private prosecution, the registrar may not accept the private prosecution for filing, but must refer it to the court for direction. New clause 165(4) would require the court, before granting leave to bring such a prosecution, to be satisfied that the evidence was sufficient and that the prosecution was not an abuse of process. As regards potential abuse of process, the prosecution should be consistent with the purpose of the legislation, and in the public interest. This is similar to the test the courts apply when considering whether to accept a charging document for a private prosecution brought under the Criminal Procedure Act 2011.

We recommend inserting clause 165(1A) to require leave for private prosecution to be sought if a regulatory agency would have prosecuted a person but cannot because the person has died.

### **Limitation period for prosecutions**

We recommend deleting clause 167, which sets out limitation periods for prosecutions, and replacing it with new clauses 167 (limitation period for the regulator), 167A (extensions to the limitations period for regulator), 167B (limitation period for private prosecutions), and 167C (extensions for certain proceedings).

We consider that a two-year period would not provide enough certainty for PCBUs and would not incentivise the regulator to conclude investigations promptly. New clause 167(1)(a) would reduce to 12 months the limitation period for prosecutions brought by the regulator. Maintaining the approach in current health and safety legislation, the 12 months would be counted from the date on which the incident, situation, or set of circumstances to which the offence relates first became known, or ought to have become known, to the regulator.

In new clause 167(1)(b), we recommend reducing the limitation period to six months after a coroner’s findings. We consider that six months is more appropriate than one year because the regulator would probably already be working with the coroner during the coroner’s investigation.

New clause 167A would allow the regulator to seek an extension from the District Court of up to 12 months. It sets out an extension process and criteria for extensions, modelled on the provisions of current health and safety legislation.

We note that under clause 165, private prosecutions could not be brought unless the regulator had decided not to prosecute. If an extension of the full 12 months were to be granted, this would allow a private prosecutor to bring a prosecution only if they filed on the very last day of the 12 months. A court may grant a shorter period than the full 12 months to allow time for others to bring prosecutions, and we anticipate that extensions for the full 12 months would only be granted in very unusual cases.

Clause 167(2), which we would move into new clause 167C, would allow an extension of the limitation period when fresh evidence had been discovered, and the offence fell under clause 42 (reckless conduct in respect of health and safety duty). We recommend also including offences under clause 43 (failure to comply with health and safety duty that exposes individual to risk of death or serious injury or illness), for contraventions where death has resulted.

### **Health and Safety at Work Strategy**

In clause 211(3), we recommend extending to 24 months the period by which the Minister must aim to publish the first Health and Safety at Work Strategy. This is a more workable timeframe for all parties, considering that in the same period those involved would also be adjusting to the new legislative regime. Too short a timeframe would risk diverting resources from the implementation of the bill.

### **Fines**

We believe the bill's maximum fines for offences against regulations should be aligned better with those in other safety regimes, such as the maritime and civil aviation sectors. In clause 221(1)(q) we recommend increasing from \$30,000 to \$50,000 the maximum fine for an offence created by regulation. In clause 221(1)(s), we recommend reducing the maximum infringement fee from \$20,000 to \$12,000. In Schedule 1, clauses 2(2) and 3(2), we recommend reducing the maximum fine from \$250,000 to \$50,000.

### **Costs**

We recommend removing clause 148(4) and amending clause 170, to allow the regulator to keep prosecution costs. The removal of clause 148(4) would also allow the regulator to keep any costs awarded for monitoring compliance with an enforceable undertaking.

### **Costs related to authorisation**

We consider that the regulator should also be able to recover the costs of providing regulatory oversight of specialised work or workplaces, such as major hazard facilities. We recommend inserting new clause 224A to allow regulations to be made pre-

scribing levies for the purposes of recovering costs related to the regulation of work or workplaces requiring authorisation.

## **Regulations**

We recommend amending clause 227(1), which contains general provisions relating to regulations, so that it applies to all regulations made under the bill. We recommend inserting clause 227(1)(aa), to make it clear that regulations may specify similar or additional duties to those in the bill, and clauses 227(1)(e) and (f), to allow flexibility in the way regulations are formulated.

We recommend amending Schedule 1 by inserting clause 2(1A) so that various regulations may be amended if necessary, and may continue to operate until revoked.

### **Regulations relating to hazardous substances**

We recommend amending clause 222(d) to ensure that the scope for regulating laboratories is not inadvertently constrained, and clause 222(h), to allow character and other requirements to be prescribed.

We recommend inserting clause 236A to set out the relationship between the Resource Management Act 1991 and hazardous substances regulations made under the bill.

## **Exemptions**

We recommend inserting clauses 228A and 228B, to allow the regulator to grant exemptions from compliance with any regulations made under the proposed Health and Safety at Work Act. Under proposed clause 228A(1), exemptions could be for a person or a class of persons. Under clause 228A(2), the regulator would have to be satisfied that the exemption is not broader than is reasonably necessary and is not inconsistent with the purposes of the bill. The regulator would also have to state the reasons for the exemption, under new clause 228B(4). These would have to be notified in the *Gazette* and published on the regulator's internet site (clause 228B(3)). Under proposed clause 228A(4)(b), an exemption would expire after five years, unless it was replaced sooner.

We recommend inserting clauses 221(2) and 223(4) to require the reasons for an exemption granted by regulations to be stated in the explanatory note of the regulations.

We recommend amending clause 221(1)(p), to allow regulations to be made imposing additional requirements on the exemption power, or specifying that exemptions may not be granted in respect of a particular regulation.

We also recommend inserting new clauses 4A and 4B into Schedule 1, to allow exemptions under existing regulations to be transitioned or saved.

## **Mining sector**

In Schedule 2, which relates to the mining sector, we recommend inserting several clauses and amending others. Our changes would make it clearer how the legislation

would apply to the mining sector. In relation to transitional provisions for mining, we recommend amending Schedule 1, clause 9.

### **Workplace incentive programmes**

We recommend amending clause 244, which would insert new section 174A into the Accident Compensation Act 2001. New section 174A(3) would allow the Accident Compensation Corporation to charge fees for participation in workplace incentive programmes (the fees and charges being set in regulations). Incentive programmes would be optional for businesses. Increasing the flexibility of funding would allow more flexible programme design.

We recommend amending Schedule 4, which would insert new Schedule 1AA, containing transitional and savings provisions, into the Accident Compensation Act 2001. Among other things, we recommend extending to 30 June 2019 the date on which the clauses in Schedule 1AA would be repealed. This would ensure the continuation of incentive programmes started before the commencement of the schedule.

### **Injury prevention**

Although reduction in ACC levies is not the only driver of injury prevention programmes, we were concerned that such programmes would be constrained to only achieving reductions to levies, when some programmes should raise awareness and therefore increase the number of ACC claims being made. We were assured that WorkSafe's injury prevention programmes can continue to be funded by WorkSafe and that such funding would not be dependent on a need to achieve a reduction to ACC levies as a criteria.

### **Amendments to the Hazardous Substances and New Organisms Act 1996**

We recommend a number of changes to clause 253, which would amend the interpretation section of the Hazardous Substances and New Organisms Act 1996. These changes are intended to reduce ambiguity in definitions relating to hazardous substances.

We recommend removing clause 256 and amending clause 290 so that the process for making decisions about hazardous substances would remain in regulations rather than being moved into tertiary legislation in the form of EPA notices.

We recommend inserting clause 258A to amend requirements relating to the EPA's register of applications received, to include all applications for hazardous substance and new organism approval, including pending and withdrawn applications. New sub-clause (4) would allow the authority to withhold from the register information about transshipment applications that could pose a risk to national safety and security.

Clause 259 would allow the EPA to keep a register of all importers and manufacturers of hazardous substances. We recommend removing this clause, as such a register would not provide any clear benefit to the public or the EPA. The EPA would still be able to collect information on importers and manufacturers through an EPA notice.



We recommend amending clause 271 to allow reference to an international hazardous substance classification system.

We recommend amending clause 273, new section 76B(2)(a), to require the EPA to have regard to the benefits alongside costs before issuing an EPA notice.

We recommend inserting clause 275(2B), to provide that controls on hazardous substances may be set to limit the circumstances in which a substance can be used where the benefits of the restriction outweigh the adverse effects.

We recommend inserting clause 284(1B) to give the Civil Aviation Authority responsibility for enforcing controls relating to the discharge of hazardous substances in, on, and from aircraft.

We recommend further amendments to clause 284 to set out more clearly the enforcement roles of the EPA and of WorkSafe in relation to hazardous substances. Clause 284(1), new section 97(1)(a) would require WorkSafe to enforce disposal and ecotoxic controls (and equivalent conditions in group standards) in any workplace. Clause 284(2), new section 97(3)(d) would require the EPA to enforce certain matters relating to hazardous substances that are prescribed in an EPA notice. We recommend inserting clause 285C, to set out powers of entry for inspection relating to hazardous substances, and amending clause 286, to improve the offence provisions in section 109 of the Hazardous Substances and New Organisms Act.

We recommend inserting clause 287A to amend section 113 of the Hazardous Substances and New Organisms Act. New section 113(2) would allow regional councils to retain infringement fees that they collect, as territorial authorities are already allowed to do. New section 113(3) would require that all other infringement fees (those enforced by central Government agencies) be deposited in a Crown bank account.

We recommend inserting clause 289(2A) to increase the maximum hazardous substances infringement fee from \$1,000 to \$3,000. The current maximum is too low to deter non-compliance. Stronger deterrence is appropriate as the potential for harm can be significant.

### **Fireworks**

We recommend amending clause 273 by inserting new section 76(1)(j), to allow the technical requirements for managing fireworks to be transferred from regulation to an EPA notice. We recommend inserting clause 274(4), new section 77(7) of the Hazardous Substances and New Organisms Act to specify that these controls are additional to those controlling their explosive properties.

We recommend inserting clause 284(1A) to make the Commissioner of Police the principal enforcer of fireworks sales restrictions instead of WorkSafe. The New Zealand Police have agreed to take on the primary responsibility from 2016, with operational and technical support from WorkSafe.

## **Dogs**

It has been suggested that utility companies should be given access to a register established under the Dog Control Act 1996, which lists addresses where dogs are kept. We acknowledge that the risk to workers entering a property could be reduced if they knew whether or not a dog is likely to be present. However, amending the Dog Control Act is outside the scope of the bill.

## **Maritime Operator Safety System**

The Maritime Operator Safety System (MOSS) is derived from the Maritime Transport Act 1994. It requires commercial ship operators to develop systems for managing the hazards associated with their operation. The bill sets out high-level, performance-based duties which are complementary to MOSS requirements. As there are overlaps, for example in requirements regarding identifying hazards and risks, new clause 29F (clause 23 in the bill as introduced) provides for compliance with other enactments. This would allow MOSS requirements to be considered when determining compliance with the legislation.

We understand it is intended that Maritime New Zealand continue to enforce health and safety legislation on board ships, as well as the requirements of the Maritime Transport Act. This would help to avoid duplication for ship operators. To keep it simple for them, we would expect Maritime New Zealand to keep a list of health and safety obligations that are additional to MOSS requirements.

## **New Zealand Labour Party minority view**

With regret, Labour cannot continue to support this bill.

Labour strongly supported the bill as it was introduced to Parliament. It was based on sound international evidence, a law that is working well in Australia, and the recommendations of two New Zealand reports - the Royal Commission on the Pike River Coal Mine Tragedy, and the Independent Taskforce on Workplace Health and Safety. It was an overdue reversal of the ideology of deregulation that is the driver of New Zealand's extremely poor workplace health and safety record that sees more people killed and injured at work per capita than in any other comparable nation.

It is regrettable that poor communication of the bill's intentions and content by the Government has resulted in rampant fear-mongering about what its impact will be on businesses. Concern amongst the business community has been fuelled by Government MPs repeating claims about the implementation of health and safety law by WorkSafe officials, and questionable statements about the potential impact of the new law. An inexplicable delay in reporting the bill back to the House has only caused further consternation amongst business people and working people alike who desire certainty about their obligations under the new law.

Significant changes have been made to the bill at select committee. Many of these are based on anecdotal assertions, a lack of appreciation for evidence and outright fear-mongering by a minority of employers who hold exceptionally negative opinions of

the people who work for them. The changes substantially water down the bill. As a result, the bill is considerably less aligned with evidence and best practice. The changes amount to a massive blow to the prospect of high quality health and safety reform.

Mainstream businesses have expressed their support for improved health and safety regulation and for the bill as it was introduced. The majority of employers values health and safety. Legislation must ensure that those who do not can be held to account and encouraged to change their practices. Good employers should not have to compete with businesses prepared to cut corners on health and safety. Sadly, the changes made to appease those who submitted against making necessary reform seriously undermine efforts to encourage positive change.

### **Health and safety representatives**

Studies overwhelmingly demonstrate that elected health and safety representatives not only improve workplace health and safety, they improve workplace relationships and foster a more proactive approach to health and safety. It is noteworthy that the most forthright opposition to health and safety representatives came from employers and representatives of industries with some of the poorest safety records. Labour is opposed to any exclusion from the requirement to hold an election for health and safety representatives if requested by workers. The proposed exclusion for businesses in low-risk sectors with fewer than 20 workers would exclude over 300,000 working people from access to one of the most effective ways they can make themselves safer at work.

### **Work groups**

The committee has made changes to the way in which work groups are determined that would grant ultimate authority to the PCBU to determine the structure of work groups. When combined with the limitation on health and safety representatives to only represent workers in their work group, this creates an opportunity for the PCBU to structure their workplace in such a way that deliberately limits the influence of health and safety representatives and denies workers an elected representative. This could be overcome by requiring work groups to be structured in a way that is agreed by both the PCBU and the workers.

### **Request to remove health and safety representative**

The bill contains provisions for WorkSafe to remove a health and safety representative if it considers that person has failed to satisfactorily discharge their duties. The representative may appeal such a decision to the District Court. The committee has added the ability for a PCBU to request the removal of a health and safety representative and to appeal a decision by WorkSafe not to remove them. This represents a gross lack of appreciation for the inherent imbalance of power between the PCBU and workers. The added provisions are likely to be used by employers who do not value elected health and safety representatives to punish those who challenge man-

agement decisions by exposing them to lengthy and expensive legal action and to deter people from standing for the role.

### **Industry health and safety representatives**

The bill allows for the appointment of industry health and safety representatives by a union or other group of workers in the underground coal mining industry to represent their interests across their industry. They have particular powers and are required to have considerable training and experience working in the industry. The Independent Taskforce on Workplace Health and Safety recommended that industry health and safety representatives operate in quarries and tunnelling operations, but that proposal has been repeatedly dismissed by the Government. Recent tragedies at quarries demonstrate that failing to implement the taskforce recommendations was a grievous error. We strongly urge the Government to consider expanding the industry health and safety representative model not only to quarrying and tunnelling operations but also to other high risk, isolated workplaces with small numbers of workers on site. This should include, but not be limited to, farming, forestry, fishing, and construction. The admission by WorkSafe that the number of quarries in New Zealand is unknown, and that an unknown number of them are operated without proper certification, demonstrates the challenges that WorkSafe will face in effectively enforcing this law, and the value of having trained and experienced support from those working within high-risk industries.

### **Definition of officer**

The meaning of officer of a PCBU has been watered down in this bill to the point that few if any senior office holders other than a Chief Executive will carry the responsibilities that come with being defined as an officer. This is disappointing because evidence supports encouraging senior management to lead the health and safety agenda in their workplace. Leadership from management is critical to positive safety outcomes.

### **Private prosecutions**

The bill allows for private prosecutions in the event that WorkSafe decides not to prosecute for offences. The ability to take such prosecutions is an important check on the Government regulator. Previous cases are rare but have been successful, demonstrating that WorkSafe (and formerly the Department of Labour) does not always make the right call on whether or not to prosecute. However, the interaction of the limitation periods for prosecutions brought by WorkSafe and those brought by persons other than the regulator creates a small but real possibility that there could be no time left for a private prosecution to be brought in the event that WorkSafe takes a full two years to decide not to prosecute. Extending the limitation period for private prosecutions to six months after WorkSafe decides not to prosecute would overcome this issue.

**Engagement with workers**

Under the bill, workers must be given a reasonable opportunity to express their views, raise issues and contribute to the decision-making process in relation to a health and safety matter. We recommend, for clarification, the bill state that workers are also given the opportunity to seek any advice they need to appropriately address the matter. This is particularly important in workplaces that do not have trained health and safety representatives where workers may need to seek further advice.

**Training for health and safety committee members**

The bill does not provide for training of health and safety committee members. Training is vital if members are to be effective in discharging their responsibilities. The role of a committee member is distinct from the role of a health and safety representative, so training would need to be specific to the functions and duties of committee membership.

**Green Party of Aotearoa New Zealand minority view**

The Green Party supports the overall purpose of this bill which is “to provide for a balanced framework to secure the health and safety of workers and workplaces.” There are, however, many instances where we feel that this bill, as amended, undermines that intention.

**Worker engagement overall**

The evidence from the Independent Taskforce on Workplace Health and Safety is clear that worker representation is one of the most important tools for improving worker health and safety—especially through properly constituted health and safety committees and empowered health and safety representatives. We note that the Australian model law on which this bill was originally based supports worker participation and engagement in regards to health and safety—however, the bill provides less opportunity for worker engagement than the provisions of the laws that this bill seeks to reform.

Examples of this are:

- health and safety representatives are optional for low-risk workplaces where fewer than 20 workers are employed and may be isolated to small workgroups in all other circumstances if the PCBU decides
- health and safety committees are optional for all PCBUs
- unions have a greatly reduced role in setting up health and safety committees, the election of health and safety representatives, or even in offering assistance to workers; and
- the system is not cohesive: health and safety representatives and health and safety committees have separate and distinct roles. Both functions are needed but the system allows neither, one, or both.

### **Meaning of PCBU**

The Greens believe that the absence of home occupiers in some instances from the definition of PCBU is deeply problematic. It means that persons employed or engaged by them to do residential work are not their workers, nor are the places that they do work workplaces. This creates a raft of problems, ranging from inconsistency with the Employment Relations Act 2000, to lack of duties on the workers. We are also concerned that as the home care workforce is predominately female, this bill legalises gendered discrimination to rights to workplace health and safety for this group of workers.

### **Duty to consult with other duty holders**

The Greens believe that the legislation should be clear in its guidance as to how PCBUs engage with each other over health and safety measures. The committee has rejected the concept of “good faith” that is used in the Employment Relations Act but the principles that underpin good faith have only been partially translated to how PCBUs should interact with each other. We believe that PCBUs’ duty to consult, co-operate, and co-ordinate activities could still be guided by the principles of good faith—particularly the duties to deal fairly with one another, not to mislead or deceive one another, and to be active and constructive in discharging their duty.

### **Duty of officers**

We remain concerned about the whittling down of the definition of officer to capture a narrower and narrower set of persons. The most significant narrowing of the definition is the removal of those who participate in making decisions that affect the whole or a substantial part of the PCBU. This means that those who advise the decision-maker would not be required to acquire and keep up to date knowledge of health and safety matters.

### **Work groups**

As well as our concern that PCBUs can determine whether or not to separate their workplaces into work groups without negotiation and agreement with their employees we also believe that the bill’s limitations on health and safety representatives to operate outside their own work groups will prevent health and safety representatives from being able to assist other work groups adequately. As well as offering advice, we believe health and safety representatives, when they are needed by another work group, should be able to act on their behalf and utilise their powers fully.

### **Training for health and safety committees**

There is no legislative requirement for PCBUs to have health and safety committees and the Green Party is disappointed that where PCBUs have elected to have them, training for those health and safety committee members is not required. In some scenarios we believe this will lead to health and safety committees being set up as simply a tick-box exercise and not assist in creating a culture of health and safety in the workplace.

**Industry health and safety representatives**

We believe that the bill misses the opportunity to create a better framework for health and safety by enabling industry health and safety representatives. Currently we do have some concession to their benefits in the coal mining industry; however, they could be extended to other high hazard industries like forestry or agriculture.

**Adverse, coercive, or misleading conduct provisions**

Under the bill a worker must use the employment relations institutions if their employer undertakes adverse, coercive, or misleading conduct. If, however, it concerns a PCBU who is not their employer, the worker must use the District Court. There are large differences between the two jurisdictions in terms of process and remedies available and, while the employment institutions are cheaper and less formal, workers are likely to get much lower remedies. We believe that this system could disadvantage employees relative to other kinds of workers.

**Health and safety offences**

We remain concerned that the sentences for breaches of the bill are significantly out of step with those under the general criminal law. While we acknowledge that sentencing under the general criminal law can be haphazard, bands of similar crimes are discernible and the most serious health and safety offence of “reckless conduct” fits most closely into an offence punishable by a maximum of 10 years’ imprisonment. Similarly, “failing to comply with a duty” is most comparable to a range of offences punishable by a maximum of three years’ imprisonment under criminal law.

**Limitation period for prosecutions**

We are concerned that the removal of the ability for the judge to allow extensions for the filing of prosecutions where the regulator has failed to bring an effective case within the relevant time period may disadvantage some workers and their families—particularly in especially complicated cases. The short time limits also contrast with the treatment of similar offences in the general criminal law.

**New Zealand First minority view**

New Zealand First strongly supports the intent of the Health and Safety Reform Bill which is to reduce by 25 percent workplace fatalities and serious injury by 2020.

New Zealand First also accepts and acknowledges this legislation has been modelled on Australia’s health and safety model law. We recognise that Australia has a significantly lower record of incidents of harm in the workplace compared to New Zealand.

New Zealand First, however, cannot support this legislation in its current form as there are a number of “unintended consequences” which could create some major problems for some employers and employees if they are not properly addressed before the bill is passed.

## **Appendix**

### **Committee process**

On 13 March 2014, the Health and Safety Reform Bill was referred to the Transport and Industrial Relations Committee of the 50th Parliament. That committee called for submissions with an original closing date of 11 April 2014, which was later extended to 9 May 2014.

The previous committee received and considered 226 submissions from interested groups and individuals. It heard 42 of these as oral submissions in Wellington. In the 51st Parliament, we heard the remaining 63 oral submissions in Wellington and Auckland. We also reheard evidence from three major witnesses who had already made oral submissions to the previous committee.

We received advice from the Ministry of Business, Innovation and Employment. The Regulations Review Committee reported to the committee on the powers contained in clauses 2, 221, 223, 225, 228, 229, and 235, and in clause 5 of Schedule 2.

### **Committee membership**

Jonathan Young (Chairperson)

Andrew Bayly

Sarah Dowie

Iain Lees-Galloway

Clayton Mitchell

Sue Moroney

Dr Parmjeet Parmar

Denise Roche

Alastair Scott

Phil Twyford

Hon Maurice Williamson



**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~



*Hon Michael Woodhouse*

## **Health and Safety Reform Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Health and Safety Reform Act **2014**.

**2 Commencement**

- (1) The following provisions come into force on the day after the date on which this Act receives the Royal assent: 5

- (a) **subpart 3 of Part 5:**  
 (b) **sections 271 to 273, 253(5), (6), (8), and (9), 258, 258A(4), 262, 263, 265, 283, 283A, 286(1AB), 290, and 291.**  
 (c) **sections 311 and 312 and Schedule 8.**

- (1A) The following provisions also come into force on the day after the date on which this Act receives the Royal assent: 10

- (a) **section 253(1)**, but only as it relates to the definition of EPA notice:  
 (b) **section 273**, but only as it relates to **sections 76A(d), (f), (g), and (h), 76AA, 76B, and 76C** of the Hazardous Substances and New Organisms Act 1996: 15  
 (c) **section 292**, but only as it relates to **clause 7 of Schedule 7** of the Hazardous Substances and New Organisms Act 1996 (which clause is set out in **Schedule 5**):  
 (d) **section 293**, but only as it relates to the items about sections 63B, and 141 to 141I of the Hazardous Substances and New Organisms Act 1996 (which items are set out in **Schedule 6**). 20

- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates and appointing different dates for different purposes. 25
- (3) Any provision that has not earlier been brought into force comes into force on **4 July 2016 31 October 2017.**

**Part 1****Health and safety at work**

## Subpart 1—Preliminary provisions 30

**3 Purpose**

- (1) The main purpose of this Act is to provide for a balanced framework to secure the health and safety of workers and workplaces by—

- (a) protecting workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work or from prescribed high-risk plant; and 35

- (b) providing for fair and effective workplace representation, consultation, co-operation, and resolution of issues in relation to work health and safety; and
- (c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting PCBUs and workers to achieve a healthier and safer working environment; and 5
- (d) promoting the provision of advice, information, education, and training in relation to work health and safety; and
- (e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and 10
- (f) ensuring appropriate scrutiny and review of actions taken by persons performing functions or exercising powers under this Act; and
- (g) providing a framework for continuous improvement and progressively higher standards of work health and safety. 15
- (2) In furthering **subsection (1)(a)**, regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety, and welfare from hazards and risks arising from work or from specified types of plant as is reasonably practicable.
- Compare: Model Work Health and Safety Act (Aust) s 3 20

#### 4 ~~Provisions affecting application of Act~~ **Transitional, savings, and related provisions**

~~**Schedule 1** contains transitional and savings provisions that affect this Act's other provisions as from time to time amended or repealed, or repealed and replaced (see **section 237**).~~ 25

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

### Subpart 2—Application of Act

#### 5 ~~Application of Act to the Crown~~

- (1) ~~Except as provided in this section, this Act binds the Crown.~~ 30  
*Notices issued under this Act*
- (2) ~~Despite section 17(1)(a) of the Crown Proceedings Act 1950, a notice issued under this Act may be issued against an instrument of the Crown, in accordance with this Act, but only if—~~
- (a) it is a Crown organisation; and 35
- (b) it is issued against the Crown organisation in its own name.

*Injunctions*

~~(3) Despite section 17(1)(a) of the Crown Proceedings Act 1950, an injunction may be granted or another order made against an instrument of the Crown, in accordance with this Act, but only if—~~

- ~~(a) it is a Crown organisation; and~~ 5
- ~~(b) the order or injunction is made against the Crown organisation in its own name.~~

*Infringement notices*

~~(4) An infringement notice may be served on an instrument of the Crown, in accordance with this Act, but only if—~~ 10

- ~~(a) it is a Crown organisation; and~~
- ~~(b) it is liable to be proceeded against for the alleged offence under **subsection (5)**; and~~
- ~~(c) the notice is served on the Crown organisation in its own name.~~

*Prosecution of offences* 15

~~(5) An instrument of the Crown may be prosecuted for an offence against this Act, but only if—~~

- ~~(a) it is a Crown organisation; and~~
- ~~(b) the proceedings are commenced—~~
  - ~~(i) against the Crown organisation in its own name and the proceedings do not cite the Crown as a defendant; and~~ 20
  - ~~(ii) in accordance with the Crown Organisations (Criminal Liability) Act 2002.~~

*Crown organisations that are not body corporates*

~~(6) If a Crown organisation is not a body corporate, it must be treated as if it were a separate legal personality for the purposes of—~~ 25

- ~~(a) issuing a notice under this Act against it; and~~
- ~~(b) granting an injunction or making any other order against it; and~~
- ~~(c) serving an infringement notice on it; and~~
- ~~(d) enforcing a notice, an order, an injunction, or an infringement notice in relation to it.~~ 30

Compare: 1992 No 96 s 3

**5 Application of Act to the Crown**

**(1) This Act binds the Crown.**

**(2) An instrument of the Crown that is a Crown organisation (whether or not a body corporate)—** 35

- (a) must be treated as if it were a separate legal personality for the purpose of complying with this Act; and
- (b) may be a PCBU in its own right.
- (3) An instrument of the Crown that is not a Crown organisation or a body corporate— 5
- (a) does not have separate legal personality; and
- (b) may not be a PCBU in its own right.
- (4) This section is subject to **section 5A**.  
 Compare: 1992 No 96 s 3
- 5A** **Enforcement of Act against the Crown** 10
- (1) This Act may be enforced against the Crown only in the manner provided in this section.
- Prosecution of offences*
- (2) An instrument of the Crown may be prosecuted for an offence against this Act, but only if— 15
- (a) it is a Crown organisation; and
- (b) the proceedings are commenced—
- (i) against the Crown organisation in its own name and the proceedings do not cite the Crown as a defendant; and
- (ii) in accordance with the Crown Organisations (Criminal Liability) Act 2002. 20
- Issue of infringement notices*
- (3) An infringement notice may be served on an instrument of the Crown, in accordance with this Act, but only if—
- (a) it is a Crown organisation; and 25
- (b) it is liable to be proceeded against for the alleged offence under **subsection (2)**; and
- (c) the notice is served on the Crown organisation in its own name.
- Injunctions*
- (4) Despite section 17(1)(a) of the Crown Proceedings Act 1950, an injunction may be granted or another order made against an instrument of the Crown, in accordance with this Act, but only if— 30
- (a) it is a Crown organisation; and
- (b) the order or injunction is made against the Crown organisation in its own name. 35

Notices issued under this Act

- (5) A notice issued under this Act may be issued against an instrument of the Crown, in accordance with this Act, but only if—
- (a) it is a Crown organisation; and
  - (b) it is issued against the Crown organisation in its own name.

5

Compare: 1992 No 96 s 3(2), (3)**6 Application of Act to Armed Forces**

(1AA) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to the defence of New Zealand.

10

(1) Subject to ~~subsection (2)~~ this section, **section 10A**, and any regulations made under **section 223**, this Act applies to the Armed Forces and any military aircraft or naval ship.

(2) This Act does not apply to—

~~(a) a worker who is a member of the Armed Forces while the worker is on operational service; or~~

15

(a) a worker who—

(i) is a member of the Armed Forces while the worker is on operational service; or

(ii) is carrying out work for the Armed Forces at a place outside New Zealand to which the Armed Forces are deployed on operational service;

20

(b) any military aircraft or naval ship operating in an area in which the deployment of the aircraft or ship is operational service.

~~(3) In **subsection (2)**, **operational service** means service that is declared by the Minister of Defence by notice in the *Gazette* to be operational service.~~

25

(3) In **subsection (2)**, **operational service** means—

(a) service in time of war or other like emergency or in the event of any actual or imminent emergency involving the deployment of the Armed Forces outside New Zealand;

30

(b) any other service by the Armed Forces overseas that is authorised by the Government of New Zealand and that involves peacekeeping, the maintenance or restoration of law and order or functioning of government institutions, or any other activity in respect of which the Government of New Zealand wishes to provide assistance (whether or not in conjunction with personnel from 1 or more other countries);

35

(c) any service or activity, or a class of service or activity, that is declared by the Minister of Defence by notice in the *Gazette* to be operational service.

- (4) In commanding the New Zealand Defence Force, the Chief of the Defence Force must take into account the need to promote the purpose of this Act to the greatest extent consistent with maintaining the defence of New Zealand.  
 Compare: Work Health and Safety Act 2011 (Aust) s 12D
- 6A Application of Act to intelligence and security agencies** 5
- (1) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to the security or defence of New Zealand or the international relations of the Government of New Zealand.
- (2) Without limiting **subsection (1)**,— 10
- (a) the Director of Security may, by notice in writing, declare that specified provisions of this Act or regulations do not apply (or apply with modifications) in relation to any worker carrying out work for the Security Intelligence Service:
- (b) the Director of the Government Communications Security Bureau may, by notice in writing, declare that specified provisions of this Act or regulations do not apply (or apply with modifications) in relation to any worker carrying out work for the Bureau. 15
- (3) Without limiting **subsection (2)**, a declaration may apply to:
- (a) a specified worker or class of workers: 20
- (b) a specified workplace or class of workplaces:
- (c) a specified type of work.
- (4) A declaration under **subsection (2)** may only be made with the approval of the Minister.
- (5) A declaration made under **subsection (2)** is not a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act. 25
- (6) In administering the Security Intelligence Service or the Bureau and in exercising the power under **subsection (2)**, the Director of Security or Director of the Bureau (as the case requires) must take into account the need to promote the purpose of this Act to the greatest extent consistent with maintaining the security or defence of New Zealand or the international relations of the Government of New Zealand. 30
- (7) A worker who is an employee of the Security Intelligence Service or the Bureau may ask the Inspector-General to review a declaration made under **subsection (2)** to determine whether, in making the declaration, the Director of Security or Director of the Bureau (as the case requires) met the criteria in **subsection (6)**. 35

- (8) A request by a worker under **subsection (7)** for a review of a declaration must be made within 14 days of the date on which the worker becomes aware, or reasonably ought to have been aware, of the declaration.
- (9) In this section,—
- Government Communications Security Bureau or Bureau** means the Government Communications Security Bureau continued by section 6 of the Government Communications Security Bureau Act 2003 5
- Inspector-General**—
- (a) means the Inspector-General of Intelligence and Security holding office under section 5 of the Inspector-General of Intelligence and Security Act 1996; and 10
- (b) includes the Deputy Inspector-General of Intelligence and Security holding office under section 5 of that Act
- Minister**,—
- (a) in relation to the Security Intelligence Service, has the same meaning as in section 2(1) of the New Zealand Security Intelligence Service Act 1969; 15
- (b) in relation to the Bureau, has the same meaning as in section 4 of the Government Communications Security Bureau Act 2003
- Security Intelligence Service** means the New Zealand Security Intelligence Service continued by section 3 of the New Zealand Security Intelligence Service Act 1969. 20
- Compare: Work Health and Safety Act 2011 (Aust) s 12C
- 7 Application of Act to aircraft in operation**
- (1) This Act applies to an aircraft in operation, wherever it may be, while the aircraft— 25
- (a) is operating on a flight beginning at a place in New Zealand and ending at that same place or at another place in New Zealand; or
- (b) is operating outside New Zealand, if any workers employed or engaged to work on board the aircraft are employed or engaged under an employment agreement or contract for services governed by New Zealand law. 30
- (2) For the purposes of **subsection (1)(b)**, an aircraft operating in New Zealand as part of a flight beginning or ending outside New Zealand must be treated as operating outside New Zealand.
- (3) To avoid doubt, where this Act applies outside New Zealand, the provisions relating to offences apply even if an act or omission that constitutes an offence occurs in respect of an aircraft outside New Zealand. 35



- (4) In this section, **in operation**, in relation to an aircraft, means while the aircraft is taxiing, taking off, flying, or landing.

Compare: 1992 No 96 s 3A(2), ~~(4)~~ (3), (5)

## 8 Application of Act to ships

- (1) This Act applies to a New Zealand ship wherever it may be. 5
- (2) This Act applies to a foreign ship on demise charter to a New Zealand-based operator when it is operating in New Zealand.
- (3) To avoid doubt, where this Act applies outside New Zealand, the provisions relating to offences apply even if an act or omission that constitutes an offence occurs in respect of a ship outside New Zealand. 10
- (4) This section does not limit or affect—
- (a) **section 6** (which relates to the application of this Act to the Armed Forces); or
- (b) **section 9** (which relates to the application of this Act in the exclusive economic zone or in or on the continental shelf). 15

Compare: 1992 No 96, s 3B(1), (4)

## 9 Application of Act in exclusive economic zone and in or on continental shelf

- (1) This Act applies to—
- (a) a workplace in the exclusive economic zone or in or on the continental shelf if an activity that is regulated under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 or the Crown Minerals Act 1991 is carried out at the workplace; and 20
- (b) any aircraft or ship (including a foreign ship) operating between New Zealand and the workplace in connection with an activity to which **paragraph (a)** applies. 25

- (2) In this section,—
- continental shelf** has the same meaning as in section 2(1) of the Continental Shelf Act 1964
- exclusive economic zone** means the exclusive economic zone of New Zealand as defined in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977. 30

## 10 Application of Act to prescribed high-risk plant

- ~~(1) This Act applies to the operation or use of prescribed high-risk plant even if the plant is not situated, operated, or used at a workplace or for use in carrying out work. 35~~

- (1) This Act applies to—

- (a) the operation or use of prescribed high-risk plant even if the plant is not situated, operated, or used at a workplace or used in carrying out work;
- (b) every operator of high-risk plant even if the operator would not otherwise be a PCBU as defined in **section 13**.
- (2) For the purposes of **subsection (1)**, a reference in this Act— 5
- (a) to carrying out work includes a reference to the operation and use of prescribed high-risk plant; and
- (b) to a workplace includes a reference to any prescribed high-risk plant and the place at or in which the plant is situated, operated, or used; and
- (c) to work health and safety (however expressed) includes a reference to public health and safety. 10
- (3) This section applies subject to any prescribed exclusions or modifications.
- Compare: Model Work Health and Safety Act (Aust), Schedule 1

*Disapplication of **Part 3***

**10A Certain provisions of Part 3 do not apply to members of Armed Forces** 15

- (1) The following provisions of **Part 3** do not apply to members of the Armed Forces:
- (a) **section 65(1)** (which relates to requests for the election of health and safety representatives); and
- (b) **section 86A(1)(b)** (which relates to requests for the establishment of a health and safety committee). 20
- (2) **Sections 106 and 107** (which relate to the right of a worker to cease unsafe work and a health and safety representative to direct unsafe work to cease), do not authorise a member of the Armed Forces to cease work where a lawful order has been issued that requires the work to be undertaken. 25

**10B Part 3 does not apply to volunteer workers**

Nothing in **Part 3** applies to a volunteer worker (as defined in **section 14(3)**).

**11 Application of Part 3 does not apply to prisoners**

- (1) Nothing in **Part 3** applies to a worker who is a prisoner who is carrying out work inside a prison. 30
- (2) In **subsection (1)**, **prison** and **prisoner** have the same meanings as in section 3(1) of the Corrections Act 2004.

Compare: Model Work Health and Safety Act (Aust) s 103

## Subpart 3—Interpretation

*General***12 Interpretation**

In this Act, unless the context otherwise requires,—

~~aircraft~~ has the same meaning as in section 2(1) of the Civil Aviation Act 1990 5

**ACC** means the Accident Compensation Corporation continued by section 259 of the Accident Compensation Act 2001

**adverse conduct** has the meaning given in **section 110**

aircraft has the same meaning as in section 2(1) of the Civil Aviation Act 1990

**approved code of practice** means a code of practice approved by the Minister under **section 229** 10

**Armed Forces** has the same meaning as in section 2(1) of the Defence Act 1990

**authorised** has the meaning given in ~~section 54~~ **section 218A**

**CAA** means the Civil Aviation Authority of New Zealand established by section 72A of the Civil Aviation Act 1990 15

**cease work** has the meaning given in **section 105**

**Chief of Defence Force** means the officer appointed under section 8 of the Defence Act 1990

**compliance power** means the functions and powers conferred on an inspector or a health and safety medical practitioner (as relevant) under this Act 20

constable has the same meaning as in section 4 of the Policing Act 2008

**construct** includes assemble, erect, reconstruct, reassemble, and re-erect

**Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002 25

**defence area** has the same meaning as in section 2(1) of the Defence Act 1990

**demise charter** has the same meaning as in section 2(1) of the Ship Registration Act 1992

**demolition** includes deconstruction

**design**, in relation to plant, a substance, or structure includes— 30

(a) the design of part of the plant, substance, or structure; and

(b) the redesign or modification of a design

**designated agency** means an agency designated under **section 207**

**employee** has the same meaning as in section 6 of the Employment Relations Act 2000 35

- employment agreement** has the same meaning as in section 5 of the Employment Relations Act 2000
- enforceable undertaking** means an undertaking accepted by the regulator under **section 144**
- ~~**enforcement officer** has the same meaning as in section 135 of the Hazardous Substances and New Organisms Act 1996~~ 5
- engage in conduct** means to do an act or omit to do an act
- EPA** means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011
- EPA control** has the same meaning as in **section 2(1)** of the Hazardous Substances and New Organisms Act 1996 10
- foreign ship** has the same meaning as in section 2(1) of the Maritime Transport Act 1994
- handle** includes transport
- ~~**hazard**—~~ 15
- (a) ~~means a situation or thing that has the potential to cause death, injury, or illness to a person; and~~
- (b) ~~includes a person's behaviour where that behaviour has the potential to cause death, injury, or illness to a person (whether or not that behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person's behaviour)~~ 20
- hazard** includes a person's behaviour where that behaviour has the potential to cause death, injury, or illness to a person (whether or not that behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person's behaviour) 25
- hazardous substance** has the same meaning as in section 2(1) of the Hazardous Substances and New Organisms Act 1996
- health** means physical and mental health
- ~~**health and safety duty** means a duty imposed on a person under **subpart 1 or 2 of Part 2**~~ 30
- health and safety medical practitioner** means a person for the time being appointed under **section 198**
- ~~**health and safety representative**, in relation to a worker, means the health and safety representative elected under **subpart 2 of Part 3** for the work group of which the worker is a member~~ 35
- health and safety representative** means a worker elected as a health and safety representative in accordance with **subpart 2 of Part 3**
- home**—
- (a) means a place occupied as a dwelling house; and

- (b) includes any garden, yard, garage, outhouse, or other appurtenance of a home
- homeworker** has the same meaning as in section 5 of the Employment Relations Act 2000
- importation** has the same meaning as in section 2(1) of the Customs and Excise Act 1996, and **import** has a corresponding meaning 5
- improvement notice** means a notice issued under **section 123**
- inspector** means an inspector appointed under **section 181**
- issuing officer** ~~means a person within the meaning of~~ has the same meaning as in section 3(1) of the Search and Surveillance Act 2012 10
- local authority** has the same meaning as in section 5(1) of the Local Government Act 2002
- Maritime New Zealand** means the authority continued by section 429 of the Maritime Transport Act 1994
- medical officer of health**— 15
- (a) has the same meaning as in section 2(1) of the Health Act 1956; and
- (b) includes the officers referred to in section 22 of that Act
- medical practitioner** means a health practitioner who—
- (a) is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine; and 20
- (b) holds a current practising certificate
- military aircraft** means an aircraft of, or pertaining to, the Armed Forces
- Minister**, except in section 6A, means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 25
- naval ship** has the same meaning as in section 2(1) of the Defence Act 1990
- New Zealand**—
- (a) means the land and the waters enclosed by the outer limits of the territorial sea of New Zealand (as described in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977); and 30
- (b) includes—
- (i) all airspace within the territorial limits of New Zealand:
- (ii) the Ross Dependency 35
- New Zealand Fire Service** means the New Zealand Fire Service established by section 3 of the Fire Service Act 1975

- New Zealand ship** has the same meaning as in section 2(1) of the Maritime Transport Act 1994
- New Zealand Transport Agency** means the Agency established by section 93 of the Land Transport Management Act 2003
- non-disturbance notice** means a notice issued under **section 130** 5
- notifiable event** has the meaning given in **section 20**
- notifiable incident** has the meaning given in **section 19**
- notifiable injury or illness** has the meaning given in **section 18**
- ~~**notifiable incident** has the meaning given in **section 19**~~
- ~~**officer**, in relation to a PCBU, — 10~~
- ~~(a) means, if the PCBU is —~~
- ~~(i) a company, any person occupying the position of a director of the company by whatever name called:~~
- ~~(ii) a partnership (other than a limited partnership), any partner:~~
- ~~(iii) a limited partnership, any general partner: 15~~
- ~~(iv) a body corporate or an unincorporated body, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company; and~~
- ~~(b) includes any other person who makes decisions that affect the whole, or a substantial part, of the business of the PCBU (for example, the chief executive); but 20~~
- ~~(c) does not include a Minister of the Crown acting in that capacity~~
- officer** has the meaning given in **section 13A**
- person** includes the Crown, a corporation sole, and a body of persons, whether corporate or unincorporate 25
- person conducting a business or undertaking** or PCBU has the meaning given in **section 13**
- personal information** has the same meaning as in section 2(1) of the Privacy Act 1993 30
- personal protective equipment**—
- (a) means anything used or worn by a person (including clothing) to minimise risks to the person's health and safety;
- (b) includes air-supplied respiratory equipment
- plant** includes— 35
- (a) any machinery, vehicle, vessel, aircraft, equipment (including personal protective equipment), appliance, container, implement, or tool; and
- (b) any component of any of those things; and

- (c) anything fitted or connected to any of those things
- prescribed high-risk plant** means plant prescribed by regulations as high-risk plant
- prohibited health and safety reason** has the meaning given in **section 111**
- prohibition notice** means a notice issued under **section 127(3)** 5
- reasonably practicable**, ~~in relation to a duty to ensure health and safety, in relation to a duty of a PCBU set out in **subpart 1 of Part 2**,~~ has the meaning given in **section 17**
- regulations** means regulations made under this Act
- regulator** means, as the case requires,— 10
- (a) WorkSafe; or
- (b) the relevant designated agency
- regulatory agency** means any of the following:
- (a) a regulator under this Act:
- (b) the CAA: 15
- (c) the New Zealand Police:
- (d) the New Zealand Transport Agency:
- (e) Maritime New Zealand:
- (f) the EPA:
- (g) a local authority: 20
- (h) the New Zealand Fire Service:
- (i) a medical officer of health:
- (j) the Ministry of Health:
- (k) ACC:
- (ka) the Ministry of Business, Innovation, and Employment, including any statutory officer who carries out work for that business or undertaking: 25
- (l) a prescribed agency:
- ~~(m) any department of State that is responsible for—~~
- ~~(i) the Building Act 2004:~~
- ~~(ii) the Crown Minerals Act 1991~~ 30
- relevant health and safety legislation** means—
- (a) this Act and regulations made under this Act:
- (b) any provisions of the following Acts (or any regulations made under those Acts) under which the regulator has functions:
- (i) Electricity Act 1992: 35
- (ii) Gas Act 1992:

(iii) Hazardous Substances and New Organisms Act 1996:

(iv) WorkSafe New Zealand Act 2013

**representative**, in relation to a worker, means—

- (a) the health and safety representative for the worker; or
- (b) a union representing the worker; or 5
- (c) any other person the worker authorises to represent the worker

**residential work** means work done by a person employed or engaged by the occupier of a home of either or both of the following kinds:

- (a) domestic work done or to be done in the home:
- (b) work done or to be done in respect of the home 10

~~**risk** means the possibility that death, injury, or illness might occur when a person is exposed to a hazard~~

**ship** has the same meaning as in section 2(1) of the Maritime Transport Act 1994

**statutory officer** means a person— 15

- (a) holding or performing duties of an office established by an enactment; or
- (b) performing duties expressly conferred on the person by virtue of his or her office by an enactment; or
- (c) holding office as the chief executive of a Crown organisation

**structure**— 20

- (a) means anything that is constructed, whether fixed, moveable, temporary, or permanent; and
- (b) includes—
  - (i) buildings, masts, towers, frameworks, pipelines, quarries, bridges, and underground works (including shafts or tunnels); and 25
  - (ii) any component of a structure; and
  - (iii) part of a structure

**substance**—

- (a) means any natural or artificial substance in any form (for example, a solid, liquid, gas, or vapour); and 30
- (b) includes a hazardous substance

**supply** has the meaning given in **section 16**

**suspension notice** means a notice issued under **section 201**

**union** has the same meaning as in section 5 of the Employment Relations Act 2000 35

**volunteer** means a person who is acting on a voluntary basis (whether or not the person receives out-of-pocket expenses)



**work group** means a work group determined under **section 66**

**worker** has the meaning given in **section 14**

**workplace** has the meaning given in **section 15**

**WorkSafe** means WorkSafe New Zealand established by section 5 of the WorkSafe New Zealand Act 2013. 5

Compare: 1992 No 96 s 2(1); Model Work Health and Safety Act (Aust) s 4

### *Key terms*

#### **13 Meaning of PCBU**

- (1) In this Act, unless the context otherwise requires, a **person conducting a business or undertaking** or **PCBU**— 10
- (a) means a person conducting a business or undertaking—
- (i) whether the person conducts a business or undertaking alone or with others; and
- (ii) whether or not the business or undertaking is conducted for profit or gain; but 15
- (b) does not include—
- (i) a person ~~conducting a business or undertaking~~ to the extent that the person is employed or engaged solely as a worker in, or as an officer of, the business or undertaking:
- (ii) a volunteer association: 20
- (iii) an occupier of a home to the extent that the occupier employs or engages another person solely to do residential work:
- (iiia) a statutory officer to the extent that the officer is a worker in, or an officer of, the business or undertaking:
- (iv) a person, or class of persons, that is declared by regulations not to be a PCBU for the purposes of this Act or any provision of this Act ~~by regulations~~. 25
- (2) In **subsection (1)(b)(ii)**, **volunteer association** means a group of volunteers (whether incorporated or unincorporated) working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association. 30

Compare: Model Work Health and Safety Act (Aust) s 5

#### **13A Meaning of officer**

In this Act, unless the context otherwise requires, **officer**, in relation to a PCBU— 35

- (a) means, if the PCBU is—

- (i) a company, any person occupying the position of a director of the company by whatever name called:
- (ii) a partnership (other than a limited partnership), any partner:
- (iii) a limited partnership, any general partner:
- (iv) a body corporate or an unincorporated body, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company; and 5
- (b) includes any other person occupying a position in relation to the business or undertaking that allows the person to exercise significant influence over the management of the business or undertaking (for example, a chief executive); but 10
- (c) does not include a Minister of the Crown acting in that capacity; and
- (d) to avoid doubt, does not include a person who merely advises or makes recommendations to a person referred to in **paragraph (a) or (b)**. 15

Compare: Model Work Health and Safety Act (Aust) s 4

#### 14 Meaning of worker

- (1) In this Act, unless the context otherwise requires, a **worker** means ~~a person~~ an individual who carries out work in any capacity for a PCBU, including work as— 20
  - (a) an employee; or
  - (b) a contractor or subcontractor; or
  - (c) an employee of a contractor or subcontractor; or
  - (d) an employee of a labour hire company who has been assigned to work in the business or undertaking; or 25
  - (e) an outworker (including a homemaker); or
  - (f) an apprentice or a trainee; or
  - (g) a person gaining work experience or undertaking a work trial; or
  - (h) a volunteer worker; or
  - (i) a person of a prescribed class. 30
- (2) For the purposes of **subsection (1)**,—
  - (a) a constable is—
    - (i) a worker; and
    - (ii) at work throughout the time when the constable is on duty or is lawfully performing the functions of a constable, but not otherwise: 35
  - (b) a member of the Armed Forces is—

- (i) a worker; and
- (ii) at work throughout the time when the member is on duty or is lawfully performing the functions of a member of the Armed Forces, but not otherwise:
- (c) a PCBU is also a worker if the PCBU is an individual who carries out work in that business or undertaking. 5
- (3) In subsection (1)(h), a volunteer worker—**
- (a) means a volunteer who carries out work in any capacity for a PCBU—**
- (i) with the knowledge or consent of the PCBU; and**
- (ii) on an ongoing and regular basis; and** 10
- (iii) that is an integral part of the business or undertaking; but**
- (b) does not include a volunteer undertaking any of the following voluntary work activities:**
- (i) participating in a fund-raising activity;**
- (ii) assisting with sports or recreation for an educational institute, sports club, or recreation club;** 15
- (iii) assisting with activities for an educational institute outside the premises of the educational institution;**
- (iv) providing care for another person in the volunteer’s home.**
- Compare: 1992 No 96 s 3C(1), (3); Model Work Health and Safety Act (Aust) s 7 20
- 15 Meaning of workplace**
- (1) In this Act, unless the context otherwise requires, a **workplace**—
- (a) means a place where work is being carried out, or is customarily carried out, for a business or undertaking; and
- (b) includes any place where a worker goes, or is likely to be, while at work. 25
- (2) In **subsection (1)**, **place** includes—
- (a) a vehicle, vessel, aircraft, ship, or other mobile structure; and
- (b) any waters and any installation on land, on the bed of any waters, or floating on any waters.
- Compare: Model Work Health and Safety Act (Aust) s 8 30
- 16 Meaning of supply**
- (1) In this Act, unless the context otherwise requires, **supply**, in relation to a thing,—
- (a) includes the supply (or resupply) of the thing by way of sale, exchange, lease, hire, or hire purchase, whether as a principal or an agent; but 35
- (b) does not include—

- (i) the return of possession of a thing to the owner of the thing at the end of a lease or other agreement; or
- (ii) the supply of a thing by a person who does not control the supply or has no authority to make decisions about the supply (for example, a registered auctioneer who auctions a thing without having possession of the thing or a real estate agent acting in his or her capacity as a real estate agent); or 5
- (iii) a prescribed supply.
- (2) The supply of a thing occurs on the passing of possession of the thing to the person or an agent of the person to be supplied. 10
- (3) A financier is taken not to supply any plant, substance, or structure for the purposes of this Act if—
- (a) the financier has, in the course of the financier’s business as a financier, acquired ownership of, or another right in, the plant, substance, or structure on behalf of a customer of the financier; and 15
- (b) the action by the financier, that would be a supply but for this subsection, is taken by the financier for, or on behalf of, that customer.
- (4) If **subsection (3)** applies, the person (other than the financier) who had possession of the plant, substance, or structure immediately before the financier’s customer obtained possession of the plant, substance, or structure is taken for the purposes of this Act to have supplied the plant, substance, or structure to the financier’s customer. 20
- (5) In this section,—
- financier** means a financial services provider registered in accordance with Financial Service Providers (Registration and Dispute Resolution) Act 2008 that is in the business of providing a financial service within the meaning of section 5(e) of that Act 25
- real estate agent** has the same meaning as agent in section 4(1) of the Real Estate Agents Act 2008
- registered auctioneer** has the same meaning as in section 4(1) of the Auctioneers Act 2013. 30
- ~~**real estate agent** has the same meaning as agent in section 4(1) of the Real Estate Agents Act 2008.~~
- Compare: Model Work Health and Safety Act (Aust) s 6
- 17 Meaning of reasonably practicable** 35
- In this Act, unless the context otherwise requires, **reasonably practicable**, in relation to a duty ~~to ensure health and safety~~ of a PCBU set out in **subpart 1 of Part 2**, means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters, including— 40

- (a) the likelihood of the hazard or the risk concerned occurring; and
- (b) the degree of harm that might result from the hazard or risk; and
- (c) what the person concerned knows, or ought reasonably to know, about—
  - (i) the hazard or risk; and
  - (ii) ways of eliminating or minimising the risk; and
- (d) the availability and suitability of ways to eliminate or minimise the risk; and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

Compare: Model Work Health and Safety Act (Aust) s 18

## 18 Meaning of notifiable injury or illness

- (1) In this Act, unless the context otherwise requires, a **notifiable injury or illness**, in relation to a person, means—
- (a) ~~an injury or illness requiring the person to have immediate treatment for any of the following:~~ any of the following injuries or illnesses that require the person to have immediate treatment (other than first aid):
    - (i) the amputation of any part of his or her body:
    - (ii) a serious head injury:
    - (iii) a serious eye injury:
    - (iv) a serious burn:
    - (v) the separation of his or her skin from an underlying tissue (such as degloving or scalping):
    - (vi) a spinal injury:
    - (vii) the loss of a bodily function:
    - (viii) serious lacerations:
  - (b) an injury or illness that requires, or would usually require, the person to be admitted to a hospital for immediate treatment:
  - (c) an injury or illness that requires, or would usually require, the person to have medical treatment within 48 hours of exposure to a substance:
  - (d) any serious infection (including occupational zoonoses) to which the carrying out of work is a significant contributing factor, including any infection that is attributable to carrying out work—
    - (i) with microorganisms; or
    - (ii) that involves providing treatment or care to a person; or
    - (iii) that involves contact with human blood or bodily substances; or

- (iv) that involves handling or contact with animals, animal hides, animal skins, animal wool or hair, animal carcasses, or animal waste products; or
- (v) that involves handling or contact with fish or marine mammals:
- (e) ~~the following occupational zoonoses contracted in the course of work involving handling or contact with animals, animal hides, animal skins, animal wool or hair, animal carcasses, or animal waste products:~~ 5
- (i) ~~leptospirosis:~~
- (ii) ~~anthrax:~~
- (iii) ~~brucellosis:~~ 10
- (iv) ~~non-seasonal influenza of animal or avian origin:~~
- (v) ~~psittacosis:~~
- (f) any other injury or illness ~~prescribed~~ declared by regulations to be a notifiable injury or illness for the purposes of this section.
- (2) Despite **subsection (1), notifiable injury or illness** does not include any injury or illness declared by regulations not to be a notifiable injury or illness for the purposes of this section. 15
- (3) In this section,—
- animal** has the same meaning as in section 2(1) of the Animal Welfare Act 1999 20
- fish** has the same meaning as in section 2(1) of the Fisheries Act 1996
- marine mammal** has the same meaning as in section 2(1) of the Marine Mammals Protection Act 1978.
- Compare: Model Work Health and Safety Act (Aust) s 36
- 19 Meaning of notifiable incident** 25
- (1) In this Act, unless the context otherwise requires, a **notifiable incident** means an unplanned or uncontrolled incident in relation to a workplace that exposes a worker or any other person to a serious risk to that person's health or safety arising from an immediate or imminent exposure to—
- (a) an escape, a spillage, or a leakage of a substance; or 30
- (b) an implosion, explosion, or fire; or
- (c) an escape of gas or steam; or
- (d) an escape of a pressurised substance; or
- (e) an electric shock; or
- (f) the fall or release from a height of any plant, substance, or thing; or 35
- (g) the collapse, overturning, failure, or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with regulations; or

- (h) the collapse or partial collapse of a structure; or
- (i) the collapse or failure of an excavation or any shoring supporting an excavation; or
- (j) the inrush of water, mud, or gas in workings in an underground excavation or tunnel; or 5
- (k) the interruption of the main system of ventilation in an underground excavation or tunnel; or
- (l) a collision between 2 vessels, a vessel capsize, or the inrush of water into a vessel; or
- (m) any other incident ~~prescribed~~ declared by regulations to be a notifiable incident for the purposes of this section. 10
- (2) Despite **subsection (1)**, **notifiable incident** does not include an incident declared by regulations not be a notifiable incident for the purposes of this section. 15
- Compare: Model Work Health and Safety Act (Aust) s 37

## 20 Meaning of notifiable event

In this Act, unless the context otherwise requires, a **notifiable event** means—any of the following events that arise from work:

- (a) the death of a person; or
- (b) a notifiable injury or illness; or 20
- (c) a notifiable incident.

Compare: Model Work Health and Safety Act (Aust) s 35

### *Examples*

## 21 Status of examples

- (1) In this Act, an example is only illustrative of the provisions to which it relates. It does not limit those provisions. 25
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

## Subpart 4—~~Key principles relating to duties~~ General provisions

## 22 ~~Duty to manage risk~~ 30

~~A duty imposed on a person under this Act to ensure health and safety requires the person—~~

- (a) ~~to eliminate risks to health and safety, so far as is reasonably practicable; and~~

- (b) ~~if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.~~

Compare: Model Work Health and Safety Act (Aust) s 17

### **23 Compliance with other enactments**

~~In determining whether a health and safety duty is being or has been complied with, a person or a court may have regard to the requirements imposed under any other enactment (whether or not those requirements have a purpose of ensuring health and safety) that apply in the circumstances and that affect, or may affect, the health and safety of any person.~~

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### **24 Duties not transferable**

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~~A duty under this Act may not be transferred to another person.~~

Compare: Model Work Health and Safety Act (Aust) s 14

### **25 Person may have more than 1 duty**

~~A person may have more than 1 duty under this Act if the person belongs to more than 1 class of duty holder.~~

15

Compare: Model Work Health and Safety Act (Aust) s 15

### **26 More than 1 person may have same duty**

- (1) ~~More than 1 person may have the same duty under this Act at the same time.~~
- (2) ~~Each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.~~
- (3) ~~If more than 1 person has a duty for the same matter, each person—~~
- (a) ~~retains responsibility for that person's duty in relation to the matter; and~~
- (b) ~~must discharge that person's duty to the extent to which the person has the capacity to influence or control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.~~

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Compare: Model Work Health and Safety Act (Aust) s 16

### **27 Duty to consult other duty holders**

- (1) ~~If more than 1 person has a duty in relation to the same matter under this Act, each person with the duty must, so far as is reasonably practicable, consult, co-operate with, and co-ordinate activities with all other persons who have a duty in relation to the same matter.~~
- (2) ~~A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—~~
- (a) ~~for an individual, to a fine not exceeding \$20,000;~~
- (b) ~~for any other person, to a fine not exceeding \$100,000.~~

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Compare: Model Work Health and Safety Act (Aust) s 46



**28 PCBU must not levy workers**

- (1) A PCBU must not impose a levy or charge on a worker (or permit a levy or charge to be imposed on a worker) for anything done, or provided, in relation to health and safety.
- (2) For the purposes of **subsection (1)**, a PCBU will be treated as having levied or charged a worker who is an employee of the PCBU if the PCBU requires the employee to provide his or her own ~~protective clothing or~~ personal protective equipment—
- (a) as a pre-condition of employment; or
- (b) as a term or condition in an employment agreement.
- ~~(3) **Subsection (2)** applies whether or not the PCBU pays the worker an allowance or extra salary or wages instead of providing protective clothing or equipment.~~
- (4) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$5,000;
- (b) for any other person, to a fine not exceeding \$25,000.

Compare: Model Work Health and Safety Act (Aust) s 273

**29 No contracting out**

- A term of any agreement or contract that purports to exclude, limit, or modify the operation of this Act, or any duty owed under this Act, or to transfer to another person any duty owed under this Act—
- (a) has no effect to the extent that it does so; but
- (b) is not an illegal contract under the Illegal Contracts Act 1970.

Compare: Model Work Health and Safety Act (Aust) s 272

**29AA Insurance against fines unlawful**

- (1) To the extent that an insurance policy or a contract of insurance indemnifies or purports to indemnify a person for the person's liability to pay a fine or infringement fee under this Act,—
- (a) the policy or contract is of no effect; and
- (b) no court or tribunal has jurisdiction to grant relief in respect of the policy or contract, whether under section 7 of the Illegal Contracts Act 1970 or otherwise.
- (2) A person must not—
- (a) enter into, or offer to enter into, a policy or contract described in **subsection (1)**; or
- (b) indemnify, or offer to indemnify, another person for the other person's liability to pay a fine or an infringement fee under this Act; or

- (c) be indemnified, or agree to be indemnified, by another person for that person's liability to pay a fine or an infringement fee under this Act; or
- (d) pay to another person, or receive from another person, an indemnity for a fine or an infringement fee under this Act.
- (3) A person who contravenes **subsection (2)** commits an offence and is liable on conviction,— 5
- (a) for an individual, to a fine not exceeding \$50,000;
- (b) for any other person, to a fine not exceeding \$250,000.
- Compare: 1992 No 96 s 56I

## Part 2

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### Health and safety duties

#### Subpart 1AA—Key principles relating to duties

#### **29A Management of risks**

A duty imposed on a person by or under this Act requires the person—

- (a) to eliminate risks to health and safety, so far as is reasonably practicable; 15
- and
- (b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

Compare: Model Work Health and Safety Act (Aust) s 17

#### **29B Duties not transferable**

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A duty imposed on a person by or under this Act may not be transferred to another person.

Compare: Model Work Health and Safety Act (Aust) s 14

#### **29C Person may have more than 1 duty**

A person may have more than 1 duty imposed on the person by or under this Act if the person belongs to more than 1 class of duty holder. 25

Compare: 1992 No 96 s 2(2); Model Work Health and Safety Act (Aust) s 15

#### **29D More than 1 person may have same duty**

- (1) More than 1 person may have the same duty imposed by or under this Act at the same time. 30
- (2) Each duty holder must comply with that duty to the standard required by or under this Act even if another duty holder has the same duty.
- (3) If more than 1 person has a duty for the same matter, each person—
- (a) retains responsibility for that person's duty in relation to the matter; and

- (b) must discharge that person's duty to the extent to which the person has the ability to influence and control the matter or would have had that ability but for an agreement or arrangement purporting to limit or remove that ability.

Compare: 1992 No 96 s 2(2); Model Work Health and Safety Act (Aust) s 16

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### **29E PCBU must consult other PCBUs with same duty**

- (1) If more than 1 PCBU has a duty in relation to the same matter imposed by or under this Act, each PCBU with the duty must, so far as is reasonably practicable, consult, co-operate with, and co-ordinate activities with all other PCBUs who have a duty in relation to the same matter.

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- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—

(a) for an individual, to a fine not exceeding \$20,000;

(b) for any other person, to a fine not exceeding \$100,000.

Compare: Model Work Health and Safety Act (Aust) s 46

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### **29F Compliance with other enactments**

In determining whether a duty imposed on a person by or under this Act is being or has been complied with, a person or a court may have regard to the requirements imposed under any other enactment (whether or not those requirements have a purpose of ensuring health and safety) that apply in the circumstances and that affect, or may affect, the health and safety of any person.

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## Subpart 1—~~Duties of persons conducting business or undertaking~~ PCBUs

### **30 Primary duty of care**

- (1) A PCBU must ensure, so far as is reasonably practicable, the health and safety of—

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(a) ~~workers employed or engaged, or caused to be employed or engaged, by the PCBU who work for the PCBU,~~ while the workers are at work in the business or undertaking; and

(b) workers whose activities in carrying out work are influenced or directed by the PCBU, while the workers are carrying out the work.

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- (2) A PCBU must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

- (3) Without limiting **subsection (1) or (2)**, a PCBU must ensure, so far as is reasonably practicable,—

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(a) the provision and maintenance of a work environment that is without risks to health and safety; and

- (b) the provision and maintenance of safe plant and structures; and
- (c) the provision and maintenance of safe systems of work; and
- (d) the safe use, handling, and storage of plant, substances, and structures; and
- (e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and 5
- (f) the provision of any information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and 10
- (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing injury or illness of workers arising from the conduct of the business or undertaking.
- (4) **Subsection (5)** applies if— 15
- (a) a worker occupies accommodation that is owned by, or under the management or control of, a PCBU; and
- (b) the occupancy is necessary for the purposes of the worker's employment or engagement by the PCBU because other accommodation is not reasonably available. 20
- (5) The PCBU must, so far as is reasonably practicable, maintain the accommodation so that the worker is not exposed to risks to his or her health and safety arising from the accommodation.
- (6) A PCBU who is a self-employed person must ensure, so far as is reasonably practicable, his or her own health and safety while at work. 25
- Compare: Model Work Health and Safety Act (Aust) s 19(4) (4)
- 31 ~~Duty of self-employed persons~~**
- ~~A self-employed person must, so far as is reasonably practicable, ensure his or her own health and safety while at work.~~
- ~~Compare: Model Work Health and Safety Act (Aust) s 19(5)~~ 30
- 32 Duty of PCBU who manages or controls workplace**
- (1) A PCBU ~~with management or control of~~ who manages or controls a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace, and anything arising from the workplace are without risks to the health and safety of any person. 35
- (1A) Despite **subsection (1)**, a PCBU who manages or controls a workplace does not owe a duty under that subsection to any person who is at the workplace for an unlawful purpose.

- (1B) For the purposes of **subsection (1)**, if the workplace is a farm, the duty owed by the PCBU under that subsection—
- (a) applies only in relation to the farm buildings and any structure or part of the farm immediately surrounding the farm buildings that are necessary for the operation of the business or undertaking; 5
- (b) does not apply in relation to any other part of the farm unless work is being carried out in that part at the time.
- (2) In ~~**subsection (1)**~~ this section, a ~~PCBU with management or control of~~ who manages or controls a workplace—
- (a) means a PCBU to the extent that the business or undertaking involves the management or control (in whole or in part) of the workplace; but 10
- (b) does not include—
- (i) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or 15
- (ii) a prescribed person.

Compare: Model Work Health and Safety Act (Aust) s 20

### 33 **Duty of PCBU who manages or controls fixtures, fittings, or plant at workplaces**

- (1) A PCBU ~~with management or control of~~ who manages or controls fixtures, fittings, or plant at a workplace must, so far as is reasonably practicable, ensure that the fixtures, fittings, or plant are without risks to the health and safety of any person. 20
- (1A) Despite **subsection (1)**, a PCBU who manages or controls fixtures, fittings, or plant at a workplace does not owe a duty under that subsection to any person who is at the workplace for an unlawful purpose. 25
- (2) In ~~**subsection (1)**~~ this section, a ~~PCBU with management or control of~~ who manages or controls fixtures, fittings, or plant at a workplace—
- (a) means a PCBU to the extent that the business or undertaking involves the management or control of fixtures, fittings, or plant (in whole or in part) at a workplace; but 30
- (b) does not include—
- (i) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or 35
- (ii) a prescribed person.

Compare: Model Work Health and Safety Act (Aust) s 21

**34 Duty of PCBU who designs plant, substances, or structures**

- (1) This section applies to a PCBU (a **designer**) who conducts a business or undertaking that designs—
- (a) plant that is to be used, or could reasonably be expected to be used, as or at a workplace; or 5
  - (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or
  - (c) a structure that is to be used, or could reasonably be expected to be used, as or at a workplace.
- (2) The designer must, so far as is reasonably practicable, ensure that the plant, substance, or structure is designed to be without risks to the health and safety of persons— 10
- (a) who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed; or
  - (b) who handle the substance at a workplace; or 15
  - (c) who store the plant or substance at a workplace; or
  - (d) who construct the structure at a workplace; or
  - (e) who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to—
    - (i) the manufacture, assembly, or use of the plant for a purpose for which it was designed, or the proper storage, decommissioning, dismantling, or disposal of the plant; or 20
    - (ii) the manufacture or use of the substance for a purpose for which it was designed, or the proper handling, storage, or disposal of the substance; or 25
    - (iii) the manufacture, assembly, or use of the structure for a purpose for which it was designed, or the proper demolition or disposal of the structure; or
  - (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose health or safety may be affected by a use or an activity referred to in any of **paragraphs (a) to (e)**. 30
- (3) The designer must carry out, or arrange the carrying out of, any calculations, analysis, testing, or examination that may be necessary for the performance of the duty imposed by **subsection (2)**. 35
- (4) The designer must give to each person who is provided with the design for the purpose of giving effect to it adequate information concerning—
- (a) each purpose for which the plant, substance, or structure was designed; and

- (b) the results of any calculations, analysis, testing, or examination referred to in **subsection (3)**, including, in relation to a substance, any hazardous properties of the substance identified by testing; and
- (c) any conditions necessary to ensure that the plant, substance, or structure is without risks to health and safety when used for a purpose for which it was designed or when carrying out any activity referred to in **subsection (2)(a) to (e)**. 5
- (5) ~~The designer, on request, must, so far as is reasonably practicable, make reasonable efforts to give current relevant information on the matters referred to in **subsection (4)** to a person who carries out, or is to carry out, any of the activities referred to in **subsection (2)(a) to (e)**.~~ 10

Compare: Model Work Health and Safety Act (Aust) s 22

### 35 Duty of PCBU who manufactures plant, substances, or structures

- (1) This section applies to a PCBU (a **manufacturer**) who conducts a business or undertaking that manufactures— 15
- (a) plant that is to be used, or that could reasonably be expected to be used, as or at a workplace; or
- (b) a substance that is to be used, or that could reasonably be expected to be used, at a workplace; or
- (c) a structure that is to be used, or that could reasonably be expected to be used, as or at a workplace. 20
- (2) The manufacturer must, so far as is reasonably practicable, ensure that the plant, substance, or structure is manufactured to be without risks to the health and safety of persons—
- (a) who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed or manufactured; or 25
- (b) who handle the substance at a workplace; or
- (c) who store the plant or substance at a workplace; or
- (d) who construct the structure at a workplace; or
- (e) who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to— 30
- (i) the assembly or use of the plant for a purpose for which it was designed or manufactured, or the proper storage, decommissioning, dismantling, or disposal of the plant; or
- (ii) the use of the substance for a purpose for which it was designed or manufactured, or the proper handling, storage, or disposal of the substance; or 35

- (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured, or the proper demolition or disposal of the structure; or
- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose health or safety may be affected by a use or an activity referred to in any of **paragraphs (a) to (e)**. 5
- (3) The manufacturer must carry out, or arrange the carrying out of, any calculations, analysis, testing, or examination that may be necessary for the performance of the duty imposed by **subsection (2)**. 10
- (4) The manufacturer must give to each person to whom the manufacturer provides the plant, substance, or structure adequate information concerning—
- (a) each purpose for which the plant, substance, or structure was designed or manufactured; and
- (b) the results of any calculations, analysis, testing, or examination referred to in **subsection (3)**, including, in relation to a substance, any hazardous properties of the substance identified by testing; and 15
- (c) any conditions necessary to ensure that the plant, substance, or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in **subsection (2)(a) to (e)**. 20
- (5) ~~The manufacturer, on request, must, so far as is reasonably practicable, The~~ manufacturer must, on request, make reasonable efforts to give current relevant information on the matters referred to in **subsection (4)** to a person who carries out, or is to carry out, any of the activities referred to in **subsection (2)(a) to (e)**. 25

Compare: Model Work Health and Safety Act (Aust) s 23

### 36 Duty of PCBU who imports plant, substances, or structures

- (1) This section applies to a PCBU (an **importer**) who conducts a business or undertaking that imports— 30
- (a) plant that is to be used, or that could reasonably be expected to be used, as or at a workplace; or
- (b) a substance that is to be used, or that could reasonably be expected to be used, at a workplace; or
- (c) a structure that is to be used, or that could reasonably be expected to be used, as or at a workplace. 35
- (2) The importer must, so far as is reasonably practicable, ensure that the plant, substance, or structure is without risks to the health and safety of persons—
- (a) who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed or manufactured; or 40



- (b) who handle the substance at a workplace; or
- (c) who store the plant or substance at a workplace; or
- (d) who construct the structure at a workplace; or
- (e) who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to— 5
- (i) the assembly or use of the plant for a purpose for which it was designed or manufactured, or the proper storage, decommissioning, dismantling, or disposal of the plant; or
- (ii) the use of the substance for a purpose for which it was designed or manufactured, or the proper handling, storage, or disposal of the substance; or 10
- (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured, or the proper demolition or disposal of the structure; or
- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose health or safety may be affected by a use or an activity referred to in any of **paragraphs (a) to (e)**. 15
- (3) The importer must—
- (a) carry out, or arrange the carrying out of, any ~~calculations~~ calculation, analysis, testing, or examination that may be necessary for the performance of the duty imposed by **subsection (2)**; or 20
- (b) ensure that the ~~calculations~~ calculation, analysis, testing, or examination ~~have~~ has been carried out.
- (4) The importer must give to each person to whom the importer provides the plant, substance, or structure adequate information concerning— 25
- (a) each purpose for which the plant, substance, or structure was designed or manufactured; and
- (b) the results of any ~~calculations~~ calculation, analysis, testing, or examination referred to in **subsection (3)**, including, in relation to a substance, any hazardous properties of the substance identified by testing; and 30
- (c) any conditions necessary to ensure that the plant, substance, or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in **subsection (2)(a) to (e)**. 35
- (5) ~~The importer, on request, must, so far as is reasonably practicable, The importer must, on request, make reasonable efforts to give current relevant informa-~~

tion on the matters referred to in **subsection (4)** to a person who carries out, or is to carry out, any of the activities referred to in **subsection (2)(a) to (e)**.

Compare: Model Work Health and Safety Act (Aust) s 24

### 37 Duty of PCBU who supplies plant, substances, or structures

- (1) This section applies to a PCBU (a **supplier**) who conducts a business or undertaking that supplies— 5
- (a) plant that is to be used, or could reasonably be expected to be used, as or at a workplace; or
  - (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or 10
  - (c) a structure that is to be used, or could reasonably be expected to be used, as or at a workplace.
- (2) The supplier must, so far as is reasonably practicable, ensure that the plant, substance, or structure is without risks to the health and safety of persons—
- (a) who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed or manufactured; or 15
  - (b) who handle the substance at a workplace; or
  - (c) who store the plant or substance at a workplace; or
  - (d) who construct the structure at a workplace; or
  - (e) who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to— 20
    - (i) the assembly or use of the plant for a purpose for which it was designed or manufactured, or the proper storage, decommissioning, dismantling, or disposal of the plant; or
    - (ii) the use of the substance for a purpose for which it was designed or manufactured, or the proper handling, storage, or disposal of the substance; or 25
    - (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured, or the proper demolition or disposal of the structure; or 30
  - (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose health or safety may be affected by a use or an activity referred to in any of **paragraphs (a) to (e)**.
- (3) The supplier must— 35
- (a) carry out, or arrange the carrying out of, any ~~calculations~~ calculation, analysis, testing, or examination that may be necessary for the performance of the duty imposed by **subsection (2)**; or

- (b) ensure that the ~~calculations~~ calculation, analysis, testing, or examination ~~have~~ has been carried out.
- (4) The supplier must give to each person to whom the supplier supplies the plant, substance, or structure adequate information concerning—
- (a) each purpose for which the plant, substance, or structure was designed or manufactured; and 5
- (b) the results of any calculations, analysis, testing, or examination referred to in **subsection (3)**, including, in relation to a substance, any hazardous properties of the substance identified by testing; and
- (c) any conditions necessary to ensure that the plant, substance, or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in **subsection (2)(a) to (e)**. 10
- (5) ~~The supplier, on request, must, so far as is reasonably practicable, The supplier must, on request, make reasonable efforts to give current relevant information~~ on the matters referred to in **subsection (4)** to a person who carries out, or is to carry out, any of the activities referred to in **subsection (2)(a) to (e)**. 15
- (6) This section does not apply to the sale of plant, whether or not in trade, if the plant—
- (a) is secondhand; and 20
- (b) is sold as is.
- (7) In **subsection (6)(b)**, **as is** means that the plant is sold without any representations or warranties about its quality, durability, or fitness, and with the entire risk in those respects to be borne by the buyer. 25
- Compare: 1992 No 96 s 18A(4), (5); Model Work Health and Safety Act (Aust) s 25

### **38 Duty of PCBU who installs, constructs, or commissions plant or structures**

- (1) This section applies to a PCBU who installs, constructs, or commissions plant or a structure that is to be used, or could reasonably be expected to be used, as or at a workplace.
- (2) The PCBU must, so far as is reasonably practicable, ensure that the way in which the plant or structure is installed, constructed, or commissioned ensures that the plant or structure is without risks to the health and safety of persons—
- (a) who install or construct the plant or structure at a workplace; or
- (b) who use the plant or structure at a workplace for a purpose for which it was installed, constructed, or commissioned; or 35
- (c) who carry out any reasonably foreseeable activity at a workplace in relation to the proper use, decommissioning, or dismantling of the plant or demolition, or disposal of the structure; or

- (d) who are at or in the vicinity of a workplace and whose health or safety may be affected by a use or an activity referred to in any of **paragraphs (a) to (c)**.

Compare: Model Work Health and Safety Act (Aust) s 26

## Subpart 2—Duties of officers, workers, and other persons 5

### 39 Duty of officers

- (1) If a PCBU has a duty or an obligation under this Act, an officer of the PCBU must exercise due diligence to ensure that the PCBU complies with that duty or obligation.
- (2) In this section, **due diligence** includes taking reasonable steps— 10
- (a) to acquire, and keep up to date, knowledge of work health and safety matters; and
  - (b) to gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations; and 15
  - (c) to ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
  - (d) to ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information; and 20
  - (e) to ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and
  - (f) to verify the provision and use of the resources and processes referred to in **paragraphs (c) to (e)**. 25
- (3) Despite **subsection (1)**, a member of the governing body of a territorial authority or regional council elected in accordance with the Local Electoral Act 2001, does not have a duty to exercise due diligence to ensure that any council-controlled organisation (as defined in section 6 of the Local Government Act 2002) complies with its duties or obligations under this Act unless that member is also an officer of that council-controlled organisation. 30

Compare: Model Work Health and Safety Act (Aust) s 27(1), (5)

### 40 Duties of workers

- While at work, a worker must— 35
- (a) take reasonable care for his or her own health and safety; and
  - (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and

- (c) comply, as far as the worker is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with this Act or regulations; and
- (d) co-operate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers. 5

Compare: Model Work Health and Safety Act (Aust) s 28

#### 41 Duties of other persons at workplace

A person at a workplace (whether or not the person has another duty under this Part) must—

- (a) take reasonable care for ~~the person's~~ his or her own health and safety; and 10
- (b) take reasonable care that ~~the person's~~ his or her acts or omissions do not adversely affect the health and safety of other persons; and
- (c) comply, as far as ~~the person~~ he or she is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with this Act or regulations. 15

Compare: Model Work Health and Safety Act (Aust) s 29

#### Subpart 3—Offences relating to ~~health and safety~~ duties

#### 42 Offence of reckless conduct in respect of ~~health and safety~~ duty

- (1) A person commits an offence against this section if the person— 20
  - (a) has a ~~health and safety~~ duty under **subpart 1 or 2**; and
  - (b) without reasonable excuse, engages in conduct that exposes any individual to whom that duty is owed to a risk of death or serious injury or serious illness; and
  - (c) is reckless as to the risk to an individual of death or serious injury or serious illness. 25
- (2) For the purposes of **subsection (1)**, if the person is an officer of a PCBU, the individual to whom the duty is owed is an individual to whom the PCBU owes the duty.
- (3) A person who commits an offence against **subsection (1)** is liable on conviction,— 30
  - (a) for an individual who is not a PCBU or an officer of a PCBU, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$300,000, or both;
  - (b) for an individual who is a PCBU or an officer of a PCBU, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$600,000, or both: 35

(c) for any other person, to a fine not exceeding \$3 million.

Compare: Model Work Health and Safety Act (Aust) s 31

**43 Offence of failing to comply with ~~health and safety~~ duty that exposes individual to risk of death or serious injury or serious illness**

- (1) A person commits an offence against this section if the person— 5
- (a) has a ~~health and safety~~ duty under **subpart 1 or 2**; and
- (b) fails to comply with that duty; and
- (c) that failure exposes any individual to a risk of death or serious injury or serious illness.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,— 10
- (a) for an individual who is not a PCBU or an officer of a PCBU, to a fine not exceeding \$150,000:
- (b) for an individual who is a PCBU or an officer of a PCBU, to a fine not exceeding \$300,000: 15
- (c) for any other person, to a fine not exceeding \$1.5 million.

Compare: Model Work Health and Safety Act (Aust) s 32

**44 Offence of failing to comply with ~~health and safety~~ duty**

- (1) A person commits an offence against this section if the person—
- (a) has a ~~health and safety~~ duty under **subpart 1 or 2**; and 20
- (b) fails to comply with that duty.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual who is not a PCBU or an officer of a PCBU, to a fine not exceeding \$50,000: 25
- (b) for an individual who is a PCBU or an officer of a PCBU, to a fine not exceeding \$100,000:
- (c) for any other person, to a fine not exceeding \$500,000.
- (3) Despite **subsection (2)**, if the duty or obligation of a PCBU is imposed under a provision other than a provision of **subpart 1 or 2**, the maximum penalty under **subsection (2)** for an offence by an officer against **subsection (1)** in relation to the duty or obligation is the maximum penalty fixed under the provision creating the duty or obligation for an individual who fails to comply with the duty or obligation. 30

Compare: Model Work Health and Safety Act (Aust) ss 27(3), 33

35

*Specific provisions relating to liability of certain persons***45 Liability of officers**

An officer of a PCBU may be convicted or found guilty of an offence against **section 39** whether or not the PCBU has been convicted or found guilty of an offence under this Act relating to the duty or obligation. 5

Compare: Model Work Health and Safety Act (Aust) s 27(4)

**46 Liability of volunteers**

A volunteer does not commit an offence under **section 42, 43, or 44** for a failure to comply with a ~~health and safety~~ duty imposed by **subpart 1 or 2**, except a duty under— 10

- (a) **section 40** (duties of workers); or
- (b) **section 41** (duties of other persons at workplaces).

Compare: Model Work Health and Safety Act (Aust) s 34(1)

**47 Liability of certain office holders**

- (1) An office holder listed in **subsection (2)**, when acting in that capacity, does not commit an offence under **section 42, 43, or 44** for a failure to comply with the duty imposed by **section 39** (duties of officers). 15

(2) ~~The office holders are—~~

- (a) ~~a member of a community board appointed or elected under the Local Electoral Act 2001;~~ 20
- (b) ~~a member of the governing body of a local authority elected under the Local Electoral Act 2001;~~
- (c) ~~a member of a local board elected under the Local Electoral Act 2001;~~
- (d) ~~a trustee of board of a school appointed or elected under the Education Act 1989.~~ 25

(2) The office holders are—

- (a) a member of the governing body of a territorial authority or regional council elected in accordance with the Local Electoral Act 2001;
- (b) a member of a local board elected or appointed under the Local Electoral Act 2001; 30
- (c) a member of a community board elected or appointed in accordance with the Local Electoral Act 2001;
- (d) a trustee of a board of a school appointed or elected under the Education Act 1989.

- (3) In **subsection (2)**— 35
- board** and **trustee**, in relation to a school, have the same meanings as in section 92(1) of the Education Act 1989

**community board** means a board established under section 49(1) of the Local Government Act 2002

**local authority and local board** ~~has the same meaning~~ have the same meanings as in section 5(1) of the Local Government Act 2002.

~~**local board** has the same meaning as in section 4(1) of the Local Government (Auckland Council) Act 2009~~ 5

~~**board and trustee**, in relation to a school, have the same meanings as in section 92(1) of the Education Act 1989.~~

#### **48 Liability of unincorporated associations**

(1) ~~An unincorporated association does not commit an offence under this Act for a failure to comply with a duty or an obligation imposed on the unincorporated association under this Act.~~ 10

(2) ~~However,—~~

(a) ~~an officer of an unincorporated association (other than a volunteer) may be liable for a failure to comply with a duty under **section 39** (duties of officers); and~~ 15

(b) ~~a member of an unincorporated association may be liable for failure to comply with a duty under **section 40 or 41** (duties of workers and duties of other persons at workplaces).~~

Compare: Model Work Health and Safety Act (Aust) s 34 20

#### *Other matters relating to offences*

#### **49 Actions taken to prevent harm**

Where a person (**person A**) harms another person (**person B**) by taking any action necessary to protect person B or any other person from harm,—

(a) person A does not commit an offence ~~against this Part~~ under this Act; and 25

(b) if person A is a worker, the PCBU for whom person A carries out work does not commit an offence ~~against this Part~~ under this Act.

Compare: 1992 No 96 s 51

#### **50 Proof of intention not required for certain offences** 30

In a matter involving a prosecution for an offence against **section 43 or 44**, it is not necessary to prove that the defendant—

(a) intended to take the action alleged to constitute the offence; or

(b) intended not to take the action, the failure to take which an action, where the failure to take that action is alleged to constitute the offence. 35

Compare: 1992 No 96 s 53



Subpart 4—Duties to ~~notify notifiable events and preserve sites~~ preserve sites and notify notifiable events

**51** ~~Duty to notify notifiable event~~

- (1) ~~A PCBU must, immediately after becoming aware that a notifiable event arising out of the conduct of the business or undertaking has occurred, ensure that the regulator is notified of the event.~~ 5
- (2) ~~A notification under **subsection (1)**—~~
- (a) ~~may be given by telephone or in writing (including by fax, email, or other electronic means); and~~
- (b) ~~must be given by the fastest possible means in the circumstances.~~ 10
- (3) ~~For the purposes of **subsection (2)**, a person giving notice by telephone must—~~
- (a) ~~give the details of the incident requested by the regulator; and~~
- (b) ~~if required by the regulator, give a written notice of the incident within 48 hours of being informed of the requirement.~~ 15
- (4) ~~Notice given in writing under **subsection (2) or (3)** must be in a form, or contain the details, approved by the regulator.~~
- (5) ~~If the regulator receives notice by telephone and a written notice is not required, the regulator must give the PCBU—~~
- (a) ~~details of the information received; or~~ 20
- (b) ~~an acknowledgement of having received notice.~~
- (6) ~~A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—~~
- (a) ~~for an individual, to a fine not exceeding \$10,000;~~
- (b) ~~for any other person, to a fine not exceeding \$50,000.~~ 25

Compare: Model Work Health and Safety Act (Aust) s 38(1)–(6)

**52** ~~Requirement to keep records~~

- (1) ~~A PCBU must keep a record of each notifiable event for at least 5 years from the date on which notice of the event is given to the regulator under **section 51**.~~ 30
- (2) ~~A record kept under **subsection (1)** must contain the particulars prescribed by regulations (if any).~~
- (3) ~~A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—~~
- (a) ~~for an individual, to a fine not exceeding \$5,000;~~ 35
- (b) ~~for any other person, to a fine not exceeding \$25,000.~~

Compare: Model Work Health and Safety Act (Aust) s 38(7)

**53 ~~Duty to preserve sites~~**

- (1) ~~A person with management or control of a workplace at which a notifiable event has occurred must, so far as is reasonably practicable, ensure that the site where the event occurred is not disturbed until authorised by an inspector.~~
- (2) ~~**Subsection (1)** does not prevent any action—~~ 5
- (a) ~~to assist an injured person; or~~
- (b) ~~to remove a deceased person; or~~
- (c) ~~that is essential to make the site safe or to minimise the risk of a further notifiable event; or~~
- (d) ~~that is done by, or under the direction of, a constable; or~~ 10
- (e) ~~for which an inspector or the regulator has given permission.~~
- (3) ~~**Subsection (1)** does not apply if the notifiable event is being investigated under the Armed Forces Discipline Act 1971 or the Transport Accident Investigation Commission Act 1990.~~
- (4) ~~A person who contravenes **subsection (1)** commits an offence and is liable on conviction, —~~ 15
- (a) ~~for an individual, to a fine not exceeding \$10,000;~~
- (b) ~~for any other person, to a fine not exceeding \$50,000.~~
- (5) ~~For the purposes of this section, a site —~~
- (a) ~~includes any plant, substance, structure, or thing associated with the notifiable event; but~~ 20
- (b) ~~does not include any particular site in prescribed circumstances.~~
- ~~Compare: Model Work Health and Safety Act (Aust) s 39~~

**51 Duty to preserve sites**

- (1) A PCBU who manages or controls a workplace at which a notifiable event has occurred must take all reasonable steps to ensure that the site where the event occurred is not disturbed until authorised by an inspector. 25
- (2) ~~**Subsection (1)** does not prevent any action—~~
- (a) to assist an injured person; or
- (b) to remove a deceased person; or 30
- (c) that is essential to make the site safe or to minimise the risk of a further notifiable event; or
- (d) that is done by, or under the direction of, a constable acting in execution of his or her duties; or
- (e) for which an inspector or the regulator has given permission. 35

- (3) **Subsection (1)** does not apply if the notifiable event is being investigated under the Armed Forces Discipline Act 1971 or the Transport Accident Investigation Commission Act 1990.
- (4) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,— 5
- (a) for an individual, to a fine not exceeding \$10,000;
- (b) for any other person, to a fine not exceeding \$50,000.
- (5) For the purposes of this section, a **site**—
- (a) includes any plant, substance, structure, or thing associated with the notifiable event; but 10
- (b) does not include any particular site in prescribed circumstances.
- Compare: Model Work Health and Safety Act (Aust) s 39
- 52 Duty to notify notifiable event**
- (1) A PCBU must, as soon as possible after becoming aware that a notifiable event arising out of the conduct of the business or undertaking has occurred, ensure that the regulator is notified of the event. 15
- (2) A notification under **subsection (1)**—
- (a) may be given by telephone or in writing (including by email, or other electronic means); and
- (b) must be given by the fastest possible means in the circumstances. 20
- (3) For the purposes of **subsection (2)**, a person giving notice by telephone must—
- (a) give the details of the incident requested by the regulator; and
- (b) if required by the regulator, give a written notice of the incident within 48 hours of being informed of the requirement. 25
- (4) Notice given in writing under **subsection (2) or (3)** must be in a form, or contain the details, approved by the regulator.
- (5) If the regulator receives notice by telephone and a written notice is not required, the regulator must give the PCBU—
- (a) details of the information received; or 30
- (b) an acknowledgement of having received notice.
- (6) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
- (b) for any other person, to a fine not exceeding \$50,000. 35
- Compare: Model Work Health and Safety Act (Aust) s 38(1)–(6)

**53 Requirement to keep records**

- (1) A PCBU must keep a record of each notifiable event for at least 5 years from the date on which notice of the event is given to the regulator under **section 52**.
- (2) A record kept under **subsection (1)** must contain the particulars prescribed by regulations (if any). 5
- (3) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$5,000;
- (b) for any other person, to a fine not exceeding \$25,000. 10

Compare: Model Work Health and Safety Act (Aust) s 38(7)

**Subpart 5—Authorisations****54 Meaning of authorised**

~~In this subpart, **authorised** means authorised by a licence, permit, registration, consent, certificate, or other authority (however described) as required by regulations.~~ 15

~~Compare: Model Work Health and Safety Act (Aust) s 40~~

**55 Requirements for authorisation of workplaces**

- (1) ~~A person must not conduct a business or an undertaking at a workplace or direct or allow a worker to carry out work at a workplace if—~~ 20
- (a) ~~regulations require the workplace, or class of workplaces, to be authorised; and~~
- (b) ~~the workplace is not authorised in accordance with regulations.~~
- (2) ~~A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—~~ 25
- (a) ~~for an individual, to a fine not exceeding \$50,000;~~
- (b) ~~for any other person, to a fine not exceeding \$250,000.~~

~~Compare: Model Work Health and Safety Act (Aust) s 41~~

**56 Requirements for authorisation of plant or substance**

- (1) ~~A person must not use plant or a substance at a workplace if—~~ 30
- (a) ~~regulations require the plant or substance or its design to be authorised; and~~
- (b) ~~the plant or substance or its design is not authorised in accordance with regulations.~~
- (2) ~~A PCBU must not direct or allow a worker to use plant or a substance at a workplace if—~~ 35

- (a) ~~regulations require the plant or substance or its design to be authorised; and~~
- (b) ~~the plant or substance or its design is not authorised in accordance with regulations.~~
- (3) ~~A person who contravenes **subsection (1) or (2)** commits an offence and is liable on conviction, — 5~~
- (a) ~~for an individual, to a fine not exceeding \$20,000;~~
- (b) ~~for any other person, to a fine not exceeding \$100,000.~~
- ~~Compare: Model Work Health and Safety Act (Aust) s 42~~
- 57 Requirements for authorisation of work 10**
- (1) ~~A PCBU must not carry out work at a workplace if —~~
- (a) ~~regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and~~
- (b) ~~the person, or the person on whose behalf the work is carried out, is not authorised in accordance with regulations. 15~~
- (2) ~~A PCBU must not direct or allow a worker to carry out work at a workplace if —~~
- (a) ~~regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and~~
- (b) ~~the person, or the person on whose behalf the work is to be carried out, is not authorised in accordance with regulations. 20~~
- (3) ~~A person who contravenes **subsection (1) or (2)** commits an offence and is liable on conviction, —~~
- (a) ~~for an individual, to a fine not exceeding \$20,000;~~
- (b) ~~for any other person, to a fine not exceeding \$100,000. 25~~
- ~~Compare: Model Work Health and Safety Act (Aust) s 43~~
- 58 Requirements for prescribed qualifications or experience**
- (1) ~~A person must not carry out work at a workplace if regulations require the work, or class of work, to be carried out —~~
- (a) ~~by a person who has prescribed qualifications or experience and the person does not have the prescribed qualifications or experience: 30~~
- (b) ~~under the supervision of a person who has prescribed qualifications or experience and the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.~~
- (2) ~~A PCBU must not direct or allow a worker to carry out work at a workplace if regulations require the work, or class of work, to be carried out — 35~~
- (a) ~~by a worker who has prescribed qualifications or experience and the worker does not have the prescribed qualifications or experience:~~

- (b) ~~under the supervision of a person who has prescribed qualifications or experience and the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.~~
- (3) ~~A person who contravenes **subsection (1) or (2)** commits an offence and is liable on conviction, —~~ 5
- (a) ~~for an individual, to a fine not exceeding \$20,000;~~
- (b) ~~for any other person, to a fine not exceeding \$100,000.~~
- Compare: Model Work Health and Safety Act (Aust) s 44

### **59 Requirement to comply with conditions of authorisation**

- (1) ~~A person must comply with the conditions of any authorisation given to that person that are prescribed in or under regulations.~~ 10
- (2) ~~A person who contravenes **subsection (1)** commits an offence and is liable on conviction, —~~
- (a) ~~for an individual, to a fine not exceeding \$20,000;~~
- (b) ~~for any other person, to a fine not exceeding \$100,000.~~ 15
- Compare: Model Work Health and Safety Act (Aust) s 45

## **Part 3**

### **Engagement, worker participation, and representation**

#### **60 Outline of this Part**

- (1) ~~In general terms, this Part —~~ 20
- (a) ~~requires PCBUs to engage with workers on matters relating to work health and safety;~~
- (b) ~~requires PCBUs to have practices that provide reasonable opportunities for workers to participate in improving work health and safety;~~
- (c) ~~requires the election of health and safety representatives and the establishment of health and safety committees, but only if —~~ 25
- (i) ~~workers request it; or~~
- (ii) ~~a PCBU initiates it;~~
- (d) ~~specifies the functions and powers of health and safety representatives and functions of health and safety committees;~~ 30
- (e) ~~allows trained health and safety representatives to issue provisional improvement notices;~~
- (f) ~~provides the right for a worker to cease unsafe work and the right of trained health and safety representatives to direct the cessation of unsafe work;~~ 35

- ~~(g) prohibits adverse, coercive, or misleading conduct in respect of work health and safety, and provides for offences and civil actions in respect of such conduct;~~
- ~~(h) specifies how issues relating to work health and safety must be dealt with by the parties to the issue.~~ 5
- ~~(2) This section is intended only as a guide to the general scheme and effect of this Part.~~

## Subpart 1—Engagement with workers and worker participation practices

### *Engagement with workers*

- 61 Duty to engage with workers** 10
- (1) A PCBU must, so far as is reasonably practicable, engage with workers—
- (a) who carry out work for the business or undertaking; and
- (b) who are, or are likely to be, directly affected by a matter relating to work health or safety.
- (2) If the PCBU and the workers have agreed to procedures for engagement, the engagement must be in accordance with those procedures. 15
- (3) The agreed procedures must not be inconsistent with **section 62**.
- (4) A person who contravenes this section commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$20,000; 20
- (b) for any other person, to a fine not exceeding \$100,000.
- Compare: Model Work Health and Safety Act (Aust) s 47
- 62 Nature of engagement**
- (1) Engagement with workers under this subpart requires—
- (a) that relevant information about the matter be shared with workers in a timely manner; and 25
- (b) that workers be given a reasonable opportunity—
- (i) to express their views and to raise work health or safety issues in relation to the matter; and
- (ii) to contribute to the decision-making process relating to the matter; 30  
and
- (c) that the views of workers be taken into account by the PCBU; and
- (d) that the workers be advised of the outcome of the engagement in a timely manner.

- (2) If the workers are represented by a health and safety representative, the engagement must involve that representative.

Compare: Model Work Health and Safety Act (Aust) s 48

### 63 When engagement is required

Engagement with workers under this subpart is required in relation to ~~the following~~ work health and safety matters in the following circumstances: 5

- (a) when identifying hazards and assessing risks to work health and safety arising from the work carried out or to be carried out as part of the conduct of the business or undertaking:
- (b) when making decisions about ways to eliminate or minimise those risks: 10
- (c) when making decisions about the adequacy of facilities for the welfare of workers:
- (d) when proposing changes that may affect the health or safety of workers:
- (e) when making decisions about the procedures for the following:
  - (i) engaging with workers: 15
  - (ii) monitoring the health of workers:
  - (iii) monitoring the conditions at any workplace under the management or control of the PCBU:
  - (iv) providing information and training for workers:
- (f) when making decisions about the procedures (if any) for resolving work health or safety issues at the workplace: 20
- (g) when developing worker participation practices:
- (h) when carrying out any other activity prescribed by regulations for the purposes of this section.

Compare: Model Work Health and Safety Act (Aust) s 49 25

#### *Worker participation practices*

### 64 Duty to have worker participation practices

- (1) A PCBU must have practices that provide reasonable opportunities for workers who carry out work for the business or undertaking to participate effectively in improving work health and safety in the business or undertaking on an ongoing basis. 30
- (2) In complying with **subsection (1)**, the PCBU must—
  - (a) comply with prescribed requirements relating to worker participation, including requirements relating to a particular industry, sector, or kind of workplace: 35
  - (b) take into account any relevant approved code of practice.



- (3) In **subsection (1), reasonable opportunities** means opportunities that are reasonable in the circumstances, having regard to relevant matters, including—
- (a) the number of workers working in the business or undertaking; and
  - (b) the number of different ~~places of work~~ workplaces of the business or undertaking, and the distance between them; and 5
  - (c) the likely risks to work health and safety in the business or undertaking and the level of those risks; and
  - (d) the nature of the work that is performed and the way that it is arranged or managed; and
  - (e) the nature of the employment arrangements or contracting arrangements, including the extent and regularity of employment or engagement of temporary workers; and 10
  - (f) the willingness of workers and their representatives to develop worker participation practices; and
  - (g) in relation to employers and employees, the duty to act in good faith as required by section 4 of the Employment Relations Act 2000. 15
- (4) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$20,000;
  - (b) for any other person, to a fine not exceeding \$100,000. 20

Compare: 1992 No 96 s 19B

Subpart 2—Health and safety representatives and health and safety committees

~~Request for~~ Election of health and safety ~~representative~~ representatives

- 65** ~~Request for election~~ Election of health and safety representatives 25
- (1) A worker who carries out work for a business or undertaking may notify the PCBU that the worker wishes 1 or more health and safety representatives to be elected to represent workers who carry out work for that business or undertaking.
- (1A) If a PCBU receives a notification under **subsection (1)**, the PCBU must initiate the election of 1 or more health and safety representatives to represent workers who carry out work for that business or undertaking, within the time prescribed by regulations. 30
- ~~(2) A PCBU may initiate the election of 1 or more health and safety representatives to represent workers who carry out work for that business or undertaking on the PCBU's own initiative.~~ 35

- (2) A PCBU may, on the PCBU's own initiative, initiate the election of 1 or more health and safety representatives to represent workers who carry out work for that business or undertaking.
- (3) Despite **subsection (1A)**, a PCBU is not required to initiate the election of 1 or more health and safety representatives, if the work of the business or undertaking— 5
- (a) is carried out by fewer than 20 workers; and
- (b) is not within the scope of any prescribed high-risk sector or industry.
- (4) The PCBU's obligation to hold an election in response to a worker's request for the election of 1 or more health and safety representatives under **subsection (1)** applies only in relation to holding an election for the work group to which that worker belongs. 10
- (5) A person who contravenes **subsection (1A)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$5,000; 15
- (b) for any other person, to a fine not exceeding \$25,000.

Compare: Model Work Health and Safety Act (Aust) s 50

#### **65A Requirements for conducting elections**

An election for 1 or more health and safety representatives (whether following the request of a worker or on the initiative of the PCBU under **section 65**) must comply with any prescribed requirements. 20

Compare: 1992 No 96 s 19V; Model Work Health and Safety Act (Aust) s 61(2)

#### *Determination of work groups*

- 66 ~~**Requirement for PCBU to facilitate determination work groups**~~ **Determination of work groups** 25
- (1) ~~If a worker makes a request or the PCBU initiates the election of a health and safety representative under **section 65**, the PCBU must facilitate the determination of~~ determine 1 or more work groups, in accordance with either **subsection (2) or (3)** for the purpose of deciding the matters set out in **section 67**. 30
- (2) ~~For the purposes of **subsection (1)**, the PCBU must comply with any prescribed requirements relating to the determination of 1 or more work groups.~~
- (2) Unless a PCBU determines otherwise in accordance with **subsection (3)**, a work group comprises all the workers in the business or undertaking.
- (3) A PCBU may determine 1 or more work groups if the PCBU considers that the work group described in **subsection (2)** would be inappropriate having regard to the structure of the business or undertaking. 35
- (4) If **subsection (3)** applies, the PCBU must—

- (a) ensure that the workers are grouped in a way that—
- (i) most effectively enables the health and safety interests of the workers to be represented; and
  - (ii) takes account of the need for a health and safety representative to be accessible to the workers that he or she represents; and 5
- (b) have regard to any prescribed requirements.
- (5) Two or more PCBU's may, by agreement, determine 1 or more work groups that comprise workers who carry out work for any PCBU who is party to the agreement (a multiple PCBU work group arrangement)—
- (a) in accordance with **subsection (3)**; and 10
  - (b) subject to any prescribed requirements.

Compare: Model Work Health and Safety Act (Aust) s 51(1), ~~(2)~~, (3)

**66A Determination of numbers of health and safety representatives for work groups**

- (1) A PCBU who determines a work group under **section 66(2)**, must determine the number of health and safety representatives who may be elected for that work group in accordance with the prescribed minimum ratio of health and safety representatives to workers. 15
- (2) A PCBU who determines a work group under **section 66(3)**, must determine the number of health and safety representatives who may be elected for that work group in accordance with any prescribed requirements. 20

**67 Purpose of determining work groups**

- (1) ~~The purpose of determining a work group is to facilitate the representation of workers by deciding—~~
- (a) ~~the number and composition of work groups to be represented by health and safety representatives; and~~ 25
  - (b) ~~the number of health and safety representatives and deputy health and safety representatives (if any) to be elected for each work group; and~~
  - (c) ~~the workplace or workplaces to which the work groups will apply.~~
- (2) ~~If a work group is determined for workers carrying out work for 2 or more PCBU's, the purpose of determining work groups also includes deciding the businesses or undertakings to which the work groups will apply.~~ 30

Compare: Model Work Health and Safety Act (Aust) s 51(2)

**68 Requirements for conducting elections**

~~An election for 1 or more health and safety representatives and deputy health and safety representatives (whether following the request of a worker or on the initiative of the PCBU under **section 65**) must comply with any prescribed requirements.~~ 35

*Functions and powers of health and safety representatives***69 Functions of health and safety representatives**

The functions of a health and safety representative for a work group are—

- (a) to represent the workers in the work group in matters relating to health and safety: 5
- (b) to investigate complaints from workers in the work group regarding health and safety:
- (c) if requested by a worker in the work group, to represent the worker in relation to a matter relating to health and safety (including a complaint):
- (d) to monitor the measures taken by the PCBU that are relevant to health and safety: 10
- (e) to inquire into anything that appears to be a risk to the health or safety of workers in the work group arising from the conduct of the business or undertaking:
- (f) to make recommendations relating to work health and safety: 15
- (g) to provide feedback to the PCBU about whether the requirements of this Act or the regulations are being complied with:
- (h) to promote the interests of workers in the work group who have been harmed at work, including in relation to arrangements for rehabilitation and return to work: 20

Compare: 1992 No 96 s 19W; Model Work Health and Safety Act (Aust) s 68

**70 Health and safety representative may attend interview**

- (1) With the consent of the worker concerned, a health and safety representative may attend an interview concerning work health and safety between a worker whom the health and safety representative represents and— 25
  - (a) an inspector; or
  - (b) the PCBU at that workplace or the PCBU's representative.
- (2) With the consent of the workers concerned, a health and safety representative may attend an interview concerning work health and safety between a group of workers whom the health and safety representative represents and— 30
  - (a) an inspector; or
  - (b) the PCBU at that workplace or the PCBU's representative.
- (3) If ~~subsection (1)(a) or (2)(a)~~ applies, an inspector may refuse to allow a health and safety representative to be present—
  - (a) during any discussion in which personal information may be disclosed (unless the person who is the subject of the information has expressly consented to the health and safety representative being present): 35

- (b) ~~if the inspector believes that the presence of the health and safety representative would prejudice the maintenance of the law, including the investigation and prosecution of offences.~~

Compare: 1992 No 96 s 19Z

- 71 ~~Health and safety representative may enter and inspect workplace~~** 5
- (1) ~~A health and safety representative may, at any reasonable time, enter and inspect any area of a workplace to perform the functions, or exercise the powers, of the health and safety representative.~~
- (2) ~~Before exercising the power under **subsection (1)**, the health and safety representative must give reasonable notice to the PCBU at that workplace.~~ 10
- (3) ~~In exercising the power under this section, the health and safety representative must comply with any reasonable procedures and requirements that relate to work health and safety.~~
- (4) ~~Despite **subsections (1) and (2)**, a health and safety representative may, at any time and without notice, enter and inspect any area of a workplace in the event of an incident, or any situation involving a serious risk to the health or safety of a person arising from an immediate or imminent exposure to a hazard.~~ 15
- Compare: 1992 No 96 s 19ZA
- 72 ~~Health and safety representative may request information~~**
- (1) ~~A health and safety representative may request a PCBU to provide any information necessary to enable the health and safety representative to perform his or her functions or exercise his or her powers, including information relating to—~~ 20
- (a) ~~hazards (including associated risks) at the workplace affecting workers in the work group; and~~ 25
- (b) ~~subject to **section 79**, the health and safety of workers in the work group.~~
- (2) ~~The health and safety representative may retain and copy any document containing information provided by the PCBU following a request under **subsection (1)**.~~ 30
- 73 ~~Health and safety representative may be assisted by another person~~**
- ~~A health and safety representative may, for the purposes of performing or exercising his or her functions or powers under this Act, be accompanied or assisted by another person.~~
- Compare: Model Work Health and Safety Act (Aust) s 68(2)(g) 35
- 74 ~~Health and safety representative may accompany inspector~~**
- (1) ~~A health and safety representative may accompany an inspector who has entered a workplace under **section 185**.~~

- (2) ~~An inspector may refuse to allow a health and safety representative accompanying the inspector under this section to be present—~~
- (a) ~~during any discussion in which personal information may be disclosed (unless the person who is the subject of the information has expressly consented to the health and safety representative being present);~~ 5
- (b) ~~if the inspector believes that the presence of the health and safety representative would prejudice the maintenance of the law, including the investigation and prosecution of offences.~~
- Compare: 1992 No 96 s 19ZD
- 75 ~~Health and safety representative may consult regulator or inspector~~** 10
- ~~A health and safety representative may consult the regulator or an inspector about any work health and safety issue.~~
- Compare: 1992 No 96 s 19ZE
- 76 ~~Functions and powers of health and safety representative generally limited to particular work group~~** 15
- (1) ~~A health and safety representative for a work group may perform his or her functions and exercise his or her powers under this Act only in relation to matters that affect, or may affect, the health and safety of workers in that work group.~~
- (2) ~~**Subsection (1)** does not apply if—~~ 20
- (a) ~~there is a serious risk to health or safety arising from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group; or~~
- (b) ~~a member of another work group asks for the representative's assistance, and the health and safety representative (and any deputy health and safety representative) for that other work group is found, after reasonable inquiry, to be unavailable.~~ 25
- (3) ~~In this section, **another work group** means—~~
- (a) ~~another work group carrying out work for a business or undertaking that relates to the work group that the health and safety representative represents;~~ 30
- (b) ~~for a multiple PCBU arrangement, another work group within that arrangement.~~
- Compare: Model Work Health and Safety Act (Aust) s 69
- 77 ~~Deputy health and safety representatives~~** 35
- (1) ~~A deputy health and safety representative may perform the functions and exercise the powers of a health and safety representative if the health and safety representative—~~

- (a) ~~is unable, due to absence or any other reason, to perform or exercise his or her functions or powers; or~~
  - (b) ~~is removed from office under **section 85**; or~~
  - (c) ~~ceases to hold office for any other reason.~~
- (2) ~~This Part applies, with any necessary modifications, to a deputy health and safety representative.~~ 5

*Obligations of PCBU to health and safety representatives*

**78 Obligations of PCBU to health and safety representative**

- (1) ~~The PCBU must—~~
- (a) ~~consult, so far as is reasonably practicable, about health and safety matters with any health and safety representative for a work group of workers carrying out work as part of the conduct of the business or undertaking; and~~ 10
  - (b) ~~confer with a health and safety representative for a work group, whenever reasonably requested by the representative, for the purpose of ensuring the health and safety of the workers in the work group; and~~ 15
  - (c) ~~allow a health and safety representative to spend as much time as is reasonably necessary to perform his or her functions or exercise his or her powers under this Act; and~~
  - (d) ~~provide any health and safety representative for a work group with any information necessary to enable the health and safety representative to perform his or her functions or exercise his or her powers, including information relating to—~~ 20
    - (i) ~~hazards (including associated risks) at the workplace affecting workers in a work group; and~~ 25
    - (ii) ~~the health and safety of the workers in a work group; and~~
  - (e) ~~allow the health and safety representative to be present at an interview relating to health and safety between a worker and—~~
    - (i) ~~an inspector; or~~
    - (ii) ~~the PCBU at that workplace or the PCBU's representative; and~~ 30
  - (f) ~~allow the health and safety representative to be present at an interview concerning health and safety between a group of workers and—~~
    - (i) ~~an inspector; or~~
    - (ii) ~~the PCBU at that workplace or the PCBU's representative; and~~
  - (g) ~~provide any resources, facilities, and assistance to a health and safety representative for the work group that are reasonably necessary or prescribed by regulations to enable the representative to perform his or her functions and exercise his or her powers under this Act; and~~ 35

- (h) ~~allow a person assisting a health and safety representative for the work group to have access to the workplace if that is necessary to enable the assistance to be provided; and~~
- (i) ~~permit a health and safety representative for the work group to accompany an inspector during an inspection of any part of the workplace where a worker in the work group works.~~ 5
- (2) ~~If a health and safety representative makes a recommendation regarding work health and safety, the PCBU must, within a reasonable time,—~~
- (a) ~~adopt the recommendation; or~~
- (b) ~~provide a written statement to the health and safety representative setting out the reasons for not adopting the recommendation.~~ 10
- (3) ~~Any time that a health and safety representative spends for the purposes of performing or exercising his or her functions or powers under this Act must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.~~ 15
- (4) ~~A person who contravenes **subsection (1) or (2)** commits an offence and is liable on conviction,—~~
- (a) ~~for an individual, to a fine not exceeding \$10,000;~~
- (b) ~~for any other person, to a fine not exceeding \$50,000.~~ 20
- Compare: Model Work Health and Safety Act (Aust) s 70
- 79 Exceptions to sections 72(1) and 78(1)**
- (1) ~~Despite **sections 72(1) and 78(1)**, a PCBU—~~
- (a) ~~must not allow a health and safety representative to have access to any personal information concerning a worker without the worker's consent unless the information is in a form that—~~ 25
- (i) ~~does not identify the worker; and~~
- (ii) ~~could not reasonably be expected to identify the worker; and~~
- (b) ~~is not required to give financial assistance to a health and safety representative for the purpose of the assistance referred to in **section 73**; and~~
- (c) ~~may refuse on reasonable grounds to grant access to the workplace to a person assisting a health and safety representative.~~ 30
- (2) ~~A person who contravenes **subsection (1)(a)** commits an offence and is liable on conviction,—~~
- (a) ~~for an individual, to a fine not exceeding \$10,000;~~
- (b) ~~for any other person, to a fine not exceeding \$50,000.~~ 35
- Compare: Model Work Health and Safety Act (Aust) s 71



- 80 ~~Requirement to allow health and safety representatives to attend certain training~~**
- (1) ~~If a health and safety representative has been elected to represent workers who carry out work for a business or undertaking, the PCBU must comply with any prescribed requirements relating to access to training for health and safety representatives (including any requirement to meet the costs of that training).~~ 5
- (2) ~~Any time off work that a health and safety representative is given to attend training must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.~~
- (3) ~~**Subsection (2)** does not apply in respect of any day for which the eligible employee is paid weekly compensation under the Accident Compensation Act 2001.~~ 10
- (4) ~~A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—~~
- (a) ~~for an individual, to a fine not exceeding \$10,000;~~ 15
- (b) ~~for any other person, to a fine not exceeding \$50,000.~~
- Compare: Model Work Health and Safety Act (Aust) s 72(1) (4)*

*Other matters*

- 81 ~~Functions and powers for health and safety purposes only~~**
- ~~A health and safety representative must not perform a function or exercise a power under this Part for a purpose other than a health and safety purpose.~~ 20
- Compare: 1992 No 96 s 19ZM*
- 82 ~~Information to be used by health and safety representative for health and safety purposes only~~**
- (1) ~~This section applies to any information obtained by a health and safety representative in the performance of his or her functions or exercise of his or her powers under this Act.~~ 25
- (2) ~~The health and safety representative may —~~
- (a) ~~disclose or use the information,—~~
- (i) ~~if the information is about a person, only with the person's consent;~~ 30
- (ii) ~~only to the extent necessary for the performance or exercise of the health and safety representative's functions or powers under this Act.~~
- (b) ~~disclose the information —~~ 35
- (i) ~~to the regulator or a person authorised by the regulator only if the health and safety representative reasonably believes the disclosure~~

- ~~is necessary for administering, monitoring, or enforcing compliance with the relevant health and safety legislation:~~
- (ii) ~~only if the disclosure is authorised or required by law.~~
- (3) ~~In **subsection (2)**, disclose includes to give any person access to information.~~  
Compare: 1992 No 96 s 19ZN 5
- 83 ~~No duty on health and safety representative~~**  
Nothing in this Act imposes or is taken to impose a duty on a health and safety representative in that capacity.  
Compare: 1992 No 96 s 19X; Model Work Health and Safety Act (Aust) s 68(4)
- 84 ~~Immunity of health and safety representatives~~** 10  
A health and safety representative is protected from civil and criminal liability for any act done or omitted to be done—
- (a) ~~in the performance or intended performance of his or her functions or the exercise or intended exercise of his or her powers; and~~
- (b) ~~in good faith.~~ 15  
Compare: 1992 No 96 s 19ZP
- 85 ~~Regulator may remove health and safety representative~~**
- (1) ~~The regulator may, by notice in writing, remove a health and safety representative from office if the regulator considers that the representative has not performed or exercised his or her functions or powers satisfactorily, including if the health and safety representative has—~~ 20
- (a) ~~performed a function or exercised a power as a health and safety representative for an improper purpose; or~~
- (b) ~~used or disclosed any information he or she acquired as a health and safety representative in contravention of **section 82**.~~ 25
- (2) ~~The notice under **subsection (1)** must state—~~
- (a) ~~the reasons for the regulator's decision; and~~
- (b) ~~whether the removal from office is for a specified period or indefinite.~~  
Compare: 1992 No 96 s 19ZR
- 86 ~~Appeal against removal from office~~** 30
- (1) ~~A health and safety representative may appeal to a District Court against a decision of the regulator to remove him or her from office.~~
- (2) ~~The appeal must be brought within 28 days of the date of the notice under **section 85(1)**.~~  
Compare: 1992 No 96 s 19ZT 35

Health and safety committees**86A Health and safety committees**

- (1) The following persons may request that the PCBU at a workplace establish a health and safety committee for the business or undertaking or part of the business or undertaking: 5
- (a) a health and safety representative for a work group of workers carrying out work at that workplace; or
- (b) 5 or more workers at that workplace.
- (2) The PCBU must, within 2 months of receiving a request under **subsection (1)**, decide whether to establish a health and safety committee for the business or undertaking or part of the business or undertaking. 10
- (3) Despite **subsection (2)**, a PCBU is not required to decide whether to establish a health and safety committee if the work of the business or undertaking—
- (a) is carried out by fewer than 20 workers; and
- (b) is not within the scope of any prescribed high-risk sector or industry. 15
- (4) The PCBU may refuse a request made under **subsection (1)** if the PCBU is satisfied that existing worker participation practices at the workplace sufficiently meet the requirements of **section 64**.
- (5) The PCBU must give written notice of its decision under **subsection (2)**—
- (a) as soon as practicable to workers who the PCBU considers have an interest in the decision; and 20
- (b) no later than any prescribed time.
- (6) If the PCBU refuses a request made under **subsection (1)**, the notice must include—
- (a) the reasons for the decision; and 25
- (b) a statement that workers may raise the refusal as an issue under **subpart 7 of this Part**.
- (7) A PCBU at a workplace may establish a health and safety committee for the workplace or part of the workplace on the PCBU's own initiative.
- (8) A person who contravenes **subsection (2)** commits an offence and is liable on conviction,— 30
- (a) for an individual, to a fine not exceeding \$5,000;
- (b) for any other person, to a fine not exceeding \$25,000.

Compare: Model Work Health and Safety Act (Aust) s 75

Further provisions relating to health and safety representatives, health and safety committees, and health and safety in mining sector

**86B Further provisions relating to health and safety representatives and health and safety committees**

- (1) **Part 1 of Schedule 1A** contains further provisions that apply to health and safety representatives for a business or undertaking. 5
- (2) **Part 2 of Schedule 1A** contains further provisions that apply to health and safety committees for a business or undertaking.

**87 Further provisions relating to mining sector**

**Schedule 2** contains further provisions that apply to health and safety representatives and other matters in the mining sector. 10

~~Subpart 3 — Health and safety committees~~

**88 ~~Health and safety committees~~**

- (1) ~~A PCBU at a workplace must establish a health and safety committee for the business or undertaking or part of the business or undertaking —~~ 15
- (a) ~~within 2 months after being requested to do so by —~~
- (i) ~~a health and safety representative for a work group of workers carrying out work at that workplace; or~~
- (ii) ~~5 or more workers at that workplace; or~~
- (b) ~~if required by regulations, within the time prescribed by regulations.~~ 20
- (2) ~~A PCBU at a workplace may establish a health and safety committee for the workplace or part of the workplace on the PCBU's own initiative.~~
- (3) ~~A person who contravenes **subsection (1)** commits an offence and is liable on conviction, —~~
- (a) ~~for an individual, to a fine not exceeding \$5,000;~~ 25
- (b) ~~for any other person, to a fine not exceeding \$25,000.~~

Compare: Model Work Health and Safety Act (Aust) s 75

**89 ~~Functions of health and safety committee~~**

~~The functions of a health and safety committee are —~~

- (a) ~~to facilitate co-operation between the PCBU and workers in instigating, developing, and carrying out measures designed to ensure the workers' health and safety at work; and~~ 30
- (b) ~~to assist in developing any standards, rules, policies, or procedures relating to health and safety that are to be followed or complied with at the workplace; and~~ 35
- (c) ~~to make recommendations relating to work health and safety; and~~

- ~~(d) to perform any other functions that are—~~
- ~~(i) agreed between the PCBU and the committee; or~~
  - ~~(ii) prescribed by regulations.~~

Compare: Model Work Health and Safety Act (Aust) s 77

<b>90</b>	<b>Obligations of PCBU in relation to health and safety committees</b>	5
(1)	The PCBU must—	
	(a) consult, so far as is reasonably practicable, about health and safety matters with a health and safety committee; and	
	(b) allow each member of a health and safety committee to spend as much time as is reasonably necessary to attend meetings of the committee or to carry out functions as a member of the committee; and	10
	(c) provide the health and safety committee with any information that is necessary to enable the committee to perform its functions, including information relating to—	
	(i) hazards (including associated risks) at the workplace; and	15
	(ii) the health and safety of the workers at the workplace.	
(2)	If a health and safety committee makes a recommendation regarding work health and safety, the PCBU must, within a reasonable time,—	
	(a) adopt the recommendation; or	
	(b) provide a written statement to the health and safety committee setting out the reasons for not adopting the recommendation.	20
(3)	Any time that a member of a health and safety committee spends for the purposes set out in <b>subsection (1)</b> must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.	25
(4)	Despite <b>subsection (1)(c)</b> , the PCBU must not allow the health and safety committee to have access to any personal information concerning a worker without the worker's consent unless the information is in a form that—	
	(a) does not identify the worker; and	
	(b) could not reasonably be expected to identify the worker.	30
(5)	A person who contravenes <b>subsection (1), (2), or (4)</b> commits an offence and is liable on conviction,—	
	(a) for an individual, to a fine not exceeding \$10,000;	
	(b) for any other person, to a fine not exceeding \$50,000.	
	Compare: 1996 No 96 s 19B(4); Model Work Health and Safety Act (Aust) s 79	35

- 91 ~~Information to be used by health and safety committee for health and safety purposes only~~**
- (1) ~~This section applies to any information obtained by a member of a health and safety committee in the performance of the committee's functions under this Act.~~ 5
- (2) ~~The member may—~~
- (a) ~~disclose or use the information,—~~
- (i) ~~if the information is about a person, only with the person's consent;~~
- (ii) ~~only to the extent necessary for the performance of the health and safety committee's functions under this Act.~~ 10
- (b) ~~disclose the information—~~
- (i) ~~to the regulator or a person authorised by the regulator only if the member reasonably believes the disclosure is necessary for administering, monitoring, or enforcing compliance with the relevant health and safety legislation;~~ 15
- (ii) ~~only if the disclosure is authorised or required by law.~~
- (3) ~~In **subsection (2)**, disclose includes to give any person access to information.~~
- ~~Compare: 1992 No 96 s 19ZN~~

#### Subpart 4—Provisional improvement notices 20

- 92 Provisional improvement notices**
- (1) This section applies if a health and safety representative reasonably believes that a person is contravening, or is likely to contravene, a provision of this Act or regulations.
- (2) The health and safety representative may issue a provisional improvement notice requiring the person to— 25
- (a) remedy the contravention; or
- (b) prevent a likely contravention from occurring; or
- (c) remedy the things or activities causing the contravention or likely to cause a contravention. 30
- (3) However, the health and safety representative must not issue a provisional improvement notice to a person unless he or she has first consulted the person.
- (4) A health and safety representative must not issue a provisional improvement notice in relation to a matter if an inspector has already issued an improvement notice or a prohibition notice in relation to the same matter. 35

- (5) If a health and safety representative issues a provisional improvement notice, he or she must provide a copy of that notice to the PCBU of the work group that the health and safety representative represents, as soon as practicable.  
Compare: Model Work Health and Safety Act (Aust) s 90
- 93 Training requirements relating to issue of provisional improvement notice** 5  
A health and safety representative must not issue a provisional improvement notice unless the representative has—
- (a) completed training prescribed by or under regulations; or
  - (b) previously completed that training when acting as a health and safety representative for another work group. 10
- Compare: Model Work Health and Safety Act (Aust) s 90(4)
- 94 Requirements relating to provisional improvement notices**
- (1) A provisional improvement notice must be in writing.
  - (2) A provisional improvement notice must state—
    - (a) that the health and safety representative believes the person is contravening, or is likely to contravene, a provision of this Act or regulations (as the case may be); and 15
    - (b) the provision the representative believes is being, or is likely to be, contravened; and
    - (c) briefly, how the provision is being, or is likely to be, contravened; and 20
    - (d) the day, at least 8 days after the notice is issued, by which the person is required to remedy the contravention or likely contravention.
- Compare: Model Work Health and Safety Act (Aust) ss 91, 92
- 95 Provisional improvement notice may include recommendations to remedy contravention** 25
- (1) A provisional improvement notice may include recommendations relating to—
    - (a) the measures to be taken to remedy the contravention or prevent the likely contravention; or
    - (b) the things or activities causing the contravention, or likely to cause a contravention, to which the notice relates. 30
  - (2) A recommendation included in a provisional improvement notice may—
    - (a) refer to an approved code of practice:
    - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention or prevent the likely contravention.
  - (3) **Subsection (2)** does not limit **subsection (1)**. 35
- Compare: Model Work Health and Safety Act (Aust) s 93

- 96 Minor changes to provisional improvement notice**
- A health and safety representative may make minor changes to a provisional improvement notice—
- (a) for clarification; or
  - (b) to correct errors or references; or
  - (c) to reflect changes of address or other circumstances.
- Compare: Model Work Health and Safety Act (Aust) s 94
- 97 Issue of provisional improvement notice**
- A provisional improvement notice must be issued to a person in accordance with **section 138**.
- Compare: Model Work Health and Safety Act (Aust) s 95
- 98 Cancellation of provisional improvement notice**
- (1) The health and safety representative may, at any time, cancel a provisional improvement notice issued to a person by written notice given to that person.
  - (2) A cancellation must be notified in the same way that the notice was issued.
- Compare: Model Work Health and Safety Act (Aust) s 96
- 99 Display of provisional improvement notice**
- (1) A person to whom a provisional improvement notice is issued must, as soon as practicable, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice.
  - (2) A person must not intentionally remove, destroy, damage, or deface a notice displayed under **subsection (1)** during the period that the notice is in force.
  - (3) A person who contravenes **subsection (1) or (2)** commits an offence and is liable on conviction,—
    - (a) for an individual, to a fine not exceeding \$5,000;
    - (b) for any other person, to a fine not exceeding \$25,000.
- Compare: Model Work Health and Safety Act (Aust) s 97
- 100 Irregularities or defects in notice**
- A provisional improvement notice is not invalid merely because of—
- (a) any defect, irregularity, omission, or want of form unless the defect, irregularity, omission, or want of form causes or is likely to cause substantial injustice; or
  - (b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person.
- Compare: Model Work Health and Safety Act (Aust) s 98



**101 Offence relating to breach of provisional improvement notice**

- (1) This section applies if a provisional improvement notice has been issued to a person and an inspector has not been required under **section 102** to review the notice.
- (2) The person must comply with the provisional improvement notice within the time specified in the notice by remedying the contravention or avoiding any likely contravention (as the case may be). 5
- (3) For the purposes of **subsection (2)**, the person may comply with the notice in a different way from that directed by the health and safety representative as long as the person substantially complies with the requirement to remedy the contravention or avoid any likely contravention. 10
- (4) A person who contravenes **subsection (2)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000:
- (b) for any other person, to a fine not exceeding \$250,000. 15

Compare: Model Work Health and Safety Act (Aust) s 99

**102 Review of provisional improvement notice**

- (1) A person specified in **subsection (2)** may, within 7 days after a provisional improvement notice is issued to the person, ask the regulator to appoint an inspector to review the notice. 20
- (2) The persons are—
- (a) the person to whom the notice was issued; and
- (b) if the person is a worker, the PCBU at the workplace at which the worker carries out work.
- (3) If a request is made under **subsection (1)**, the provisional improvement notice is stayed until the inspector makes a decision on the review. 25

Compare: Model Work Health and Safety Act (Aust) s 100

**103 Regulator must ensure inspector reviews notice**

- (1) The regulator must ensure that, as soon as practicable after a request is made under **section 102**, an inspector— 30
- (a) reviews the provisional improvement notice; and
- (b) inquires into the circumstances that are the subject of the provisional improvement notice.
- (2) An inspector may review a provisional improvement notice even if the period for compliance with the notice has expired. 35

Compare: Model Work Health and Safety Act (Aust) s 101

- 104 Decision of inspector on review of provisional improvement notice**
- (1) After reviewing the provisional improvement notice, the inspector must—
- (a) confirm the provisional improvement notice; or
  - (b) confirm the provisional improvement notice with changes; or
  - (c) cancel the provisional improvement notice. 5
- (2) The inspector must give a copy of his or her decision in accordance with **section 138** to—
- (a) the applicant for the review of the provisional improvement notice; and
  - (b) the health and safety representative who issued the notice.
- (3) A provisional improvement notice that is confirmed (with or without changes) 10  
by an inspector must be treated as an improvement notice issued by the inspector under this Act.
- Compare: Model Work Health and Safety Act (Aust) s 102
- Subpart 5—Right to cease or direct cessation of unsafe work
- 105 Meaning of cease work** 15
- In this subpart, unless the context otherwise requires, **cease work** means—
- (a) to cease or refuse to carry out work under **section 106**; or
  - (b) to cease work on a direction under **section 107**.
- Compare: Model Work Health and Safety Act (Aust) s 83
- 106 Right of worker to cease unsafe work** 20
- (1) A worker may cease, or refuse to carry out, work if the worker believes that carrying out the work would expose the worker, or any other person, to a serious risk to the worker’s or other person’s health or safety arising from an immediate or imminent exposure to a hazard.
- (2) A worker may continue to refuse to carry out the work if— 25
- (a) the worker attempts to resolve the matter with the PCBU as soon as practicable after first refusing to do the work; and
  - (b) the matter is not resolved; and
  - (c) the worker believes on reasonable grounds that carrying out the work would expose the worker or any other person to a serious risk to the 30  
worker’s or other person’s health or safety arising from an immediate or imminent exposure to a hazard.
- (3) Without limiting **subsection (2)(c)**, **reasonable grounds** exist if a health and safety representative has advised the worker that carrying out the work would expose the worker or any other person to a serious risk to the worker’s or other 35  
person’s health or safety arising from an immediate or imminent exposure to a hazard.

- (4) A worker who ceases work under **subsection (1)** must, as soon as practicable, notify the PCBU that the worker has ceased work.
- (5) **Subsection (1)** does not authorise a worker to refuse to do work that, because of its nature, inherently or usually carries an understood risk to the worker's health and safety, unless that risk has materially increased beyond the understood risk. 5
- (6) To avoid doubt, nothing in this section limits or affects an employee's right to refuse to do work under any other enactment or the general law.
- Compare: 1992 No 96 s 28A; Model Work Health and Safety Act (Aust) ss 84, 86

### 107 Health and safety representative may direct unsafe work to cease 10

- (1) A health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative reasonably believes that carrying out the work would expose the worker, or any other person, to a serious risk to the worker's or other person's health or safety, arising from an immediate or imminent exposure to a hazard. 15
- (2) The health and safety representative must not give a direction under **subsection (1)** unless the matter is not resolved within a reasonable time after consultation about the matter with the PCBU for whom the workers are carrying out work.
- (3) Despite **subsection (2)**, the health and safety representative may direct the worker to cease work without carrying out that consultation if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction. 20
- (4) The health and safety representative must carry out the consultation as soon as practicable after giving a direction under **subsection (3)**. 25
- (5) The health and safety representative must immediately inform the PCBU of any direction given by the health and safety representative to a worker under **subsection (1)**.
- (6) **Subsection (1)** does not authorise a health and safety representative to give a direction to a worker to cease work that, because of its nature, inherently or usually carries an understood risk to health and safety unless the risk has materially increased beyond the understood risk. 30
- (7) ~~A health and safety representative must not give a direction to cease work under **subsection (1)** unless the representative has—~~
- ~~(a) completed training prescribed by or under regulations; or~~ 35
- ~~(b) previously completed the training when acting as a health and safety representative for another work group.~~

Compare: 1992 No 96 s 28A; Model Work Health and Safety Act (Aust) s 85(1), (2), (4), (5)

**107A Training requirements relating to giving direction to cease work**

A health and safety representative must not give a direction to cease work unless the representative has—

- (a) completed training prescribed by or under regulations; or
- (b) previously completed that training when acting as a health and safety representative for another work group. 5

Compare: Model Work Health and Safety Act (Aust) s 85(6)

**108 Alternative work**

- (1) If a worker ceases work, the PCBU may direct the worker to carry out alternative work at the same or another workplace if that work is safe and appropriate for the worker to carry out until the worker can resume normal duties. 10
- (2) A worker who ceases work must remain available to carry out alternative work as directed by the PCBU under **subsection (1)**.
- (3) For the purposes of this section, **alternative work** means,—
  - (a) for a worker who is an employee, work within the scope of the person's employment agreement: 15
  - (b) for a worker who is not an employee, work within the scope of the worker's contract.
- (4) In addition, a worker may agree (but cannot be directed) to do other work that is safe and appropriate for the worker. 20

Compare: 1992 No 96 s 28A(6); Model Work Health and Safety Act (Aust) s 87

**109 Regulator may assist to resolve issues relating to cessation of work**

- (1) The health and safety representative, the PCBU, or the worker may ask the regulator to assist in resolving the issue relating to the cessation of work.
- (2) If the regulator agrees to assist in resolving an issue relating to the cessation of work, the regulator must provide the assistance as soon as practicable after agreeing to assist. 25

Compare: Model Work Health and Safety Act (Aust) s 89

**Subpart 6—Prohibition of adverse, coercive, or misleading conduct****110 Meaning of adverse conduct** 30

- (1) For the purposes of this subpart, a person engages in **adverse conduct** if—
  - (a) the person—
    - (i) dismisses a worker who is an employee; or
    - (ii) terminates a contract for services with a worker; or
    - (iii) refuses or omits to employ or engage any person on work of any description that is available and for which that person is qualified; or 35

- (iv) refuses or omits to offer or afford to the worker the same terms of employment or engagement, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available to other workers of the same or substantially similar qualifications, experience, or skills who are employed or engaged in the same or substantially similar circumstances; or 5
- (v) subjects the worker to any detriment, in circumstances in which other workers employed or engaged by the person on work of that description are not or would not be subjected to such detriment; or
- (vi) retires the worker, or requires or causes the worker to retire or resign or terminate a contract for services; or 10
- (b) the person terminates a commercial arrangement with another person; or
- (c) the person refuses or fails to enter into a commercial arrangement with another person.
- (2) For the purposes of this subpart, a person also engages in adverse conduct if the person organises to take any action referred to in **subsection (1)** or threatens to organise or take that action. 15
- (3) For the purposes of **subsection (1)(a)(v)**, **detriment** includes anything that has a detrimental effect on the worker's employment or engagement, job performance, or job satisfaction. 20

Compare: Model Work Health and Safety Act (Aust) s 105

### 111 Meaning of prohibited health and safety reason

For the purposes of this subpart, adverse conduct is engaged in for a **prohibited health and safety reason** if it is engaged in because the worker or prospective worker or the person referred to in **section 110(1)(b) or (c)** (as the case requires)— 25

- (a) is, has been, or proposes to be a health and safety representative or a member of a health and safety committee; or
- (b) undertakes, has undertaken, or proposes to undertake another role under this Act; or 30
- (c) performs, has performed, or proposes to perform a function—
  - (i) as a health and safety representative or as a member of a health and safety committee; or
  - (ii) under this Act; or
  - (iii) under this Act in a particular way; or 35
- (d) refrains from, has refrained from, or proposes to refrain from performing a function under this Act or under this Act in a particular way; or
- (e) exercises, has exercised, or proposes to exercise a power—
  - (i) as a health and safety representative; or

- (ii) under this Act; or
- (iii) under this Act in a particular way; or
- (f) refrains from, has refrained from, or proposes to refrain from exercising a power under this Act or under this Act in a particular way; or
- (g) assists, has assisted, or proposes to assist, or gives, has given, or proposes to give, any information to any person performing a function or exercising a power under this Act; or 5
- (h) raises, has raised, or proposes to raise an issue or concern about health and safety with—
  - (i) the PCBU; or 10
  - (ii) the regulator or an inspector; or
  - (iii) a worker's representative; or
  - (iv) another worker; or
  - (v) a health and safety representative; or
  - (vi) a member of a health and safety committee; or 15
  - (vii) any other person who has a duty under this Act in relation to the matter; or
  - (viii) any other person performing a function or exercising a power under this Act; or
- (i) is involved in, has been involved in, or proposes to be involved in resolving a health and safety issue under this Act; or 20
- (j) is taking action, has taken action, or proposes to take action to seek compliance by any person with any duty or obligation under this Act; or
- (k) has ceased work under **section 106 or 107**.

Compare: Model Work Health and Safety Act (Aust) s 106 25

## 112 Prohibition on adverse conduct

- (1) A person must not engage in adverse conduct for a prohibited health and safety reason.
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,— 30
  - (a) for an individual, to a fine not exceeding \$100,000;
  - (b) for any other person, to a fine not exceeding \$500,000.
- (3) However, a person commits an offence under **subsection (1)** only if the prohibited health and safety reason was the dominant reason for the adverse conduct. 35

Compare: Model Work Health and Safety Act (Aust) s 104

- 113 Prohibition on requesting, instructing, inducing, encouraging, authorising, or assisting adverse conduct**
- (1) A person must not request, instruct, induce, encourage, authorise, or assist another person to engage in adverse conduct in contravention of **section 112**.
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,— 5
- (a) for an individual, to a fine not exceeding \$100,000;
- (b) for any other person, to a fine not exceeding \$500,000.
- Compare: Model Work Health and Safety Act (Aust) s 107
- 114 Prohibition on coercion or inducement** 10
- (1) A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce or induce the other person, or a third person,—
- (a) to perform or not to perform, or to propose to perform or not to perform, a function under this Act or a function under this Act in a particular way; 15
- or
- (b) to exercise or not to exercise, or propose to exercise or not to exercise, a power under this Act or a power under this Act in a particular way; or
- (c) to refrain from seeking, or continuing to undertake, a role under this Act.
- (2) For the purposes of **subsection (1)**, the following are not to be treated as an action with intent to coerce or induce a person: 20
- (a) a reasonable direction given by a constable;
- (b) a reasonable direction given by an emergency services worker in an emergency.
- (3) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,— 25
- (a) for an individual, to a fine not exceeding \$100,000;
- (b) for any other person, to a fine not exceeding \$500,000.
- (4) In this section,—
- emergency services worker** includes a person who has a legal duty (under any enactment, employment agreement, other binding agreement or arrangement, or other source) to, at the scene of an emergency, provide 1 or more of the following services: 30
- (a) ambulance services, first aid, or medical or paramedical care:
- (b) services provided by or on behalf of a fire brigade (within the meaning of section 2(1) of the Fire Service Act 1975) to save life or property 35

**organise or take, or threaten to organise or take, any action** against a person includes not taking a particular action or threatening not to take a particular action in relation to that person.

Compare: Model Work Health and Safety Act (Aust) s 108

- 115 Misrepresentation** 5
- (1) A person must not knowingly or recklessly make a false or misleading representation to another person about that other person's—
- (a) rights or obligations under this Act; or
  - (b) ability to initiate, or participate in, a process or proceedings under this Act; or 10
  - (c) ability to make a complaint or an inquiry to a person or body empowered under this Act to seek compliance with this Act.
- (2) **Subsection (1)** does not apply if the person to whom the representation is made would not be expected to rely on it.
- (3) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,— 15
- (a) for an individual, to a fine not exceeding \$100,000;
  - (b) for any other person, to a fine not exceeding \$500,000.

Compare: Model Work Health and Safety Act (Aust) s ~~110~~ 109

- 116 Proof of adverse conduct** 20
- (1) This section applies if, in proceedings for an offence of contravening **section 112 or 113**, the prosecution—
- (a) proves that adverse conduct was engaged in; and
  - (b) proves that a prohibited health and safety reason existed at the time the adverse conduct was engaged in; and 25
  - (c) adduces evidence that the adverse conduct was engaged in for a prohibited health and safety reason.
- (2) The prohibited health and safety reason alleged for the adverse conduct is presumed to be the dominant reason for that conduct unless the defendant proves that the reason was not the dominant reason for the conduct. 30

Compare: Model Work Health and Safety Act (Aust) s 110(1), (2)

*Civil proceedings in relation to adverse or coercive conduct*

- 117 Civil proceedings in relation to engaging in or inducing adverse or coercive conduct**
- (1) An eligible person may apply to a District Court for 1 or more orders specified in **subsection (2)** in relation to a person who has— 35
- (a) engaged in adverse conduct for a prohibited health and safety reason; or



- (b) requested, instructed, induced, encouraged, authorised, or assisted another person to engage in adverse conduct for a prohibited health and safety reason; or
- (c) breached **section 114** (which relates to the prohibition on coercion or inducement). 5
- (2) The orders are—
- (a) an injunction restraining the person from engaging in conduct described in **subsection (1)**; or
- (b) for conduct referred to in **subsection (1)(a) or (b)**, an order that the person pay compensation that the court considers appropriate to the person who was the subject of the adverse conduct; or 10
- (c) any other order that the court considers appropriate.
- (3) The court may grant an interim injunction restraining a person from engaging in conduct described in **subsection (1)** if, in its opinion, it is desirable to do so. 15
- (4) For the purposes of this section, a person may be found to have engaged in adverse conduct for a prohibited health and safety reason only if a prohibited health and safety reason was a substantial reason for the conduct.
- (5) For the purposes of this section, **eligible person** means—
- (a) a person affected by conduct described in **subsection (1)**, or the person's representative; but 20
- (b) does not include an employee (or that employee's representative) in relation to conduct of that employee's employer or former employer.

Compare: Model Work Health and Safety Act (Aust) s 112

- 118 Procedure for civil proceedings for adverse conduct** 25
- (1) A proceeding brought under **section 117** must be commenced not more than 1 year after the date on which the action or conduct occurred or came to the notice of the eligible person, whichever is the later.
- (2) In a proceeding under **section 117** in relation to conduct referred to in **section 117(1)(a) or (b)**, if a prohibited health and safety reason is alleged for adverse conduct, that reason is presumed to be a substantial reason for that conduct unless the defendant proves, on the balance of probabilities, that the reason was not a substantial reason for the conduct. 30
- (3) It is a defence to a proceeding under **section 117** in relation to conduct referred to in **section 117(1)(a) or (b)** if the defendant proves that— 35
- (a) the conduct was reasonable in the circumstances; and
- (b) a substantial reason for the conduct was to comply with relevant health and safety legislation.

Compare: Model Work Health and Safety Act (Aust) s 113

*General provisions***119 General provisions**

- (1) Subject to **subsections (2) and (3)**, the bringing of a prosecution under **section 112, 113, or 114** does not prevent, in respect of the same conduct,—
- (a) the bringing of a civil proceeding under **section 117**; or 5
- (b) the raising of a personal grievance under the Employment Relations Act 2000.
- (2) If a District Court orders reparation to be paid under the Sentencing Act 2002 following conviction of a person under **section 112, 113, or 114**,—
- (a) the court may not order compensation to be payable in respect of the same losses in a civil proceeding under **section 117**: 10
- (b) the Employment Relations Authority or Employment Court may not order compensation to be payable in respect of the same losses in relation to a personal grievance under the Employment Relations Act 2000.
- (3) If, in respect of an action referred to in **subsection (1)(a) or (b)**, the court or the Employment Relations Authority or Employment Court orders compensation to be payable for the conduct, the same losses cannot be the subject of an order of reparation under the Sentencing Act 2002. 15

Compare: Model Work Health and Safety Act (Aust) s 114

Subpart 7—Issue resolution 20

**120 Resolution of work health and safety issues**

If an issue about work health and safety arises at a workplace, the parties to the issue (including any representative of the parties) must make reasonable efforts to achieve a timely, final, and effective resolution of the issue ~~in accordance with any relevant procedure for resolving work health and safety issues.~~ 25

Compare: Model Work Health and Safety Act (Aust) ~~s 81~~ s 81

**121 Regulator may appoint inspector to assist parties in resolving issue**

- (1) This section applies if a work health and safety issue has not been resolved after reasonable efforts have been made under **section 120** to achieve a resolution of the issue. 30
- (2) A party to the issue may ask the regulator to appoint an inspector to assist the parties in resolving the issue.
- (3) ~~The~~ If the regulator agrees to appoint an inspector, the inspector may, after providing assistance to the parties in accordance with **subsection (2)**, decide the issue if it is of a type specified in regulations. 35

Compare: Model Work Health and Safety Act (Aust) s 82(1), (2)

## Part 4

### Enforcement and other matters

#### 122 Meaning of notice

In this Part, **notice**, unless the context otherwise requires,—

- (a) means the following notices issued under this Act: 5
  - (i) an improvement notice:
  - (ii) a prohibition notice:
  - (iii) a non-disturbance notice:
  - (iv) a suspension notice:
- (b) includes a subsequent notice. 10

#### Subpart 1—Enforcement measures

##### *Improvement notices*

#### 123 Power to issue improvement notices

- (1) This section applies if an inspector reasonably believes that a person—
  - (a) is contravening a provision of this Act or regulations; or 15
  - (b) is likely to contravene this Act or regulations.
- (2) The inspector may issue an improvement notice requiring the person to—
  - (a) remedy the contravention; or
  - (b) prevent a likely contravention from occurring; or
  - (c) remedy the things or activities causing the contravention or likely to 20  
cause a contravention.

Compare: 1992 No 96 s 39(1), (2); Model Work Health and Safety Act (Aust) s 191

#### 124 Content of improvement notices

- (1) An improvement notice must state—
  - (a) that the inspector believes the person— 25
    - (i) is contravening a provision of this Act or regulations; or
    - (ii) is likely to contravene this Act or regulations; and
  - (b) the provision the inspector believes is being, or is likely to be, contravened; and
  - (c) briefly, how the provision is being, or is likely to be, contravened; and 30
  - (d) ~~the~~ a reasonable period within which the person is required to remedy—
    - (i) the contravention or likely contravention; or

- (ii) the things or activities causing the contravention or likely to cause a contravention.
- (2) An improvement notice may include recommendations concerning—
  - (a) the measures that could be taken to remedy the contravention, or prevent the likely contravention, to which the notice relates; or 5
  - (b) the things or activities causing the contravention, or likely to cause a contravention, to which the notice relates.

Compare: 1992 No 96 s 39(3), (4); Model Work Health and Safety Act (Aust) s 192

### 125 Compliance with improvement notice

- (1) A person who has been issued with an improvement notice must comply with the notice within the period specified in the notice. 10
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$50,000;
  - (b) for any other person, to a fine not exceeding \$250,000. 15
- (3) It is not an offence to fail to comply with recommendations in an improvement notice.

Compare: 1992 No 96 s 39(5); Model Work Health and Safety Act (Aust) s 193

### 126 Extension of time for compliance with improvement notices

- (1) This section applies if a person has been issued with an improvement notice. 20
- (2) An inspector may, by written notice given to the person, extend the compliance period for the improvement notice.
- (3) However, the inspector may extend the compliance period only if the period has not ended.
- (4) In this section, **compliance period**— 25
  - (a) means the period stated in the improvement notice under **section 125(1)**; and
  - (b) includes any extension of that period under this section.

Compare: Model Work Health and Safety Act (Aust) s 194

### *Prohibition notices* 30

### 127 Power to issue prohibition notice

- ~~(1) This section applies if,—~~
  - ~~(a) in respect of a workplace that is required to be authorised under **sub-part 5 of Part 2** or a mining operation (as defined in **clause 2 of Schedule 2**), an inspector— 35~~

- (i) ~~believes that there is a serious risk to the health and safety of any person because of a failure to comply with this Act or regulations;~~  
or
- (ii) ~~believes on reasonable grounds that it is likely that a person will fail to comply with this Act or regulations, and that failure would be likely to cause a serious risk to the health and safety of any person;~~ or
- (b) ~~an inspector reasonably believes that—~~
- (i) ~~an activity is occurring at a workplace that involves or will involve a serious risk to the health or safety of a person arising from an immediate or imminent exposure to a hazard; or~~
- (ii) ~~an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person arising from an immediate or imminent exposure to a hazard.~~
- (1) This section applies if,—
- (a) an inspector reasonably believes that—
- (i) an activity is occurring at a workplace that involves or will involve a serious risk to the health or safety of a person arising from an immediate or imminent exposure to a hazard; or
- (ii) an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person arising from an immediate or imminent exposure to a hazard; or
- (b) in respect of any workplace, plant or substance, or work that is required to be authorised under **subpart 1A of Part 5** or a mining operation (as defined in **clause 2 of Schedule 2**), an inspector—
- (i) believes that there is a serious risk to the health and safety of any person because of a failure to comply with this Act or regulations;  
or
- (ii) believes on reasonable grounds that it is likely that a person will fail to comply with this Act or regulations, and that failure would be likely to cause a serious risk to the health and safety of any person.
- (2) The inspector may give a person who has control over the matter or activity a direction prohibiting the carrying on of the matter or activity, or the carrying on of the matter or activity in a specified way, until an inspector is satisfied that the matter or activity that gives or will give rise to the risk has been remedied.
- (3) The direction may be given orally, but must be confirmed by written notice (a **prohibition notice**) issued to the person as soon as practicable.

Compare: 1992 No 96 s 41(1); Model Work Health and Safety Act (Aust) s 195

**128 Content of prohibition notice**

- (1) A prohibition notice must—
- (a) state that the inspector believes that grounds for the issue of the prohibition notice exist and the basis for that belief; and
  - (b) describe briefly the matter or activity that the inspector believes gives rise or will give rise to the risk; and 5
  - (c) in respect of a notice to which **section 127(1)(b)** applies, specify the provision of this Act or regulations that the inspector believes is being, or is likely to be, contravened by that matter or activity.
- (2) A prohibition notice may include recommendations on the measures that could be taken to remedy the risk, activities, or matters to which the notice relates, or the contravention or likely contravention referred to in **subsection (1)(c)**. 10
- (3) Without limiting **section 127**, a prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying 1 or more of the following: 15
- (a) a workplace, or part of a workplace, at which the activity is not to be carried out:
  - (b) anything that is not to be used in connection with the activity:
  - (c) any procedure that is not to be followed in connection with the activity.
- Compare: 1992 No 96 s 41(2), (4); Model Work Health and Safety Act (Aust) s 196 20

**129 Compliance with prohibition notice**

- (1) A person to whom a direction is given under **section 127(2)** or to whom a prohibition notice is issued must comply with the direction or notice.
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,— 25
- (a) for an individual, to a fine not exceeding \$100,000:
  - (b) for any other person, to a fine not exceeding \$500,000.
- (3) It is not an offence to fail to comply with recommendations in a prohibition notice.
- Compare: 1992 No 96 s 43; Model Work Health and Safety Act (Aust) s 197 30

*Non-disturbance notices***130 Power to issue non-disturbance notice**

An inspector may issue a non-disturbance notice to ~~a person with management or control of~~ PCBU who manages or controls a workplace if the inspector reasonably believes that it is necessary to do so to facilitate the exercise of his or her compliance powers. 35

Compare: Model Work Health and Safety Act (Aust) s 198

**131 Content of non-disturbance notice**

- (1) A non-disturbance notice may require a person to—
- (a) preserve the site at which a notifiable event has occurred for a specified period; or
  - (b) prevent the disturbance of a particular site (including the operation of plant) in other circumstances for a specified period that is reasonable in the circumstances. 5
- (2) A non-disturbance notice must specify the period (not exceeding 7 days) for which it applies and set out—
- (a) the obligations of the person to whom the notice is issued; and 10
  - (b) the measures to be taken to preserve a site or prevent the disturbance of a site; and
  - (c) the penalty for contravening the notice.
- (3) In **subsection (1)**, a reference to a **site** includes any plant, substance, structure, or thing associated with the site. 15
- (4) A non-disturbance notice does not prevent any action—
- (a) to assist an injured person; or
  - (b) to remove a deceased person; or
  - (c) that is essential to make the site safe or to prevent a further notifiable event; or 20
  - (d) done by, or under direction of, a constable acting in the execution of his or her duties; or
  - (e) for which an inspector or the regulator has given permission.

Compare: Model Work Health and Safety Act (Aust) s 199

**132 Compliance with non-disturbance notice** 25

- (1) A person must not, without reasonable excuse, refuse or fail to comply with a non-disturbance notice issued to the person.
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000: 30
  - (b) for any other person, to a fine not exceeding \$250,000.

Compare: Model Work Health and Safety Act (Aust) s 200

**133 Issue of subsequent non-disturbance notices**

- (1) If an inspector considers it necessary to do so, he or she may issue 1 or more subsequent non-disturbance notices to a person, whether before or after the expiry of the previous notice. 35

- (2) A subsequent non-disturbance notice issued under **subsection (1)** must comply with **section 131** (which deals with the content of non-disturbance notices).

Compare: Model Work Health and Safety Act (Aust) s 201

### *General provisions*

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#### **134 General provisions relating to notices**

- (1) A notice must be in writing.
- (2) A notice may be addressed to any person under the person's legal name or usual business name or style.

Compare: 1992 No 96 s 44; Model Work Health and Safety Act (Aust) s 203

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#### **135 Changes to notice by inspector**

An inspector or a health and safety medical practitioner (as the case may be) may make minor changes to a notice—

- (a) for clarification; or
- (b) to correct errors or references; or
- (c) to reflect changes of address or other circumstances.

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Compare: Model Work Health and Safety Act (Aust) s 206

#### **136 Regulator may vary or cancel notice**

Except as provided in **section 135**, a notice issued by an inspector or a health and safety medical practitioner may be varied or cancelled only by the regulator.

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Compare: Model Work Health and Safety Act (Aust) s 207

#### **137 Formal irregularities or defects in notice**

A notice is not invalid merely because of—

- (a) any defect, irregularity, omission, or want of form in the notice unless the defect, irregularity, omission, or want of form causes or is likely to cause ~~substantial injustice~~ a miscarriage of justice; or
- (b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person and is issued ~~or given~~ to the person in accordance with **section 138**.

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Compare: ~~1992 No 96 s 44~~; Model Work Health and Safety Act (Aust) s 208

#### **138 Issue ~~and giving~~ of notice**

- (1) A notice may be issued ~~or given~~ to a person—
- (a) by delivering it personally to the person or sending it by post, fax, or electronic transmission to the person's usual or last known place of residence or business; or

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- (b) by leaving it for the person at the person's usual or last known place of residence or business with a person who appears to be 16 years or over and who appears to reside or work there; or
- (c) by leaving it for the person at the workplace to which the notice relates with a person who is or appears to be ~~the person with management or control~~ in charge of the workplace; or 5
- (d) in a prescribed manner.
- (2) Regulations may prescribe the steps a person to whom a notice is issued must take to bring it to the attention of other persons. 10
- Compare: 1992 No 96 ss 40, 42; Model Work Health and Safety Act (Aust) s 209

### **139 Display of notice at workplace by person issued with notice**

- (1) A person to whom a notice (other than a suspension notice) is issued must, as soon as ~~possible~~ practicable, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice. 15
- (2) A person must not intentionally remove, destroy, damage, or deface a notice displayed under **subsection (1)** while the notice is in force.
- (3) A person who contravenes **subsection (1) or (2)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$5,000: 20
- (b) for any other person, to a fine not exceeding \$25,000.
- Compare: Model Work Health and Safety Act (Aust) s 210

### **139A Inspector may display notice**

- (1) An inspector who issues a notice under **section 138** may, either before or after issuing the notice, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which the work is being carried out that is affected by the notice. 25
- (2) A person must not intentionally remove, destroy, damage, or deface a notice displayed under **subsection (1)** while the notice is in force.
- (3) A person who contravenes **subsection (2)** commits an offence and is liable on conviction,— 30
- (a) for an individual, to a fine not exceeding \$5,000:
- (b) for any other person, to a fine not exceeding \$25,000.

Compare: 1996 No 96 s 42(1)

## Subpart 2—Remedial action

### 140 When regulator may carry out remedial action

- (1) This section applies if a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice.
  - (2) The regulator may take any remedial action it believes reasonable to make the workplace or situation safe after giving written notice to the person to whom the prohibition notice was issued of—
    - (a) the regulator’s intention to take that action; and
    - (b) the person’s liability for the costs of that action.
- Compare: Model Work Health and Safety Act (Aust) s 211

### 141 Power of regulator to take other remedial action

- (1) This section applies if the regulator reasonably believes that—
    - (a) circumstances in which a prohibition notice can be issued exist; and
    - (b) a prohibition notice cannot be issued at a workplace because, after taking reasonable steps, the person ~~with management or control of~~ to whom the notice could be issued ~~the workplace~~ cannot be found.
  - (2) The regulator may take any remedial action necessary to make the workplace safe.
- Compare: Model Work Health and Safety Act (Aust) s 212

### 142 Costs of remedial or other action

- The regulator may recover as a debt due to the regulator the reasonable costs of any remedial action taken under—
- (a) **section 140** from the person to whom a prohibition notice is issued; or
  - (b) **section 141** from any person to whom a prohibition notice could have been issued in relation to the matter.

Compare: Model Work Health and Safety Act (Aust) s 213

## Subpart 3—~~Order relating to~~ Civil proceedings for non-compliance with notices

### 143 ~~Order relating to~~ Civil proceedings relating to non-compliance with notice

- (1) On an application by the regulator, a District Court may make an order—
  - (a) compelling a person to comply with a notice; or
  - (b) restraining a person from contravening a notice.
- (2) The court may make an order—
  - (a) under **subsection (1)(a)** if it is satisfied that the person has refused or failed to comply with a notice:

- (b) under **subsection (1)(b)** if it is satisfied that the person has contravened, is contravening, or is likely to contravene a notice.
- (3) The court may make an order under **subsection (1)**—
- (a) whether or not proceedings have been brought for an offence against this Act or regulations in connection with any matter in relation to which the notice was issued; and 5
- (b) whether or not the compliance period for the notice has expired.

Compare: Model Work Health and Safety Act (Aust) s 215

### Subpart 4—Enforceable undertakings

#### 144 Regulator may accept enforceable undertakings 10

- (1) The regulator may accept an enforceable undertaking given by a person in writing in connection with a matter relating to a contravention or an alleged contravention by the person of this Act or regulations.
- (2) The regulator ~~may~~ must not accept an enforceable undertaking under **subsection (1)** if the regulator believes that the contravention or alleged contravention would amount to an offence against **section 42**. 15
- (3) The giving of an enforceable undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.

Compare: Model Work Health and Safety Act (Aust) s 216 20

#### 145 Notice of decision and reasons for decision

- (1) The regulator must give the person seeking to make an enforceable undertaking written notice of—
- (a) its decision to accept or reject the undertaking; and
- (b) the reasons for the decision. 25
- (2) The regulator must publish, on an Internet site maintained by or on behalf of the regulator, notice of a decision to accept an enforceable undertaking and the reasons for that decision.

Compare: Model Work Health and Safety Act (Aust) s 217

#### 146 When enforceable undertaking is enforceable 30

An enforceable undertaking takes effect and becomes enforceable when the regulator's decision to accept the undertaking is given to the person who made the undertaking, or at any later date specified by the regulator.

Compare: Model Work Health and Safety Act (Aust) s 218

#### 147 Compliance with enforceable undertaking 35

- (1) A person must not contravene an enforceable undertaking given by that person that is in force.

- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000;
  - (b) for any other person, to a fine not exceeding \$250,000.
- Compare: Model Work Health and Safety Act (Aust) s 219 5
- 148 Contravention of enforceable undertaking**
- (1) The regulator may apply to a District Court for an order if a person contravenes an enforceable undertaking.
- (2) If the court is satisfied that the person who made the enforceable undertaking has contravened the undertaking, the court, ~~in addition to imposing any penalty,~~ 10 may make 1 or both of the following orders:
- (a) an order directing the person to comply with the undertaking;
  - (b) an order discharging the undertaking.
- (3) In addition to the orders referred to in **subsection (2)**, the court may make 15 any other order that the court considers appropriate in the circumstances, including orders directing the person to pay to the regulator—
- (a) the costs of the proceedings; and
  - (b) the reasonable costs of the regulator in monitoring compliance with the enforceable undertaking in the future.
- ~~(4) All costs received under **subsection (3)(b)** must be paid into a Crown Bank Account.~~ 20
- (5) This section does not prevent proceedings being brought for the contravention or alleged contravention of this Act or regulations to which the enforceable undertaking relates.
- Compare: Model Work Health and Safety Act (Aust) s 220 25
- 149 Withdrawal or variation of enforceable undertaking**
- (1) A person who has given an enforceable undertaking may at any time, with the written agreement of the regulator,—
- (a) withdraw the undertaking; or
  - (b) vary the undertaking. 30
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of this Act or regulations.
- (3) The regulator must publish on an Internet site maintained by or on behalf of the regulator notice of the withdrawal or variation of an enforceable undertaking. 35
- Compare: Model Work Health and Safety Act (Aust) s 221

**150 Proceedings for alleged contravention**

- (1) Subject to this section, no proceedings (whether civil or criminal) for a contravention or an alleged contravention of this Act or regulations may be brought against a person if an enforceable undertaking is in effect in relation to that contravention. 5
- (2) No proceedings may be brought for a contravention or an alleged contravention of this Act or regulations against a person who—
- (a) has made an enforceable undertaking in relation to that contravention; and
- (b) has completely discharged the enforceable undertaking. 10
- (3) The regulator may accept an enforceable undertaking in relation to a contravention or an alleged contravention before proceedings in relation to that contravention have been completed.
- (4) If the regulator accepts an enforceable undertaking before the proceedings are completed, the regulator must take all reasonable steps to have the proceedings discontinued as soon as ~~possible~~ practicable. 15

Compare: Model Work Health and Safety Act (Aust) s 222

**Subpart 5—Reviews and appeals****151 Interpretation**

In this subpart, unless the context otherwise requires,— 20

**appealable decision** means any of the following:

- (a) a reviewable decision, but only if that decision has been subject to internal review and the regulator has made a decision on the review:
- (b) a decision made by the regulator to issue a notice (including a subsequent notice): 25
- (c) a decision made by the regulator to cancel or vary a notice:
- (d) a decision made by the regulator to extend the time to comply with an improvement notice:
- (da) a decision made by the regulator to stay the operation of a decision to issue a notice: 30
- (e) a decision made by the regulator of a type prescribed by regulations for the purposes of this section

**eligible person**, in relation to an appealable decision or a reviewable decision, means a person affected by the decision or that person's representative

**reviewable decision** means a decision made by an inspector— 35

- (a) to issue a notice (including a subsequent notice) under this Act; or
- (b) to extend the time to comply with an improvement notice; or

- (c) under **section 104** in respect of a provisional improvement notice; or
- (d) of a type prescribed by regulations for the purposes of this section.

*Internal review*

**152 Application for internal review**

- (1) An eligible person in relation to a reviewable decision may apply to the regulator for review (an **internal review**) of the decision within— 5
  - (a) the specified time after the day on which the decision first came to the eligible person's notice; or
  - (b) any longer period that the regulator allows.
- (2) The application must be made in the manner and form required by the regulator. 10
- (3) For the purposes of this section, the **specified time** is,—
  - (a) for a decision to issue an improvement notice, the period specified in the notice for compliance with the notice or 14 days, whichever is the lesser; 15
    - and
  - (b) in any other case, 14 days.

Compare: Model Work Health and Safety Act (Aust) s 224

**153 Decision of regulator**

- (1) The regulator must review the reviewable decision and make a decision—
  - (a) as soon as ~~is reasonably~~ practicable; and 20
  - (b) within 14 days after the application for internal review is received.
- (2) However, the individual who made the reviewable decision must not review the decision.
- (3) The regulator's decision may—
  - (a) confirm or vary the reviewable decision; or 25
  - (b) set aside the reviewable decision; or
  - (c) set aside the reviewable decision and substitute another decision that the regulator considers appropriate.
- (4) The regulator may seek further information from the applicant, and, if it does,— 30
  - (a) the period specified in **subsection (1)(b)** ceases to run until the applicant provides the information to the regulator; and
  - (b) the applicant must provide the information within the period (not less than 7 days) specified by the regulator in the request for information.

- (5) If the applicant does not provide the further information within the required time, the regulator may make a decision on the internal review on the basis of the information held by the regulator.
- (6) If the reviewable decision is not varied or set aside within the period specified in **subsection (1)(b)**, the decision is to be treated as having been confirmed by the regulator. 5

Compare: Model Work Health and Safety Act (Aust) ss 225, 226

#### 154 Notice of decision on internal review

As soon as practicable after ~~an internal review of a decision~~ making a decision in accordance with **section 153**, the regulator must give the applicant in writing— 10

- (a) the decision on the internal review; and
- (b) the reasons for the decision.

Compare: Model Work Health and Safety Act (Aust) s 227

#### 155 Stay of reviewable decision on internal review 15

- (1) If an application is made for an internal review of a decision to issue a notice, the regulator may stay the operation of the decision.
- (2) The regulator may stay the operation of a decision—
- (a) on the regulator's own initiative; or
- (b) on the application of the applicant for review. 20
- (3) The regulator must make a decision on an application for a stay within 3 working days after the regulator receives the application.
- (4) If the regulator has not made a decision on an application under **subsection (2)(b)** within the time set out in **subsection (3)**, the regulator is to be treated as having made a decision to grant a stay. 25
- (5) A stay of the operation of a decision pending a decision on an internal review continues until the reviewer has made a decision on the review.

Compare: Model Work Health and Safety Act (Aust) s 228

### *Appeal to District Court*

#### 156 Application for appeal 30

- (1) An eligible person may appeal to a District Court against an appealable decision on the grounds that it is unreasonable.
- (2) The appeal must be lodged within 14 days after the day on which the appealable decision first came to the eligible person's notice.
- (3) On an appeal under **subsection (1)**, the court must inquire into the decision and may— 35
- (a) confirm or vary the decision; or

- (b) set aside the decision; or
- (c) set aside the decision and substitute another decision that the court considers appropriate.

Compare: 1992 No 96 s 46; Model Work Health and Safety Act (Aust) s 229

## Subpart 6—Infringement offences 5

### 157 Interpretation

In this subpart,—

**infringement fee**, in relation to an infringement offence, means the infringement fee for the offence prescribed for the purposes of this section in regulations 10

**infringement offence** means an offence against this Act (except an offence against **section 42, 43, or 44**) or regulations that is declared by regulations to be an infringement offence for the purposes of this Act.

### 158 Proceedings for infringement offence

- (1) A person who is alleged to have committed an infringement offence may 15  
either—
  - (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
  - (b) be served with an infringement notice under **section 159**.
- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957. 20

### 159 Infringement notices

- (1) The regulator may issue an infringement notice to a person if the regulator believes on reasonable grounds that the person is committing, or has committed, 25  
an infringement offence.
- (2) The regulator may deliver the infringement notice (or a copy of it) in person to the person alleged to have committed an infringement offence or send the notice by post addressed to that person's last known place of residence or business. 30
- (3) An infringement notice (or a copy of it) sent by post to a person under **subsection (2)** is to be treated as having been served on that person when it was posted.
- (4) An infringement notice must be in the prescribed form and must contain the following particulars: 35
  - (a) such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence; and



- (b) the amount of the infringement fee; and
- (c) the address of the place at which the infringement fee may be paid; and
- (d) the time within which the infringement fee must be paid; and
- (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and 5
- (f) a statement that the person served with the notice has a right to request a hearing; and
- (g) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and
- (h) any other particulars that may be prescribed. 10
- (5) If an infringement notice has been issued under this section, the procedure under section 21 of the Summary Proceedings Act 1957 may be used in respect of the offence to which the infringement notice relates and, in that case, the provisions of that section apply with all necessary modifications. 15
- Compare: 1992 No 96 ss 56B(1)(a), 56E(2)–(5)

#### **160 Revocation of infringement notice**

- (1) The regulator may revoke an infringement notice issued under **section 159** before the infringement fee is paid; or an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957. 20
- (2) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.
- Compare: 1992 No 96 s 56B(2), (3)

#### **161 Payment of infringement fees**

All infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account. 25

Compare: 1992 No 96 s 56G

### Subpart 7—~~Legal~~ Criminal proceedings

#### **162 ~~Interpretation~~ Meaning of enforcement action**

In this subpart, unless the context otherwise requires,— 30

**enforcement action** means,—

(a) in relation to the regulator, the filing of a charging document under section 14 of the Criminal Procedure Act 2011 or the issuing of an infringement notice in respect of an offence under this Act:

(b) in relation to a person other than the regulator, the filing of a charging document under section 14 of the Criminal Procedure Act 2011 in respect of an offence under this Act. 35

**~~matter means—~~**

- ~~(a) a failure to comply with this Act or regulations; or~~  
~~(b) a series of failures arising out of, or relating to, the same incident, situation, or set of circumstances.~~

**163 Person may notify regulator of interest in knowing of enforcement action taken by regulator** 5

- (1) A person may notify the regulator in the ~~prescribed manner~~ manner determined by the regulator that the person has an interest in knowing whether a particular ~~matter~~ incident, situation, or set of circumstances has been, is, or is to be subject to the taking of enforcement action by the regulator. 10
- (2) If the regulator receives a notification under **subsection (1)**, the regulator must—
- (a) establish whether—
- (i) it or any other regulator has made a decision to take any enforcement action in respect of the ~~matter~~ incident, situation, or set of circumstances; or 15
- (ii) any regulatory agency has made a decision to take prosecution action in respect of the same incident, situation, or set of circumstances; and
- (b) notify the person in writing of that decision, but not the reasons for the decision. 20

Compare: 1992 No 96 s 54

**164 Prosecutions by regulator**

- (1) Subject to ~~this section and section 165, proceedings~~ a prosecution for an offence ~~against~~ under this Act may be brought only by the regulator. 25
- ~~(2) The regulator may not file a charging document in respect of a matter in respect of which an infringement notice has been issued under section 159 unless the infringement notice has been revoked.~~

Compare: 1992 No 96 s 54A

**165 Private prosecutions** 30

- (1) A person other than the regulator may file a charging document in respect of an offence under this Act if—
- ~~(a) the regulator has not taken enforcement action against any possible defendant in respect of the same matter; and~~
- ~~(b) a regulatory agency has not taken prosecution action under any other Act against any possible defendant in respect of the same incident, situation, or set of circumstances; and~~ 35

- (a) the regulator has not taken, and does not intend to take, enforcement action against any person in respect of the same incident, situation, or set of circumstances; and
- (b) a regulatory agency has not taken, and does not intend to take, prosecution action under any other Act against any person in respect of the same incident, situation, or set of circumstances; and 5
- (c) any person has received notification from the regulator under **section 163(2)(b)** that neither the regulator nor a regulatory agency—
- (i) has taken enforcement action or prosecution action against any possible defendant in respect of the same matter person in respect of the same incident, situation, or set of circumstances; and 10
- (ii) will take any enforcement action or prosecution action.
- (1A) For the purposes of **subsection (1)**, if the regulator or a regulatory agency is unable to take enforcement action or prosecution action against any person in respect of the same incident, situation, or set of circumstances because the person is dead, the regulator or regulatory agency (as the case may be) must be treated as intending to take enforcement action or prosecution action. 15
- (2) Despite **subsection (1)(b)**, a person other than the regulator may file a charging document even though a regulatory agency has taken or intends to take prosecution action if— 20
- (a) the person has leave of the court; and
- (b) ~~**subsection (1)(a) and (c)** is complied with.~~
- (b) the person has received notification from the regulator under **section 163(2)(b)** that the regulator has made a decision not to take enforcement action in respect of the same incident, situation, or set of circumstances. 25
- (3) If a person applies for leave under **subsection (2)(a)**, the Registrar must refer the matter to a District Court Judge for a direction that the person proposing to commence the proceeding file formal statements, and the exhibits referred to in those statements, that form the evidence that the person proposes to call at trial, or such part of that evidence that the person considers is sufficient to justify a trial. 30
- (4) Section 26(2) to (5) of the Criminal Procedure Act 2011 applies to an application for leave under **subsection (2)(a)** with the following modifications:
- (a) a reference to accepting a charging document for filing must be read as if it were a reference to granting leave; 35
- (b) in determining whether the proposed prosecution is an abuse of process in accordance with section 26(3)(b) of that Act, the Judge must take into account—
- (i) whether allowing the proposed prosecution to proceed would be consistent with the purpose of this Act; and 40

(ii) whether the proposed prosecution is in the public interest.

Compare: 1992 No 96 s 54A(2), (3)

## **166 Continuing or repeated matters**

Nothing in this Act prevents the regulator or another person from taking enforcement action in respect of ~~a matter~~ an incident, situation, or set of circumstances despite enforcement action having been taken in respect of ~~the matter~~ that incident, situation, or set of circumstances, if the ~~matter~~ incident, situation, or set of circumstances is continuing or repeated.

Compare: 1992 No 96 s 54E

## **~~167~~ Limitation period for prosecutions**

~~(1) Despite section 25 of the Criminal Procedure Act 2011, proceedings for an offence against this Act may be brought within the latest of the following periods to occur:~~

~~(a) within 2 years after the offence first comes to the notice of the regulator;~~

~~(b) within 1 year after the date on which a coroner completes and signs a certificate of findings under section 94 of the Coroners Act 2006 if it appears from the certificate of findings (or the proceedings of an inquiry) that an offence has been committed against this Act or regulations;~~

~~(c) if an enforceable undertaking has been given in relation to the offence, within 6 months after —~~

~~(i) the enforceable undertaking is contravened; or~~

~~(ii) it comes to the notice of the regulator that the enforceable undertaking has been contravened; or~~

~~(iii) the regulator has agreed under **section 149** to the withdrawal of the enforceable undertaking.~~

~~(2) A proceeding for an offence against **section 42** may be brought after the end of the applicable limitation period in **subsection (1)** if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period.~~

Compare: Model Work Health and Safety Act (Aust) s 222

### Limitation periods for prosecutions

## **167 Limitation period for prosecutions brought by regulator**

(1) Despite section 25 of the Criminal Procedure Act 2011, proceedings for an offence under this Act may be brought by the regulator within the latest of the following periods to occur:

(a) within 12 months after the date on which the incident, situation, or set of circumstances to which the offence relates first became known, or ought reasonably to have become known, to the regulator:

- (b) within 6 months after the date on which a coroner completes and signs a certificate of findings under section 94 of the Coroners Act 2006 if it appears from the certificate of findings (or the proceedings of an inquiry) that an offence has been committed under this Act:
- (c) if an enforceable undertaking has been given in relation to the offence, within 6 months after— 5
- (i) the enforceable undertaking is contravened; or
- (ii) it comes to the notice of the regulator that the enforceable undertaking has been contravened; or
- (iii) the regulator has agreed under **section 149** to the withdrawal of the enforceable undertaking. 10
- (2) **Subsection (1)(a) is subject to section 167A.**
- Compare: 1992 No 96 s 54B; Model Work Health and Safety Act (Aust) s 232
- 167A Extension of time if regulator needs longer to decide whether to bring prosecution** 15
- (1) This section applies if the regulator considers that it will not be able to file a charging document by the end of the 12 month period specified in **section 167(1)(a).**
- (2) The District Court may, on application by the regulator made before the end of the 12 month period specified in **section 167(1)(a),** extend the time available for filing a charging document for a further period not exceeding 12 months from the expiry of the 12 month specified in **section 167(1)(a).** 20
- (3) The court must not grant an extension under **subsection (2)** unless it is satisfied that—
- (a) the regulator reasonably requires longer than the 12 month period to decide whether to file a charging document; and 25
- (b) the reason for requiring the longer period is that the investigation of the events and issues surrounding the alleged offence is complex or time consuming; and
- (c) it is in the public interest in the circumstances that a charging document is able to be filed after the 12 month period expires; and 30
- (d) filing the charging document after the 12 month period expires will not unfairly prejudice the proposed defendant in defending the charge.
- (4) The court must give the following persons an opportunity to be heard:
- (a) the regulator; 35
- (b) the proposed defendant;
- (c) any other person who has an interest in whether or not a charging document should be filed, being a person described in **section 163(1).**

Compare: 1992 No 96 s 54D

**167B Limitation period for private prosecutions**

Despite section 25 of the Criminal Procedure Act 2011, proceedings for an offence against this Act may be brought by a person other than the regulator within the latest of the following periods to occur:

- (a) within 2 years after the date on which the incident, situation, or set of circumstances to which the offence relates first became known, or ought reasonably to have become known, to the regulator: 5
- (b) within 6 months after the date on which a coroner completes and signs a certificate of findings under section 94 of the Coroners Act 2006 if it appears from the certificate of findings (or the proceedings of an inquiry) that an offence has been committed under this Act: 10
- (c) if an enforceable undertaking has been given in relation to the offence, within 6 months after—
  - (i) the enforceable undertaking is contravened; or
  - (ii) it comes to the notice of the regulator that the enforceable undertaking has been contravened; or 15
  - (iii) the regulator has agreed under **section 149** to the withdrawal of the enforceable undertaking.

**167C Extension of time for certain proceedings**

Despite anything in **section 167, 167A, or 167B**, the following proceedings may be brought after the end of the applicable limitation period if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within that period: 20

- (a) proceedings for an offence against **section 42**:
- (b) proceedings for an offence against **section 43** that relates to the death of a person. 25

Compare: Model Work Health and Safety Act (Aust) s 232(2)

## Subpart 8—Sentencing for offences

**168 Application of subpart**

This subpart applies if a court convicts a person (an **offender**) or finds an offender guilty of an offence ~~against this Act or regulations~~ under this Act. 30

Compare: Model Work Health and Safety Act (Aust) s 234

**169 Sentencing criteria**

- (1) This section applies when a court is determining how to sentence or otherwise deal with an offender convicted of an offence under **section 42, 43, or 44.** 35
- (2) The court must apply the Sentencing Act 2002 and must have particular regard to—

- (a) sections 7 to 10 of that Act; and
- (b) the purpose of this Act; and
- (c) the risk of, and the potential for, illness, injury, or death that could have occurred; and
- (d) the safety record of the person (including, without limitation, any warning, infringement notice, or improvement notice issued to the person or enforceable undertaking agreed to by the person) to the extent that it shows whether any aggravating factor is present; and 5
- (e) the degree of departure from prevailing standards in the person's sector or industry as an aggravating factor; and 10
- (f) the person's financial capacity or ability to pay any fine to the extent that it has the effect of increasing the amount of the fine.

Compare: 1992 No 96 s 51A

#### **170 Order for payment of regulator's costs in bringing prosecution**

- (1) On the application of the regulator, the court may order the offender to pay to the regulator, a sum that it thinks just and reasonable towards the costs of the prosecution (including the costs of investigating the offending and any associated costs). 15
- (2) If the court makes an order under **subsection (1)**, it must not make an order under section 4 of the Costs in Criminal Cases Act 1967. 20
- (3) If the court makes an order under **subsection (1)** in respect of a Crown organisation, any costs and fees awarded must be paid from the funds of that organisation.

Compare: 1967 No 129 s 4(5)

#### **171 Adverse publicity orders** 25

- (1) A court may make an order (an **adverse publicity order**) requiring an offender—
  - (a) to take either or both of the following actions within the period specified in the order:
    - (i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed, and any other related matter: 30
    - (ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed, and any other related matter; and
  - (b) to give the regulator, within 7 days after the end of the period specified in the order, evidence that the action or actions have been taken by the offender in accordance with the order. 35
- (2) The court may make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.

- (3) If the offender fails to give evidence to the regulator in accordance with **subsection (1)(b)**, the regulator, or a person authorised in writing by the regulator, may take the action or actions specified in the order.
- (4) However, the regulator may apply to the court for an order authorising the regulator, or a person authorised in writing by the regulator, to take the action or actions specified in the order if— 5
- (a) the offender gives evidence to the regulator in accordance with **subsection (1)(b)**; and
- (b) despite that evidence, the regulator is not satisfied that the offender has taken the action or actions specified in the order in accordance with the order. 10
- (5) If the court makes an order under **subsection (1)**, the regulator may recover as a debt due to the regulator in any court of competent jurisdiction any reasonable expenses incurred in taking an action under **subsection (3) or (4)**. 15
- Compare: Model Work Health and Safety Act (Aust) s 236

## 172 Orders for restoration

- (1) A court may make an order requiring an offender to take the specified steps, within a specified period, to remedy any matter caused by the commission of the offence that appears to the court to be within the offender's power to remedy. 20
- (2) The period in which an order under this section must be complied with may be extended, or further extended, by order of the court, but only if an application for the extension is made before the expiry of that period.
- (3) The court may not make an order under this section for any matter in respect of which an order for reparation is made under section 32 of the Sentencing Act 2002. 25
- Compare: Model Work Health and Safety Act (Aust) s 237

## 173 Work health and safety project orders

- (1) A court may make an order requiring an offender to undertake a specified project for the general improvement of work health and safety within the period specified in the order. 30
- (2) The order may specify conditions that must be complied with in undertaking the specified project.
- Compare: Model Work Health and Safety Act (Aust) s 238

## 174 Release on giving of court-ordered enforceable undertaking 35

- (1) The court may (with or without recording a conviction) adjourn a proceeding for up to 2 years and make an order for the release of the offender if the offender gives an undertaking with specified conditions (a **court-ordered enforceable undertaking**).



- (2) A court-ordered enforceable undertaking must specify the following conditions:
- (a) that the offender appears before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned: 5
  - (b) that the offender does not commit, during the period of the adjournment, any offence against this Act or regulations:
  - (c) that the offender observes any special conditions imposed by the court.
- (3) An offender who has given a court-ordered enforceable undertaking under this section may be called on to appear before the court by order of the court. 10
- (4) An order under **subsection (3)** must be served on the offender not less than 4 days before the time specified in it for the appearance.
- (5) If the court is satisfied at the time to which a further hearing of a proceeding is adjourned that the offender has observed the conditions of the court-ordered enforceable undertaking, it must discharge the offender without any further hearing of the proceeding. 15
- (6) The regulator must publish, on an Internet site maintained by or on behalf of the regulator, notice of a court-ordered enforceable undertaking made in accordance with **subsection (1)**, unless the court orders otherwise. 20
- Compare: Model Work Health and Safety Act (Aust) s 239

### 175 Injunctions

If a court finds a person guilty of an offence against this Act or regulations, the court may issue an injunction requiring the offender to cease any particular conduct or action that constitutes a contravention of this Act or regulations.

Compare: Model Work Health and Safety Act (Aust) s 240 25

### 176 Training orders

The court may make an order requiring an offender to undertake, or arrange for 1 or more workers to undertake, a specified course of training.

Compare: Model Work Health and Safety Act (Aust) s 241

### 177 Offence to fail to comply with order 30

- (1) A person must not, without reasonable excuse, fail to comply with an order under this subpart.
- (2) **Subsection (1)** does not apply to—
- (a) an order made under **section 174**; or
  - (b) an injunction granted under **section 175**. 35
- (3) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000:

(b) for any other person, to a fine not exceeding \$250,000.

Compare: Model Work Health and Safety Act (Aust) s 242

*Insurance against fines unlawful and of no effect*

**~~178 Insurance against fines unlawful~~**

- (1) ~~To the extent that an insurance policy or a contract of insurance indemnifies or purports to indemnify a person for the person's liability to pay a fine or infringement fee under this Act,~~ 5
- (a) ~~the policy or contract is of no effect; and~~
- (b) ~~no court or tribunal has jurisdiction to grant relief in respect of the policy or contract, whether under section 7 of the Illegal Contracts Act 1970 or otherwise.~~ 10
- (2) ~~A person must not—~~
- (a) ~~enter into, or offer to enter into, a policy or contract described in **subsection (1)**; or~~
- (b) ~~indemnify, or offer to indemnify, another person for the other person's liability to pay a fine or an infringement fee under this Act; or~~ 15
- (c) ~~be indemnified, or agree to be indemnified, by another person for that person's liability to pay a fine or an infringement fee under this Act; or~~
- (d) ~~pay to another person, or receive from another person, an indemnity for a fine or an infringement fee under this Act.~~ 20
- (3) ~~A person who contravenes **subsection (2)** commits an offence and is liable on conviction,—~~
- (a) ~~for an individual, to a fine not exceeding \$50,000;~~
- (b) ~~for any other person, to a fine not exceeding \$250,000.~~
- Compare: 1992 No 96 s 561 25

*Attribution of liability*

**~~179 State of mind of directors, employees, or agents attributed to body corporate or other principal~~**

- (1) ~~If, in a proceeding under this Act in respect of any conduct engaged in by a body corporate, being conduct in relation to which any provision of this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that an officer, employee, or agent of the body corporate, acting within the scope of his, her, or its actual or apparent authority, had that state of mind.~~ 30
- (2) ~~If, in a proceeding (other than a proceeding for an offence) under this Act in respect of any conduct engaged in by a person other than a body corporate, being conduct in relation to which any provision of this Act applies, it is neces-~~ 35

~~sary to establish the state of mind of the person, it is sufficient to show that an officer, employee, or agent of the person, acting within the scope of his or her actual or apparent authority, had that state of mind.~~

- ~~(3) In this section, **state of mind**, in relation to a person, includes the knowledge, intention, opinion, belief, or purpose of the person and the person's reasons for that intention, opinion, belief, or purpose.~~ 5

**180 Conduct of directors, employees, or agents attributed to body corporate or other principal**

- ~~(1) Conduct engaged in on behalf of a body corporate by any of the following must be treated, for the purposes of this Act, as having been engaged in also by the body corporate:~~ 10

~~(a) an officer, employee, or agent of the body corporate, acting within the scope of his, her, or its actual or apparent authority:~~

~~(b) any other person at the direction or with the consent or agreement (whether express or implied) of an officer, employee, or agent of the body corporate, given within the scope of the actual or apparent authority of the director, employee, or agent.~~ 15

- ~~(2) Conduct engaged in on behalf of a person other than a body corporate (**person A**) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by person A:~~ 20

~~(a) an employee or agent of person A acting within the scope of his, her, or its actual or apparent authority:~~

~~(b) any other person at the direction or with the consent or agreement (whether express or implied) either of person A or of an employee or agent of person A, given within the scope of the actual or apparent authority of the employee or agent.~~ 25

Subpart 8A—General provisions relating to proceedings

**178 State of mind of directors, employees, or agents attributed**

- (1) If, in any civil proceedings under this Act in respect of any conduct engaged in by an individual, being conduct in relation to which any provision of this Act or regulations applies, it is necessary to establish the state of mind of that individual, it is sufficient to show that an employee or agent of the individual acting within the scope of his, her, or its actual or apparent authority, had that state of mind. 30

- (2) If, in any civil or criminal proceedings under this Act in respect of any conduct engaged in by a person other than an individual, being conduct in relation to which any provision of this Act or regulations applies, it is necessary to establish the state of mind of the person, it is sufficient to show that an officer, employee, or agent of the person, acting within the scope of his or her actual or apparent authority, had that state of mind. 40

- (3) In this section, **state of mind**, in relation to a person, includes the knowledge, intention, opinion, belief, or purpose of the person and the person's reasons for that intention, opinion, belief, or purpose.  
 Compare: Model Work Health and Safety Act (Aust) s 244(2), (3)
- 179 Conduct of directors, employees, or agents attributed** 5
- (1) Conduct engaged in on behalf of an individual (**person A**) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by person A:
- (a) an employee or agent of person A, acting within the scope of his, her, or its actual or apparent authority: 10
- (b) any other person at the direction or with the consent or agreement (whether express or implied) either of person A or an employee or agent of person A, given within the scope of the actual or apparent authority of the employee or agent.
- (2) Conduct engaged in on behalf of a person (other than an individual) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by that person: 15
- (a) an officer, employee, or agent of the person acting within the scope of his, her, or its actual or apparent authority:
- (b) any other person at the direction or with the consent or agreement (whether express or implied) of an officer, employee, or agent of the person, given within the scope of the actual or apparent authority of the officer, employee, or agent. 20
- Compare: Model Work Health and Safety Act (Aust) s 244(1)
- 180A Proceedings involving classified security information** 25
- Schedule 2A** contains provisions that apply in civil and criminal proceedings that involve classified security information.

## Subpart 9—Inspectors and health and safety medical practitioners

### *Inspectors*

- 181 Appointment of inspectors** 30
- (1) The regulator may, by notice in writing, appoint any of the following as an inspector:
- (a) an employee of a department (within the meaning of the State Sector Act 1988):
- (b) an employee of the State services (within the meaning of the State Sector Act 1988): 35
- (c) a statutory officer:

- (d) a prescribed person:
- (e) an employee of the regulator:
- (f) any other person who the regulator is satisfied—
- (i) is suitably qualified and trained:
  - (ii) belongs to a class of persons who are suitably qualified and trained to exercise any or all of the powers of, and carry out any or all of the duties of, an inspector under relevant health and safety legislation. 5
- (2) An inspector's compliance powers are subject to any conditions or limitations specified in the notice of the inspector's appointment. 10
- (3) However, the exercise of a compliance power by an inspector is not invalid merely because it did not comply with the conditions specified in the notice of the inspector's appointment.
- (4) The regulator has all the powers that an inspector has under this Act. 15  
Compare: Model Work Health and Safety Act (Aust) ss 156, 161
- 182 Identity cards**
- (1) The regulator must give each inspector an identity card that—
- (a) states the person's name and appointment as an inspector; and
  - (b) includes any other matter prescribed by regulations.
- (2) An inspector must, when exercising compliance powers under this Act, produce his or her identity card for inspection on request. 20
- (3) A person who ceases to be an inspector must as soon as practicable return the identity card to the regulator.  
Compare: Model Work Health and Safety Act (Aust) s 157
- 183 Suspension and ending of appointment of inspectors** 25
- (1) The regulator may suspend or end the appointment of an inspector at any time.
- (2) To avoid doubt, a person's appointment as an inspector ends when the person ceases to be eligible for appointment as an inspector.  
Compare: Model Work Health and Safety Act (Aust) s 159
- 184 Inspectors subject to regulator's directions** 30
- (1) An inspector (whether or not an employee) is subject to directions from the regulator that appointed him or her in the exercise of the inspector's compliance powers.
- (2) A direction under **subsection (1)** may be of a general nature or may relate to a specified matter or specified class of matter. 35

- (3) A failure to comply with a direction under **subsection (1)** does not invalidate the exercise of an inspector's compliance power.

Compare: Model Work Health and Safety Act (Aust) s 162

### 185 Powers of entry and inspection

- (1) Subject to **section 186**, for the purpose of performing any function of the regulator or an inspector under relevant health and safety legislation, any inspector may, at any reasonable time, enter any workplace and—
- (a) conduct examinations, tests, inquiries, and inspections, or direct a PCBU or a person who is or appears to be ~~the person with management or control~~ in charge of the workplace to conduct examinations, tests, inquiries, or inspections: 10
  - (b) be accompanied and assisted by any other person and bring into the workplace any equipment necessary to carry out the inspector's functions: 10
  - (c) take photographs and measurements and make sketches and recordings: 15
  - (d) require the PCBU or a person who is or appears to be ~~the person with management or control~~ in charge of the workplace to ensure that the workplace or any place or thing in the workplace specified by the inspector is not disturbed for a reasonable period pending examination, test, inquiry, or inspection: 20
  - (e) require the PCBU or a person who is or appears to be ~~the person with management or control~~ in charge of the workplace to—
    - (i) produce information relating to the work, the workplace, or the workers who work there; and
    - (ii) produce information relating to the PCBU's compliance with relevant health and safety legislation; and 25
    - (iii) permit the inspector to examine and make copies of, or take extracts from, the information:
  - (f) require the PCBU or a person who is or appears to be ~~the person with management or control~~ in charge of the workplace to make or provide statements, in any form and manner that the inspector specifies. 30
- (2) An inspector may do any of the things referred to in **subsection (1)**, whether or not—
- (a) the inspector or the person the inspector is dealing with is in the workplace; or 35
  - (b) the workplace is still a workplace; or
  - (c) the workers work in the workplace; or
  - (d) the PCBU is still a PCBU in respect of the workplace; or
  - (e) the workers still carry out work in any capacity for the PCBU; or

- (f) in respect of any information, the information is—
- (i) in the workplace; or
  - (ii) in the place where the inspector is; or
  - (iii) in another place.
- (3) Despite **subsection (1)**, an inspector must not enter a defence area except in accordance with a written agreement between the regulator and the Chief of Defence Force that is entered into for the purposes of this section and is for the time being in force. 5
- (4) Despite **subsection (1)(e)**, if all or any part of the information relates to a person's health status and identifies the person, an inspector must not, without that person's consent,— 10
- (a) require the production of information; or
  - (b) examine the information; or
  - (c) make a copy of, or take an extract from, the information.
- (5) Nothing in this section affects the application of section 60 of the Evidence Act 2006. 15
- (6) In this section, **information** includes any document.
- Compare: 1992 No 96 s 31; Model Work Health and Safety Act (Aust) s 163

#### **186 ~~Powers of inspectors~~ Power to enter homes**

- (1) Despite **section 185(1) and (2)**, an inspector must not, except with the consent of an occupier or pursuant to a warrant issued under **subsection (2)**,— 20
- (a) enter a workplace that is, or is within, a home; or
  - (b) enter a workplace through a home.
- (2) An issuing officer may, on an application made by an inspector in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012, issue a warrant to enter a home (or part of a home) if he or she is satisfied that there are reasonable grounds to believe that the home— 25
- (a) is a workplace or has a workplace within it; or
  - (b) is the only practicable means through which the inspector may enter the workplace. 30
- (3) A warrant issued under **subsection (2)** authorises an inspector to exercise only the powers specified in **section 185**.
- Compare: 1992 No 96 s 31; Model Work Health and Safety Act (Aust) s 170

#### **187 ~~Power of inspectors~~ to deal with cause of imminent danger**

- (1) This section applies if an inspector who enters a workplace under **section 185 or 186** reasonably believes that any material, substance, structure, or thing in a workplace is defective or hazardous to a degree that it is likely to imminently 35

- cause death or serious injury or illness or a notifiable incident (**cause of imminent danger**).
- (2) The inspector may seize, destroy, or take any other action to reduce or remove the cause of imminent danger.
- (3) The inspector must,— 5
- (a) before exercising the power under **subsection (2)**, if it is practicable to do so, take a sample of the cause of imminent danger:
- (b) as soon as practicable after exercising the power under **subsection (2)**, give the PCBU written notice of the action taken in relation to the cause of imminent danger. 10
- (4) This section is subject to **section 186**.
- Compare: Model Work Health and Safety Act (Aust) s 176; Health and Safety at Work etc. Act 1974 (UK) s 25
- 188 Notice of entry**
- (1) If an inspector enters any workplace under this Act and is unable, despite reasonable efforts, to find any person in charge, the inspector must before leaving the workplace leave a written notice stating— 15
- (a) the inspector’s identity; and
- (b) the inspector’s contact information; and
- (c) the date and time of entry; and 20
- (d) the inspector’s reasons for entering.
- (2) In this section, **contact information** includes—
- (a) the name of the inspector; and
- (b) 1 or more of the following: 25
- (i) telephone number:
- (ii) email address:
- (iii) physical or postal address.
- Compare: 1992 No 96 s 32(2); Model Work Health and Safety Act (Aust) s 164
- 189 ~~Powers~~ Power to take samples and other objects and things**
- (1) An inspector who enters a workplace or a former workplace under **section 185 or 186** may take or remove a sample of any material, substance, or thing for analysis, or seize and retain any material, substance, or thing, for the purpose of— 30
- (a) monitoring conditions in the workplace; or
- (b) determining the nature of any material or substance in the workplace; or 35
- (c) determining whether relevant health and safety legislation has been, is being, or is likely to be complied with; or



- (d) gathering evidence to support the taking of enforcement action.
- (2) This section does not allow an inspector to take a sample from a person's body unless the inspector has that person's informed consent to the taking of the sample.
- (3) If an inspector removes or retains any sample, material, substance, or thing under **subsection (1)**, the inspector must,— 5
- (a) ~~as soon as is reasonably practicable after removing or retaining it, at the time he or she removes or retains the sample, material, substance, or thing or as soon as practicable after doing so,~~ give the PCBU written notice of— 10
- (i) what has been (or is being) removed or retained; and
- (ii) why it has been (or is being) removed or retained; and
- (iii) where it will be kept in the meantime; and
- (b) subject to **subsections (4) and (5)**, within 5 working days of removing or retaining any sample, material, substance, or thing, give the PCBU written notice of whether the inspector intends to return it or destroy it. 15
- (4) If it is practicable to do so, the inspector must return the sample, material, substance, or thing to its owner—
- (a) when it is no longer required for any purpose under relevant health and safety legislation (or any other enactment); or 20
- (b) if a court earlier orders its return.
- (5) The inspector may destroy any removed or retained sample, material, substance, or thing if—
- (a) it is perishable and has become rotten or has otherwise deteriorated; or 25
- (b) it is perishable and is likely to become rotten or perish before it can be dealt with under **subsection (4)**; or
- (c) it is likely to pose a risk to public health.
- (6) In addition, sections 154, 155, and 159 of the Search and Surveillance Act 2012 apply in relation to any sample, material, substance, or thing removed or retained. 30
- (7) Those sections of the Search and Surveillance Act 2012 referred to **subsection (6)** apply as if—
- (a) the reference in section 159(1) of that Act to a person described in section 156(2) ~~was~~ were to— 35
- (i) any person from whom the sample, material, substance, or thing was seized:
- (ii) the PCBU:

- (iii) any other person who, in the opinion of the inspector, may be affected by the forfeiture of the sample, material, substance, or thing; and
- (b) references to a thing were to any sample, material, substance, or thing; and 5
- (c) references to seized or produced were to removed or retained; and
- (d) references to the person in whose custody the thing is were to the inspector; and
- (e) all other necessary modifications were made.
- (8) Any sample, material, substance, or thing forfeited to the Crown may be destroyed or otherwise disposed of as the inspector directs. 10
- Compare: 1992 No 96 s 33; Model Work Health and Safety Act (Aust) ss 165, 178, 180
- 190 ~~Powers~~ Power of regulator to authorise making of applications for search warrants**
- (1) A regulator may authorise a specified person to enter and search a place, vehicle, or other thing for the purpose of ascertaining whether a person has engaged in or is engaging in conduct that contravenes or may contravene relevant health and safety legislation if the regulator is satisfied that there are reasonable grounds— 15
- (a) to suspect that person has engaged in or is engaging in conduct that constitutes or may constitute such a contravention; and 20
- (b) to believe that the search will find evidential material in or on any part of the place, vehicle, or thing.
- (2) A specified person authorised under **subsection (1)** may enter and search the place, vehicle, or other thing if— 25
- (a) the occupier of the place, or the person in charge of the vehicle or thing, ~~consents~~ (as the case may be) consents; or
- (b) the specified person obtains a warrant under **subsection (3)**.
- (3) An issuing officer may issue a search warrant in relation to a place, vehicle, or thing, on an application made in the manner provided by subpart 3 of Part 4 of the Search and Surveillance Act 2012 by a specified person authorised under **subsection (1)**, if the issuing officer is satisfied that there are reasonable grounds— 30
- (a) to suspect that a person has engaged in or is engaging in conduct that contravenes or may contravene any provision of relevant health and safety legislation; and 35
- (b) to believe that the search will find evidential material in or on any part of the place, vehicle, or thing.
- (4) In this section **specified person** means—

- (a) an inspector; or
- (b) an employee of the regulator; or
- (c) any other person who, the regulator is satisfied,—
- (i) is suitably qualified and trained:
  - (ii) belongs to a class of persons who are suitably qualified and trained to act under this section. 5
- (5) Despite **subsection (4)**, a constable may apply for a warrant to be issued under **subsection (3)** without an authorisation from a regulator under **subsection (1)**.
- (6) The provisions of subpart 2 of Part 3 and Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply, with any necessary modifications. 10
- Compare: Model Work Health and Safety Act (Aust) s 167
- 191 Continuation of ~~inspectors~~<sup>2</sup> powers of entry and inspection without search warrants** 15
- An inspector who, in the course of exercising a power under **section 185 or 186**, finds evidence of contravention of relevant health and safety legislation is not required to obtain a search warrant under **section 190** to continue exercising powers under **section 185 or 186**.
- 192 Power to require name and address** 20
- (1) An inspector may require a person to provide the person's name and residential address if—
- (a) the inspector finds the person committing an offence against relevant health and safety legislation; or
  - (b) the inspector finds the person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has committed an offence against relevant health and safety legislation. 25
- (2) When asking a person to provide his or her name and residential address, the inspector must—
- (a) tell the person the reason for the requirement to provide his or her name and residential address; and 30
  - (b) warn the person that it is an offence to fail to provide his or her name and residential address, unless the person has a reasonable excuse.
- (3) If the inspector reasonably believes that the name and residential address a person provides are false, the inspector may require the person to give evidence of their correctness. 35
- Compare: Model Work Health and Safety Act (Aust) s 185

**193 Duty to assist inspectors**

(1) Any person on whom a duty is imposed by relevant health and safety legislation must give all reasonable assistance to enable an inspector to enter, inspect, examine, inquire, or exercise any other power under relevant health and safety legislation. 5

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—

(a) for an individual, to a fine not exceeding \$10,000:

(b) for ~~a body corporate~~ any other person, to a fine not exceeding \$50,000.

Compare: 1992 No 96 s 47

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**194 Immunity of inspectors and persons assisting inspectors or regulator**

~~An inspector or a person called on to assist an inspector is~~ The following persons are not liable in any criminal or civil proceedings for any act done or omitted to be done in good faith in the performance or exercise, or intended performance or exercise, of ~~his or her~~ an inspector's functions or powers under relevant health and safety legislation: 15

(a) an inspector:

(b) a person called on to assist an inspector:

(c) a person called on to assist the regulator.

Compare: Model Work Health and Safety Act (Aust) s 270(1)

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**195 Offence for failing to provide inspector with correct name and residential address**

(1) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under **section 192(1) or (3)**.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000. 25

Compare: Model Work Health and Safety Act (Aust) s 185

**196 Offence to hinder or obstruct inspector**

(1) A person must not ~~intentionally~~, without reasonable cause, hinder or obstruct an inspector in exercising his or her compliance powers, or cause or attempt to cause any other person to do so. 30

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—

(a) for an individual, to a fine not exceeding \$10,000:

(b) for any other person, to a fine not exceeding \$50,000. 35

Compare: 1992 No 96 s 48; Model Work Health and Safety Act (Aust) s 188

**197 Offence to impersonate inspector**

- (1) A person who is not an inspector must not, in any way, hold himself or herself out to be an inspector.
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000. 5

Compare: 1992 No 96 s 58; Model Work Health and Safety Act (Aust) s 189

*Health and safety medical practitioners***198 Appointment of health and safety medical practitioners**

- (1) The regulator may appoint any medical practitioner to be a health and safety medical practitioner. 10
- (2) A health and safety medical practitioner must exercise the powers of a health and safety medical practitioner subject to the directions given and conditions (if any) for the time being imposed by the regulator.

- (3) Every health and safety medical practitioner must have a certificate of appointment in a form approved by the regulator. 15

- ~~(4) A health and safety medical practitioner ceases to be a health and safety medical practitioner on ceasing to be a medical practitioner.~~

Compare: 1992 No 96 s 34(1)–(3)

**198A Suspension and ending of appointment of health and safety medical practitioners** 20

- (1) The regulator may suspend or end the appointment of a health and safety medical practitioner at any time.

- (2) A person's appointment as a health and safety medical practitioner ends when the person ceases to be a medical practitioner.

Compare: 1992 No 96 s 34(4)

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**199 Powers of entry and inspection of health and safety medical practitioners**

- (1) For the purposes of relevant health and safety legislation, a health and safety medical practitioner may, at any reasonable time, enter a workplace and—
- (a) conduct examinations, tests, inquiries, and inspections, or direct a PCBU to conduct examinations, tests, inquiries, or inspections: 30
- (b) be accompanied and assisted by any other person and bring into the workplace any equipment necessary to carry out the health and safety medical practitioner's functions:
- (c) take photographs and measurements and make sketches and recordings:
- (d) require a PCBU to produce documents or information relating to the workplace or the workers who work there and permit the health and safety medical practitioner to examine and make copies or extracts of the documents and information. 35

- (2) Despite **subsection (1)**, a health and safety medical practitioner must not, except with the consent of an occupier or pursuant to a warrant issued under **subsection (3)**,—
- (a) enter a workplace that is, or is within, a home; or
  - (b) enter a workplace through a home. 5
- (2A) Despite **subsection (1)**, a health and safety medical practitioner must not enter a defence area except in accordance with a written agreement between the regulator and the Chief of Defence Force that is entered into for the purposes of this section and is for the time being in force.
- (3) An issuing officer may, on an application made by a health and safety medical practitioner in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012, issue a warrant to enter a home (or part of a home) if he or she is satisfied that there are reasonable grounds to believe that the home—
- (a) is a workplace or has a workplace within it; or
  - (b) is the only practicable means through which the health and safety medical practitioner may enter the workplace. 10 15

Compare: 1992 No 96 s 35

## 200 Health and safety medical practitioners may require workers to be medically examined

- (1) A health and safety medical practitioner may exercise the powers under this section if satisfied that—
- (a) any worker is, has been, or may have been exposed to a significant hazard while at work; and
  - (b) by examining the worker or causing a sample taken from the worker to be tested or analysed, it is likely to be possible to determine— 25
    - (i) whether the worker is or has been exposed to the hazard; or
    - (ii) the extent to which the worker is or has been exposed to the hazard; or
    - (iii) the extent to which the worker's health has been or may have been affected by exposure to the hazard. 30
- (2) A health and safety medical practitioner may, by notice in writing to the worker,—
- (a) require the worker—
    - (i) to be examined by a ~~medical~~ health practitioner; and
    - (ii) to provide to the health and safety medical practitioner a certificate from the ~~medical~~ health practitioner as to the worker's fitness for work: 35
  - (b) require the worker—

- (i) to allow a person (or person of a kind) specified in the notice to take from the worker a sample of a kind specified in the notice; and
- (ii) to have the sample tested or analysed by a person (or person of a kind) specified in the notice in a manner specified in the notice; and 5
- (iii) to provide the health and safety medical practitioner with a written report from the person who tests or analyses the sample on the results of the tests and analyses done.
- (3) In this section and in **section 201**, **significant hazard** means a hazard that is an actual or a potential cause or source of— 10
- (a) death; or
- (b) notifiable injury or illness the severity of whose effects on any person ~~depend~~ depends (entirely or among other things) on the extent or frequency of the person's exposure to the hazard; or 15
- (c) notifiable injury or illness that does not usually occur, or usually is not easily detectable, until a significant time after exposure to the hazard.
- Compare: 1992 No 96 s 36
- 201 Health and safety medical practitioners may suspend workers in certain cases** 20
- (1) Subject to the provisions of **subsection (2)**, a health and safety medical practitioner may, by written notice to the worker (a copy of which must be given to the PCBU),—
- (a) require the worker to cease doing anything specified in the notice that, in the health and safety medical practitioner's opinion, constitutes, causes, or increases the worker's exposure to the hazard; and 25
- (b) require the PCBU to ensure that the worker ceases doing the thing or things specified in the notice.
- (2) A health and safety medical practitioner may exercise the powers under **subsection (1)** if satisfied that— 30
- (a) a worker—
- (i) is, has been, or may have been exposed to a significant hazard while at work; and
- (ii) has failed or refused, without reasonable cause, to comply with a notice under **section 200**; or 35
- (b) a worker has been so harmed by exposure to a significant hazard while at work that the worker should not continue to be exposed to the hazard.

- (3) Every worker and PCBU must comply with a suspension notice served under this section.  
Compare: 1992 No 96 s 37
- 202 Immunity of health and safety medical practitioners and persons assisting health and safety medical practitioners** 5
- A health and safety medical practitioner or a person called on to assist a health and safety medical practitioner is not liable in any criminal or civil proceedings for any act done or omitted to be done in good faith in the performance or exercise, or intended performance or exercise, of his or her functions or powers under relevant health and safety legislation. 10
- 203 Offence to hinder or obstruct health and safety medical practitioner**
- (1) A person must not ~~intentionally~~, without reasonable cause, hinder or obstruct a health and safety medical practitioner in exercising his or her compliance powers, or cause or attempt to cause any other person to do so.
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,— 15
- (a) for an individual, to a fine not exceeding \$10,000;
- (b) for any other person, to a fine not exceeding \$50,000.
- Compare: 1992 No 96 s 38
- 204 Offence to impersonate health and safety medical practitioner** 20
- (1) A person who is not a health and safety medical practitioner must not, in any way, hold himself or herself out to be a health and safety medical practitioner.
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000. 25
- Compare: 1992 No 96 s 38

## Part 5

### Miscellaneous provisions

#### Subpart 1—Administration

- 205 Role of WorkSafe**
- Except to the extent that a designation under **section 207** is in force, WorkSafe is the regulator for the purposes of this Act. 30
- 206 Functions and powers of regulator other than WorkSafe**
- Subject to its scope of designation, a regulator other than WorkSafe has the following functions under this Act:



- 
- (a) to monitor and enforce compliance with relevant health and safety legislation:
- (b) to develop codes of practice:
- (c) to develop safe work instruments:
- (ca) to publish information about— 5
- (i) its approach to enforcing compliance with relevant health and safety legislation (including where a provision of the relevant health and safety legislation overlaps with another enactment); and
- (ii) its performance standards for completing investigations in relation to enforcing compliance with relevant health and safety legislation: 10
- (d) to provide guidance, advice, and information on work health and safety to—
- (i) persons who have duties under the relevant health and safety legislation; and 15
- (ii) the public:
- (e) to promote and support research, education, and training in work health and safety:
- (f) to collect, analyse, and publish statistics and other information relating to work health and safety: 20
- (g) to engage in, promote, and co-ordinate the sharing of information with other regulatory agencies:
- (h) to foster a co-operative and consultative relationship between persons who have duties under the relevant health and safety legislation and the persons to whom they owe duties and their representatives in relation to work health and safety: 25
- (i) to promote and co-ordinate the implementation of work health and safety initiatives by establishing partnerships or collaborating with other agencies or interested persons in a coherent, efficient, and effective way: 30
- (j) to perform any other functions or exercise any other powers conferred on the regulator by or under—
- (i) this Act or regulations; or
- (ii) any other enactment.
- Compare: Model Work Health and Safety Act (Aust) ss 152, 153(2) 35

*Designated ~~agency~~ agencies***207 Designated ~~agency~~ agencies**

- (1) The Prime Minister may, having regard to the specialist knowledge of the agency, designate by notice in the *Gazette*, an agency listed in **subsection (3)** as a designated agency. 5
- (2) A designation under **subsection (1)** must specify the scope of the designated agency's role (**scope of designation**) by reference to—
- (a) a particular industry, sector, or type of work or circumstance; and
  - (b) the functions or powers (or both) of the regulator under this Act, ~~or regulations~~ any other enactment, that the designated agency may perform or exercise in respect of the particular industry, sector, or type of work or circumstance. 10
- (3) The agencies are—
- (a) the chief executive of a department or departmental agency (within the meaning of section 27A of the State Sector Act 1988): 15
  - (b) a Crown entity (within the meaning of section 7 of the Crown Entities Act 2004):
  - (c) the Commissioner of Police:
  - (d) the Chief of Defence Force.
- Compare: 1992 No 96 s 28B 20

**208 Role of designated agencies**

- (1) If a designated agency has been given a scope of designation under **section 207**, WorkSafe or another agency may perform functions or exercise powers under this Act ~~and regulations~~ or any other enactment in respect of the scope of designation only if the designated agency has given its consent for WorkSafe or the other agency to do so. 25
- (2) A designated agency or its inspectors must not perform any functions or exercise any powers in respect of a matter that is outside its scope of designation unless WorkSafe (or, if relevant, another designated agency) has given its consent for the designated agency to do so. 30
- (3) However, a failure to obtain consent under **subsection (1) or (2)** does not affect the validity of the performance of any function or exercise of any power by WorkSafe or another agency or by the designated agency (as the case may be).

**209 Proceedings not to be questioned for want of form**

No action by a regulator or an inspector and no process or proceedings may be dismissed, set aside, or held invalid by any court by reason only of a regulator or the inspector acting outside its scope of designation or of any defect, irregu- 35

larity, omission, or want of form unless the court is satisfied that there has been a miscarriage of justice.

Compare: Model Work Health and Safety Act (Aust) s 208

*Joint policy directions*

- 210 Designated agency must give effect to joint policy directions** 5
- (1) Subject to any enactment or rule of law, a designated agency must, in performing functions and exercising powers under this Act ~~or regulations~~ or any other enactment, give effect to any joint policy directions given to it by the Minister and the Minister responsible for the designated agency.
- (2) A direction given under **subsection (1)** must be in writing and signed by the Ministers. 10
- (3) Sections 113 and 115 of the Crown Entities Act 2004 apply to a direction given under **subsection (1)** subject to—
- (a) all references to a Crown entity or entity being read as references to a designated agency; and 15
- (b) any other necessary modifications.

Compare: 1992 No 96 s 28B(2)

*Health and Safety at Work Strategy and workplace injury prevention*

- 211 Health and Safety at Work Strategy**
- (1) The Minister must publish a strategy, called the Health and Safety at Work Strategy, ~~which that~~ sets out the Government's overall direction in improving the health and safety of workers. 20
- (2) The strategy must be developed jointly with WorkSafe.
- (3) The Minister must make reasonable efforts to publish the first strategy within ~~12~~24 months after the commencement of this section. 25
- (4) The Minister may amend or replace the strategy at any time.
- (5) The strategy must—
- (a) identify any significant issues relating to capacity or capability in the work health and safety system and any plan for addressing the issues; and 30
- (b) take account of ACC's injury prevention priorities.
- (6) The strategy, or amendments to it or replacement of it, must be developed by a process that involves consultation—
- (a) with regulatory agencies; and
- (b) with other persons who have an interest in work health and safety in New Zealand or with organisations representing those persons. 35

- (7) The Minister must make publicly available, and present to the House of Representatives, a copy of any strategy, amendment, or replacement as soon as practicable after the strategy, amendment, or replacement has been published or made under this section.

**212 Workplace injury prevention** 5

- (1) **Section 264A** of the Accident Compensation Act 2001 requires WorkSafe and ACC to, at all times, have a workplace injury prevention action plan that meets the requirements of that section.
- (2) **Section 264B** of the Accident Compensation Act 2001 requires WorkSafe and ACC to enter into written agreements about injury prevention measures that are— 10
- (a) jointly undertaken by ACC and WorkSafe; or
- (b) undertaken by WorkSafe and partly or wholly funded by ACC.

*Information sharing*

**213 Sharing of information between regulator and regulatory agencies** 15

- (1) Subject to any enactment,—
- (a) the regulator may provide a regulatory agency with any information, or a copy of any document, that it—
- (i) holds in relation to the performance or exercise of its functions, duties, or powers under or in relation to the relevant health and safety legislation; and 20
- (ii) considers may assist the regulatory agency in the performance or exercise of the regulatory agency's functions, duties, or powers under or in relation to any enactment; and
- (b) a regulatory agency may provide the regulator with any information, or a copy of any document, that it— 25
- (i) holds in relation to the performance or exercise of its functions, duties, or powers under or in relation to any enactment; and
- (ii) considers may assist the regulator in the performance or exercise of its functions, duties, or powers under or in relation to the relevant health and safety legislation. 30
- (2) If **subsection (1)(a) or (b)** applies, the regulator or regulatory agency (as the case may be) may impose conditions that it thinks fit relating to the provision of the information or document, including conditions relating to—
- (a) the storage and use of, or access to, anything provided: 35
- (b) the copying, returning, or disposing of copies of any documents provided.

- (3) However, if ACC receives any information or document from the regulator under **subsection (1)**, it must not use that information or document in connection with making decisions about cover or entitlements under the Accident Compensation Act 2001.
- (4) Nothing in this section limits the Privacy Act 1993. 5
- (5) This section applies despite anything to the contrary in any contract, deed, or document.
- 214 Requirement of other regulator to notify WorkSafe of notifiable event**
- (1) This section applies if a regulator other than WorkSafe receives a notification of a notifiable event under **section 51**. 10
- (2) The regulator must, as soon as practicable,—
- (a) supply a copy of the notification to WorkSafe; and
- (b) advise WorkSafe of whether it intends to investigate the event and, if so, whether the investigation will be carried out under this Act or another enactment. 15
- 215 Requirement of medical officer of health to notify regulator of work-related notifiable disease or hazardous substances injury**
- (1) This section applies if a medical officer of health receives—
- (a) a notification under section 74 of the Health Act 1956 of a notifiable disease that he or she reasonably believes ~~relates to a workplace~~ arises from work; 20
- (b) a notification under section 143 of the Hazardous Substances and New Organisms Act 1996 of an injury caused by a hazardous substance that he or she reasonably believes ~~relates to a workplace~~ arises from work.
- (2) The medical officer of health must, as soon as practicable after receiving the notification,— 25
- (a) advise the regulator of the notification; and
- (b) provide the regulator with the following information:
- (i) the name of the person who suffers or suffered from the notifiable disease or injury caused by the hazardous substance; and 30
- (ii) the nature of the disease or injury.
- (3) Except as required by **subsection (2)(b)**, the medical officer of health must comply with the Privacy Act 1993 and any relevant code of practice issued under that Act.

**216 Coroner may call for report on fatal accident**

If requested by a coroner, the regulator must give the coroner a written report of an investigation that the regulator has carried out, or is carrying out, on the circumstances of any fatal accident that occurs at a workplace.

Compare: 1992 No 96 s 28; Model Work Health and Safety Act (Aust) s 187

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*Funding levy***217 Funding levy**

- (1) For the purpose of recovering certain Crown costs, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations requiring the persons specified in **subsection (2)** to pay a levy (a **funding levy**) on the earnings specified in relation to that person at a rate or rates prescribed by regulations. 10
- (2) ~~The persons and earnings are~~ levy is payable by—
  - (a) every employer, on the amount of earnings paid or deemed to have been paid by the employer to the employer's employees: 15
  - (b) every earner who has earnings as a self-employed person, on the amount of earnings as a self-employed person derived or deemed to have been derived by the earner:
  - (c) every shareholder-employee to whom section RD 3(2) to (4) of the Income Tax Act 2007 applies, on the amount of earnings derived or deemed to have been derived by the shareholder-employee. 20
- (3) The funding levy must be added to, and is deemed to be part of, the Work Account levy, and—
  - (a) the funding levy is payable, collected, and remitted, and penalties are payable in respect of it, as if it were the Work Account levy; and 25
  - (b) ACC and the Commissioner of Inland Revenue have all of the powers in respect of the funding levy that they have in respect of the Work Account levy; and
  - (c) the Commissioner of Inland Revenue is not required to refer separately to or account separately for, or identify, any funding levy in performing his or her functions in relation to the Work Account levy or the funding levy. 30
- (4) ACC must, by the 20th day of the month after the month in which ACC receives any funding levy from the Commissioner of Inland Revenue, pay the funding levy to the chief executive. 35
- (5) ACC may charge WorkSafe a fee for collecting the funding levy.
- (6) The chief executive must pay into a Crown Bank Account all of the funding levy that ACC pays to the chief executive.
- (7) In this section,—

**certain Crown costs** means any expected cost to the Crown associated with—

- (a) WorkSafe carrying out its functions under any enactment:
- (b) a designated agency performing functions or exercising powers under this Act:
- (c) the Crown administering the relevant health and safety legislation: 5
- (d) collecting the funding levy

**chief executive** means the chief executive of the department responsible for administering this Act

**earner, earnings, and earnings as a self-employed person** have the same meanings as in section 6(1) of the Accident Compensation Act 2001 10

**Work Account levy** means the levy payable under section 168, 168A, 168B, or 211 of the Accident Compensation Act 2001.

- (8) To avoid doubt, this section does not require all of the Crown's costs referred to in the definition of certain Crown costs to be recovered by the funding levy. 15  
Compare: 1992 No 96 s 59

## **218 Consultation requirement relating to funding levy**

The Minister must not recommend the making of regulations for the purposes of **section 217** without first—

- (a) consulting WorkSafe and ACC; and
- (b) having regard to any recommendations of WorkSafe made under section 10(d) of the WorkSafe New Zealand Act 2013. 20

Compare: 1992 No 96 s 59(7)

## Subpart 1A—Authorisations

### **218A Meaning of authorised**

In this subpart, **authorised** means authorised by a licence, permit, registration, consent, certificate, or other authority (however described) as required by regulations. 25

Compare: Model Work Health and Safety Act (Aust) s 40

### **218B Requirements for authorisation of workplaces**

- (1) A person must not conduct a business or undertaking at a workplace or direct or allow a worker to carry out work at a workplace if— 30
  - (a) regulations require the workplace, or class of workplaces, to be authorised; and
  - (b) the workplace is not authorised in accordance with regulations.
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,— 35

- (a) for an individual, to a fine not exceeding \$50,000:
- (b) for any other person, to a fine not exceeding \$250,000.

Compare: Model Work Health and Safety Act (Aust) s 41

### **218C Requirements for authorisation of plant or substance**

- (1) A person must not use plant or a substance at a workplace if— 5
  - (a) regulations require the plant or substance or its design to be authorised; and
  - (b) the plant or substance or its design is not authorised in accordance with regulations.
- (2) A PCBU must not direct or allow a worker to use plant or a substance at a workplace if— 10
  - (a) regulations require the plant or substance or its design to be authorised; and
  - (b) the plant or substance or its design is not authorised in accordance with regulations. 15
- (3) A person who contravenes **subsection (1) or (2)** commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$20,000:
  - (b) for any other person, to a fine not exceeding \$100,000. 20

Compare: Model Work Health and Safety Act (Aust) s 42 20

### **218D Requirements for authorisation of work**

- (1) A person must not carry out work if—
  - (a) regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and
  - (b) the person, or the person on whose behalf the work is carried out, is not authorised in accordance with regulations. 25
- (2) A PCBU must not direct or allow a worker to carry out work if—
  - (a) regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and
  - (b) the person, or the person on whose behalf the work is to be carried out, is not authorised in accordance with regulations. 30
- (3) A person who contravenes **subsection (1) or (2)** commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$20,000:
  - (b) for any other person, to a fine not exceeding \$100,000. 35

Compare: Model Work Health and Safety Act (Aust) s 43



**218E Requirements for prescribed qualifications or experience**

- (1) A person must not carry out work if regulations require the work, or class of work, to be carried out—
- (a) by a person who has prescribed qualifications or experience and the person does not have the prescribed qualifications or experience; or 5
  - (b) under the supervision of a person who has prescribed qualifications or experience and the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.
- (2) A PCBU must not direct or allow a worker to carry out work if regulations require the work, or class of work, to be carried out— 10
- (a) by a worker who has prescribed qualifications or experience and the worker does not have the prescribed qualifications or experience; or
  - (b) under the supervision of a person who has prescribed qualifications or experience and the work is not carried out under the supervision of a person who has the prescribed qualifications or experience. 15
- (3) A person who contravenes **subsection (1) or (2)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$20,000;
  - (b) for any other person, to a fine not exceeding \$100,000.
- Compare: Model Work Health and Safety Act (Aust) s 44 20

**218F Requirement to comply with conditions of authorisation**

- (1) A person must comply with the conditions of any authorisation given to that person that are prescribed in or under regulations.
- (2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,— 25
- (a) for an individual, to a fine not exceeding \$20,000;
  - (b) for any other person, to a fine not exceeding \$100,000.
- Compare: Model Work Health and Safety Act (Aust) s 45

## Subpart 2—General provisions

- 219 Offence to give false or misleading information** 30
- (1) A person must not give information in complying or purportedly complying with this Act or regulations that the person knows—
- (a) ~~to be~~ is false or misleading in a material particular; or
  - (b) omits any matter or thing without which the information is misleading.
- (2) A person must not produce a document in complying or purportedly complying with this Act or regulations that the person knows ~~to be~~ is false or misleading in a material particular without— 35

- (a) indicating the respect in which it is false or misleading and, if practicable, providing correct information; or
  - (b) accompanying the document with a written statement signed by the person, or, in the case of a body corporate, a person authorised by the body corporate—
    - (i) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
    - (ii) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.
  - (3) A person who contravenes **subsection (1) or (2)** commits an offence and is liable on conviction,—
    - (a) for an individual, to a fine not exceeding \$10,000;
    - (b) for any other person, to a fine not exceeding \$50,000.
- Compare: Model Work Health and Safety Act (Aust) s 268

## 220 Confidentiality of information

- (1) This section applies if the regulator obtains information or gains access to a document in performing or exercising any function, ~~power, or duty~~ duty, or power under this Act or regulations.
- (2) The regulator must not publish or disclose, or direct any person to publish or disclose, any information or document to which this section applies unless—
  - (a) the information or document is available to the public under any enactment or is otherwise publicly available; or
  - (b) the information is in a statistical or summary form; or
  - (c) the publication or disclosure of the information or document is—
    - (i) for the purposes of, or in connection with, the performance or exercise of any function, ~~power, or duty~~ duty, or power conferred or imposed on the regulator or the person by the relevant health and safety legislation; or
    - (ii) to a regulatory agency in accordance with **section 213**; or
    - (iii) to a person who the person disclosing the information is satisfied has a proper interest in receiving the information or document; or
    - (iv) with the consent of the person to whom the information or document relates or of the person to whom the information or document is confidential; or
    - (v) required or authorised by law.
- (3) The person must not publish or disclose, or direct a person to publish or disclose, any information or document under **subsection (2)(c)(iii)** unless the person is satisfied that appropriate protections are or will be in place for the

purpose of maintaining the confidentiality of the information or document (in particular, information that is personal information within the meaning of the Privacy Act 1993).

Compare: Model Work Health and Safety Act (Aust) s 271

### Subpart 3—Regulations, exemptions, approved codes of practice, and safe work instruments 5

#### *Regulations*

#### **221 Regulations relating to health and safety**

- (1) The Governor General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes: 10

##### *Duties and obligations*

- (a) imposing duties and obligations relating to work health and safety on PCBUs, workers, and other persons at workplaces:
- (b) prescribing the way in which duties and obligations imposed by this Act and regulations are to be performed: 15
- (c) prescribing matters relating to the regulation or prohibition of specified activities or a specified class of activities—
- (i) at workplaces or a specified class of workplaces; or
- (ii) by a specified class of persons on whom duties or obligations are imposed by this Act to eliminate or minimise risks to health and safety: 20
- ~~(iii) imposing specific duties on persons in relation to any matter provided for under regulations:~~
- (ca) imposing specific duties on persons in relation to any matter provided for under regulations: 25

##### *Notifiable events*

- (d) prescribing matters (including requirements) relating to notifiable events at workplaces, including—
- (i) regulating the taking of any action to prevent a notifiable event from occurring at a workplace or in the course of conducting a business or undertaking: 30
- (ii) regulating or prohibiting the taking of any action in the event of a notifiable event at a workplace or in the conduct of a business or undertaking:

##### *Plant, substances, or structures* 35

- (e) prescribing matters (including requirements) relating to plant, substances, or structures, including—

- (i) regulating the storage, tracking, and handling of plant, substances, or structures:
- (ii) regulating the design, manufacture, examination, testing, labelling, maintenance, or repair of plant or structures:
- (iii) regulating the examination, testing, analysis, packaging, or labelling of any substance (taking into account any EPA controls set for a hazardous substance): 5
- Protection and welfare of workers and other persons*
- (f) prescribing matters (including requirements) relating to the protection and welfare of workers and other persons at a workplace, including— 10
- (i) ~~regulating the provision, maintenance, and use of protective clothing or equipment, first aid equipment, or rescue equipment in specified circumstances:~~
- (i) regulating the provision, maintenance, administration, or use in specified circumstances of— 15
- (A) personal protective equipment:
- (B) first aid (including requiring a PCBU to make persons available at the workplace who are trained in administering first aid):
- (C) rescue equipment: 20
- (ii) regulating the provision of ~~specified~~ facilities for the welfare of workers and other persons at the workplace:
- (iii) prescribing matters relating to health and safety in relation to any accommodation provided to workers or ~~specified~~ facilities for the welfare of workers using accommodation: 25
- (iv) ~~setting workplace exposure standards for hazardous substances with toxic properties, including—~~
- (A) ~~setting exposure limits for the substances or any element or compound making up the substance:~~
- (B) ~~providing for the setting of exposure limits for the substance or any element or compound making up the substance:~~ 30
- (iv) setting, or providing for the setting of, mechanisms for measuring and controlling exposure to substances (or their components) in the workplace, for example, workplace exposure standards or biological exposure indices: 35
- Hazards and risks*
- (g) prescribing matters (including requirements) relating to hazards and risks, including—

- (i) specifying standards relating to the use of or exposure to any hazard, for example, a physical, biological, chemical, atmospheric, or psychological hazard:
- (ii) prescribing matters relating to safety cases, safety management plans, and safety management systems (however described): 5
- (iii) prescribing matters relating to measures to control hazards and risks:
- (iv) requiring workers who work with children to undergo Police vetting:
- Records and notices* 10
- (h) prescribing requirements relating to—
- (i) the keeping and availability of records of health and safety representatives ~~and deputy health and safety representatives~~:
- (ii) the keeping of records in relation to notifiable events:
- (iii) the keeping of records of specified activities, matters, or things to be kept by specified persons: 15
- (iv) the making available of, or the giving of, any ~~notice or information, report, or other document~~ about specified activities, matters, or ~~thing~~ things to the regulator, an inspector, or other specified person: 20
- (ha) prescribing the information that must be included in any notice, report, or other document made available or given in accordance with **paragraph (h)**:
- Authorisations*
- (i) prescribing matters relating to authorisations (including licences, certifications, registrations, and permits) qualifications, and experience for the purposes of ~~subpart 5 of Part 2~~ subpart 1A of Part 5 or regulations, including providing for—
- (i) the grant, issue, renewal, variation, suspension, cancellation, expiry, and replacement of authorisations: 30
- (ii) the evidence and information to be provided in relation to applications (for example, statutory declarations or ~~test~~ compliance certificates):
- (iii) exemptions from a requirement to be authorised:
- (iv) variations of authorisations by the regulator, whether on application or otherwise: 35
- (v) the authorisation of persons who are to be involved in the authorisation of other persons (for example, as trainers, assessors, auditors, or ~~test~~ compliance certifiers):

- (vi) the authorisation of persons to authorise other persons:
- (vii) the grant, issue, renewal, suspension, or cancellation of authorisations granted by persons referred to in **subparagraph (vi)**:
- (viii) processes for the review or appeal of decisions in respect of authorisations: 5
- (ix) the examination of applicants for authorisations, including setting competency, character, security, or other relevant requirements or providing for the regulator to do so:
- (x) the minimum age for a person to be eligible for an authorisation:
- (xi) the grounds and processes for regular and performance-based auditing of authorisations: 10
- (xii) conditions of authorisations:
- (xiii) fees for applications for the grant, issue, renewal, or variation of authorisations:
- (xiv) the keeping of 1 or more registers of authorisations, and for access to those registers: 15
- (j) the recognition of authorisations granted under other enactments or by other jurisdictions and any exceptions to such recognition:
- Identity cards*
- (k) prescribing matters relating to identity cards: 20
- ~~*Reviewable decisions*~~ *Review of decisions*
- ~~(l) prescribing matters relating to the review of decisions, including specifying decisions as reviewable decisions for the purposes of **subpart 5 of Part 4** or for the purposes of regulations:~~
- (l) prescribing matters relating to the review of decisions made under this Act: 25
- Mining sector*
- (m) prescribing matters relating to industry health and safety representatives, including the eligibility criteria for appointment as an industry health and safety representative: 30
- (n) prescribing matters relating to the New Zealand Board of Mining Examiners, including prescribing functions relating to training and competency requirements for participants in the extractives industry:
- Exemptions*
- (o) prescribing exemptions from ~~complying~~ compliance with regulations on the terms and conditions (if any) prescribed: 35
- ~~(p) allowing the regulator to provide exemptions from complying with regulations on the terms and conditions (if any) prescribed or, if regulations allow, on the terms and conditions (if any) determined by the regulator:~~

- (p) prescribing criteria or other requirements that relate to exemptions granted by the regulator under **section 228A**, including specifying that an exemption must not be granted in respect of any particular provision or provisions:
- Offences and penalties* 5
- (q) creating offences in respect of the contravention of regulations and providing for the imposition of fines not exceeding ~~\$30,000~~ \$50,000:
- Infringement offences*
- (r) prescribing infringement offences for the purposes of this Act and regulations: 10
- (s) setting the infringement fee payable for an infringement offence, which may not exceed ~~\$20,000~~ \$12,000, and setting different infringement fees for different infringement offences or in respect of different persons or individuals:
- (t) prescribing the form of infringement notices and infringement offence reminder notices: 15
- Fees and charges*
- (u) prescribing fees or charges for doing any act or providing any service for the purposes of this Act, including—
- (i) prescribing the circumstances and way in which fees or charges can be refunded, waived, or reduced: 20
- (ii) specifying the method or methods by which fees and charges may be recovered:
- Forms*
- (v) prescribing the information that must be contained in forms for the purposes of this Act: 25
- General*
- (w) providing for any matters contemplated by this Act, necessary for its administration or necessary for giving it full effect.
- (2) If an exemption is provided under **subsection (1)(o)**, the reasons for it must be set out in the explanatory note of the regulations. 30

Compare: 1992 No 96 ss 21, 23; Model Work Health and Safety Act (Aust) Schedule 3

## 222 Regulations relating to hazardous substances

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes: 35

- (a) prescribing duties, obligations, or restrictions imposed on any hazardous substance, or on any person in relation to any hazardous substances—
- (i) for substances with explosive properties,—

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- (A) to reduce the likelihood of an unintended explosion:
  - (B) to control the adverse effects likely to be caused by an explosion:
  - (ii) for substances with flammable properties,—
    - (A) to reduce the likelihood of an unintended fire or explosion: 5
    - (B) to control the adverse effects of any fire or explosion:
  - (iii) for substances with oxidising properties,—
    - (A) to reduce the likelihood of any unintended release of chemical energy as an explosion or fire:
    - (B) to control the adverse effects of any release of chemical energy as an explosion or fire: 10
  - (iv) for substances with corrosive properties,—
    - (A) to reduce the likelihood of any unintended corrosion:
    - (B) to control the adverse effects of any corrosion:
  - (v) for substances with toxic properties,— 15
    - (A) to reduce the likelihood of any unintended exposure to any such substances:
    - (B) to control the adverse effects of any exposure to such substances:
  - (b) prescribing or providing for controls on ~~compressed gases~~ gases under pressure, whether intrinsically hazardous or not: 20
  - (c) prescribing controls to avoid or mitigate illness or injury to people or damage to the environment or chattels from any hazardous substance:
  - (d) ~~prescribing requirements to be met by a laboratory, and during the storage, importation, or transportation of any hazardous substance for the purpose of any small-scale use of hazardous substances in relation to research and development or teaching:~~ 25
  - (e) prescribing controls for by-products with hazardous properties, which result from the manufacture or use of any hazardous substance:
  - (f) prescribing requirements to manage any emergency involving a hazardous substance: 30
  - (g) prescribing systems for tracking hazardous substances, including requirements that—
    - (i) the whereabouts of the substances be recorded at all times or from time to time: 35
    - (ii) the quantity of the substances be recorded:
    - (iii) a person be identified as being in charge of the substances:
    - (iv) any person handling the substances hold prescribed qualifications:



- (h) prescribing qualifications, including competency, character, or other relevant requirements (for example, that a person be a member of any specified professional body or organisation) for any person handling a hazardous substance;
- (i) providing for any matters contemplated by this Act, necessary for its administration or necessary for giving it full effect. 5

Compare: 1996 No 30 ss 75, 140

### 223 Regulations relating to exemptions in respect of Armed Forces

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing that any specified provisions of this Act or regulations do not apply (or apply with modifications) in respect of— 10
- (a) any specified activity or class of activity of the Armed Forces; or
- (b) any defence area; or
- (c) the Armed Forces or any part of the Armed Forces; or
- (d) military aircraft or naval ships, or any class of military aircraft or naval ships. 15
- (2) Without limiting **subsection (1)**, the regulations may be subject to any conditions specified in the regulations.
- (3) Before making a recommendation under **subsection (1)**, the Minister must consult the Minister of Defence. 20
- (4) If an exemption is provided under this section, the reasons for the exemption must be set out in the explanatory note of the regulations.

### 224 Regulations relating to worker engagement, participation, and representation

- The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes: 25
- (a) prescribing matters relating to work groups, including—
- (i) the requirements for determining a work group (including work groups for workers carrying out work for 2 or more PCBUs):
- (ii) agreements or variations of agreements relating to the determination of work groups: 30
- (b) prescribing matters relating to health and safety representatives ~~and deputy health and safety representatives~~, including—
- (i) the eligibility criteria for election as a health and safety representative ~~or deputy health and safety representative~~: 35
- (ii) the procedure for electing or removing a health and safety representative ~~or deputy health and safety representative~~:

- (iii) the eligibility criteria to vote for a health and safety representative ~~or deputy health and safety representatives~~:
- (iv) the term of office for health and safety representatives ~~or deputy health and safety representatives~~:
- (iva) specifying high-risk sectors or industries for the purposes of **sections 65(3)(b) and 86A(3)(b)**: 5
- (ivb) specifying or providing for the method of determining the maximum total number of days' paid leave for health and safety representatives that a PCBU is required to allow for the whole business or undertaking under **clause 12(2) of Schedule 1A**, based on the number of workers who work for the PCBU as at specified dates in the year: 10
- (ivc) specifying the number of days' paid leave that a PCBU must allow a health and safety representative in specific industries to take in a year under **clause 12(1)(a)(ii) of Schedule 1A**: 15
- (v) maintaining a list of health and safety representatives ~~and deputy health and safety representative~~ and providing the list to the regulator:
- (c) prescribing matters relating to health and safety committees, including—
  - (i) the constitution of health and safety committees: 20
  - (ii) meeting requirements for health and safety committees:
- (d) providing for any matters contemplated by this Act, necessary for its administration or necessary for giving it full effect.

Compare: 1992 No 96 s 21; Model Work Health and Safety Act (Aust) Schedule 3 cl 8, 9

#### **224A Regulations relating to levies** 25

- (1) The Governor-General may, by Order in Council, made on the recommendation of the Minister, make regulations prescribing levies for the purposes of recovering the costs of the regulator that relate to its functions in respect of authorisations granted under this Act.
- (2) The regulations may— 30
  - (a) prescribe different levies for different classes of persons:
  - (b) provide for the method by which the levies will be calculated:
  - (c) specify the criteria and other requirements by and against which the levies will be set or reset:
  - (d) provide for the payment and collection of the levy: 35
  - (e) state whether or not the persons collecting the levy are entitled to recover the cost of collection and, if the persons are entitled to do so, specify the maximum rate of collection costs:
  - (f) exempt any person or classes of persons from paying the levies:

- (g) provide for waivers or refunds of the whole or any part of the levies:
- (h) provide for any other matters that are necessary or desirable to set, calculate, administer, collect, and enforce the levies, including (without limitation),—
- (i) the returns to be made to the regulator for the purpose of enabling or assisting in the determination of the amounts of levy payable: 5
- (ii) the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for paying the levies:
- (iii) the keeping and retention of accounts, statements, or records specified by the regulator for a specified period for the purpose of ascertaining whether regulations are being complied with: 10
- (iv) the establishment of a dispute resolution process for disputes relating to levies, including the appointment of persons to resolve the disputes, the procedures to be followed by those persons, and the remuneration of those persons. 15
- (3) If an exemption is provided under **subsection (2)(f)**, the reasons for it must be set out in the explanatory note of the regulations.
- (4) Before making a recommendation under this section, the Minister must—
- (a) receive advice from WorkSafe on the proposed levy; and
- (b) consult in accordance with **section 226**. 20
- 225 Regulations providing for transitional matters**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
- (a) providing transitional and savings provisions concerning the coming into force of this Act that may be in addition to, or in place of, the transitional and savings provisions in **Schedule 1**: 25
- (b) providing that, subject to such conditions as may be specified in the regulations, during a specified transitional period,—
- (i) specified provisions of this Act (including definitions) do not apply: 30
- (ii) specified terms have the meaning given to them by the regulations:
- (iii) specified provisions repealed or amended or revoked by this Act are to continue to apply:
- (c) providing for any other matters necessary for facilitating or ensuring an orderly transition from the provisions of any enactments replaced by this Act to the provisions of this Act. 35
- (2) No regulations made under this section may be made, or continue in force, later than 2 years after the date on which this section commences.

**226 Consultation requirements for making certain regulations**

- (1) The Minister must not recommend the making of any regulations under **section 221, 222, ~~or 224~~ 224, or 224A** without first consulting persons and organisations that the Minister considers appropriate, having regard to the subject matter of the proposed regulations. 5
- (2) The Minister, before recommending the making of any regulations relating to hazardous substances, must consult the EPA about the subject matter of the proposed regulations.
- (3) A failure to comply with this section does not affect the validity of the regulations made. 10
- Compare: 1992 No 96 s 21(2), (3)

**227 Further provisions relating to regulations**

- (1) Regulations made under **~~section 221, 222, 223, or 224~~ this Act** may—
- (aa) impose similar or additional duties on a person in relation to the same circumstances as this Act does: 15
- (a) be of general or limited application; ~~or;~~
- (b) differ according to differences in time, place, or circumstance, or any other basis; ~~or;~~
- (c) impose prohibitions; ~~or;~~
- (d) apply differently to people of a differing age or health status, and may apply only to people of a particular age or health status; 20
- (e) apply differently to different classes of person, workplace, plant, structure, substance, or kind of risk:
- (f) prescribe, set, or provide for any thing by reference to any methodology, value, or similar tool (however described) or by reference to controls in other Acts, regulations, or instruments. 25
- (2) Regulations made under **~~subsection (1)~~ this Act** may not be held invalid just because ~~it confers~~ they confer any discretion on, or ~~allows~~ allow any matter to be determined or approved by, any person. 30
- Compare: 1992 No 96 s 22

**228 Procedure for making regulations relating to definitions, exclusions, or exemptions**

- (1) The Minister must, before making a recommendation in relation to a provision referred to in **subsection (2)**,—
- (a) have regard to the purpose of this Act set out in **section 3**; and 35
- (b) be satisfied that the extent to which any definitions are modified, or any requirements are modified, exempted, excluded, or applied (as the case may be) is not broader than is reasonably necessary to address the matters that gave rise to the proposed regulations.

- (2) The provisions are—
- (a) **section 10** (which relates to the application of this Act to prescribed high-risk plant):
  - (b) **section 13** (which defines person conducting a business or undertaking): 5
  - (c) **section 14** (which defines worker):
  - (d) **section 16** (which defines supply):
  - (e) **section 18** (which defines notifiable injury or illness):
  - (f) **section 19** (which defines notifiable incident):
  - (g) **section 32** (which relates to the duty of a PCBU who manages or controls a workplace): 10
  - (h) **section 33** (which relates to the duty of a PCBU who manages or controls fixtures, fittings, or plant at a workplace):
  - (i) **section-53 51** (which relates to the duty to preserve sites):
  - (j) **section 221(o) and (p)** (which authorises regulations prescribing exemptions from complying compliance with regulations): 15
  - (k) **section 223** (which authorises regulations relating to exemptions in respect of the Armed Forces).

### Exemptions

- 228A Regulator may grant exemption from compliance with regulations** 20
- (1) The regulator may exempt any person or class of persons from compliance with any provision or provisions of regulations.
  - (2) The regulator must not grant an exemption under **subsection (1)** unless it is satisfied that—
    - (a) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the proposed exemption; and 25
    - (b) the exemption is not inconsistent with the purposes of this Act.
  - (3) The regulator may—
    - (a) grant the exemption on any terms and conditions that the regulator thinks fit; and 30
    - (b) amend or revoke an exemption; and
    - (c) replace an exemption either before or when it expires.
  - (4) An exemption granted under **subsection (1)**—
    - (a) takes effect from the date specified in the notice published in accordance with **section 228B** (which may not be earlier than the date of the notice); and 35

- (b) expires on the close of the day that is 5 years after the date on which it took effect, unless it is sooner replaced or revoked.
- (5) The breach of a term or condition of an exemption granted under **subsection (1)** is a breach of the provision to which the exemption relates (unless the terms of the exemption provide otherwise). 5
- 228B Status and publication of exemptions granted by regulator**
- (1) An exemption granted under **section 228A** that is a class exemption is a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (2) An exemption granted under **section 228A** that is not a class exemption is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act. 10
- (3) As soon as practicable after an exemption granted under **section 228A** is made, it must be— 15
- (a) notified in the *Gazette*; and
- (b) published on an Internet site maintained by or on behalf of the regulator.
- (4) The regulator’s reasons for granting the exemption (including why the exemption is appropriate) must be published in accordance with **subsection (3)(b)** together with the exemption. 20
- (5) A notification in the *Gazette* for the purpose of **subsection (3)(a)** does not have to incorporate the exemption.
- (6) In this section, **class exemption** means an exemption granted under **section 228A** that is of general application and that applies to classes of persons.

*Codes of practice* 25

**229 Approval of codes of practice**

- (1) The Minister may—
- (a) approve a code of practice developed by the regulator for the purposes of this Act; and
- (b) amend or revoke an approved code of practice. 30
- (2) The Minister may approve, amend, or revoke a code of practice under **subsection (1)** only if the Minister is satisfied that the code of practice, amendment, or revocation was developed by a process that involved consultation between—
- (a) unions; and
- (b) employer organisations; and 35
- (c) other persons or representatives of other persons affected, or reasonably likely to be affected, by the code, amendment, or revocation.

- (3) A code of practice may incorporate, adopt, or apply (with or without modification) all or any part of any other document that is prepared or issued by any person or body, and that is in force at a particular time.
- (4) However, an approved code of practice may not, without the approval of—
- (a) the relevant Minister,— 5
    - (i) adopt with modification any documents previously approved by a Minister of the Crown; or
    - (ii) approve any amendment of any part of a code of practice that comprises a document approved by a Minister of the Crown; or
  - (b) the Minister responsible for the administration of the Building Act 2004,— 10
    - (i) adopt an acceptable solution or verification method (or both) issued under section 22(1) of that Act; or
    - (ii) approve any amendment of any part of a code of practice that comprises a document approved by that Minister. 15
- (5) The following may be approved by the Minister without carrying out the consultation required by **subsection (2)**:
- (a) a code of practice that corresponds, or substantially corresponds, ~~with to~~ a code of practice made under section 20 of the Health and Safety in Employment Act 1992: 20
  - (b) any minor or technical amendments to an approved code of practice (including ~~approving the~~ incorporation of amendments to, or updates of, documents incorporated by reference).
- (6) If the Minister approves any amendment in accordance with **subsection (5)(b)**, the regulator must make reasonable efforts to notify any affected persons or their representatives of the amendment. 25
- (7) A code of practice approved under this section is neither a disallowable instrument nor a legislative instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act. 30

Compare: 1992 No 96 s 20; Model Work Health and Safety Act (Aust) s 274(1)–(3)

### 230 Publication and commencement of approved code of practice

- (1) As soon as practicable after an approved code of practice has been approved, amended, or revoked, the regulator must ensure that notice of the approval, amendment, or revocation is published in the *Gazette*. 35
- (2) Subject to **subsection (3)**, an approved code of practice, an amendment, or a revocation may not come into force until at least 28 days after it has been notified in the *Gazette*.

- (3) A minor or technical amendment approved by the Minister under **section 229(5)** comes into force on the date specified by notice in the *Gazette*.

Compare: 1992 No 96 s 20A

### **231 Access to approved codes of practice**

- (1) The *Gazette* notice published by the regulator under **section 230(1)** must specify the place or places at which copies of the code of practice or amendment (as the case may be) are available for public inspection and purchase. 5
- (2) The regulator must ensure that the approved code of practice is available—
- (a) free of charge on an Internet site maintained by or on behalf of the regulator; and 10
- (b) for purchase in hard copy at a reasonable charge.

Compare: 1992 No 96 s 20C(1)

### **232 Proof of codes of practice**

The publication by the regulator of a notice under **section 230(1)** is conclusive proof that the code has been validly made under **section 229**. 15

Compare: 1992 No 96 s 20A(5)

### **233 Use of approved codes of practice in proceedings**

- ~~(1) This section applies in a proceeding for an offence against this Act or regulations.~~
- (1) No code of practice issued or amended under this Part confers rights or obligations capable of enforcement in any civil or criminal proceedings. 20
- ~~(2) An However, an approved code of practice is admissible in the proceeding any civil or criminal proceedings as evidence of whether or not a duty or obligation under this Act or regulations has been complied with.~~
- (3) The court may— 25
- (a) have regard to the code as evidence of what is known about a hazard or risk, risk assessment, or risk control to which the code relates; and
- (b) rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.
- (4) Nothing in this section prevents a person from introducing evidence of compliance with this Act in a manner that is different from the code but provides a standard of work health and safety that is equivalent to or higher than the standard required in the code. 30

Compare: 1992 No 96 s 20(11) s 20B; Model Work Health and Safety Act (Aust) s 275

### *Safe work instruments* 35

### **234 Minister may approve safe work instruments**

- (1) The Minister may—



- (a) approve a safe work instrument developed by the regulator for the purposes referred to in **subsection (2)**; and
- (b) amend or revoke a safe work instrument approved under **paragraph (a)**.
- (2) The purposes of safe work instruments are to define terms, prescribe matters, or make other provision in relation to any activity, or thing, including (without limitation) ~~any asset, equipment, facility, goods, information, material, practice, premises, process, product, programme, service, or system~~ listing standards, control of substances, and competency requirements. 5
- (3) The Minister must not approve a safe work instrument unless the Minister is satisfied that all persons and organisations that the Minister thinks appropriate have been consulted, having regard to the subject matter of the proposed safe work instrument. 10
- (4) The Minister may approve an amendment to a safe work instrument (including approving incorporation of amendments to, or updates of, documents incorporated by reference) without complying with **subsection (3)** if the Minister is satisfied that the amendment is minor or technical. 15
- (5) A safe work instrument is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act but only to the extent that the instrument is given effect to in accordance with **section 235(1)**. 20
- (6) The Minister must, as soon as practicable after a safe work instrument is made,—
- (a) notify the safe work instrument in the *Gazette*; and
- (b) ensure that a copy of the safe work instrument is available— 25
- (i) free of charge on an Internet site maintained by or on behalf of the regulator; and
- (ii) for purchase in hard copy at a reasonable charge.
- (7) A failure to comply with **subsection (3)** does not affect the validity of a safe work instrument. 30

### 235 Legal effect of safe work instruments

- (1) A safe work instrument made under **section 234** has legal effect only to the extent that any regulations made under the relevant health and safety legislation refer to it.
- (2) For the purposes of **subsection (1)**, regulations may refer to— 35
- (a) a particular safe work instrument as amended or replaced from time to time; or

- (b) any safe work instrument that may be made for the purposes of regulations (even if the instrument is not or has not been made at the time the regulations are made).

*General provisions*

- 236 Minister may delegate approval of codes of practice and safe work instruments to regulator** 5
- (1) The Minister may, either generally or particularly, delegate to the regulator his or her power—
- (a) under **section 229** to approve, amend, or revoke ~~an approved~~ a code of practice: 10
- (b) under **section 234** to approve, amend, or revoke a safe work instrument.
- (2) A delegation under this section must be in writing.
- (3) The regulator must not delegate the power to approve, amend, or revoke a code of practice or a safe work instrument delegated to it under **subsection (1)** except in accordance with the terms of the delegation. 15
- (4) The power of the Minister to delegate under this section—
- (a) is subject to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but 20
- (b) does not limit any power of delegation conferred on the Minister by any other Act.
- (5) The regulator may exercise the power delegated to it under this section in the same manner and with the same effect as if it had been conferred on the regulator (subject to any restrictions or conditions imposed under the delegation). 25
- (6) If the regulator purports to act under a delegation under this section, the regulator must, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (7) No delegation affects or prevents the performance or exercise of any function or power by the Minister or affects the responsibility of the Minister for the actions of a person acting under the delegation. 30
- 236A Relationship between regulations relating to hazardous substances under this Act and Resource Management Act 1991**
- (1) A person performing a function or exercising a power under the Resource Management Act 1991 that relates to the use, handling, manufacture, transport, storage, or disposal of any hazardous substance must comply with the provisions of any regulations for work involving hazardous substances made under this Act, except as provided in **subsections (2) and (3)**. 35

- (2) Nothing in **subsection (1)** prevents any person lawfully imposing more stringent requirements on the use, handling, manufacture, or storage of any hazardous substance than may be required by regulations for work involving hazardous substances made under this Act where those requirements are considered necessary by that person for the purposes of the Resource Management Act 1991. 5
- (3) Nothing prescribed in regulations made under this Act for the safe use, handling, manufacture, or storage of hazardous substances applies in relation to any resource consent to which this subsection applies that is—
- (a) a land use consent relating to the use, handling, manufacture, or storage of any hazardous substance; or 10
- (b) a coastal permit to do something that would otherwise contravene section 15 of the Resource Management Act 1991; or
- (c) a discharge permit.
- (4) **Subsection (3)** applies where the resource consent concerned was granted before the coming into force of any regulations made under the Hazardous Substances and New Organisms Act 1996 and until such time as the conditions on the resource consent are reviewed in accordance with section 128 of the Resource Management Act 1991. 15
- (5) In this section, **resource consent** has the same meaning as in section 2(1) of the Resource Management Act 1991. 20

Subpart 4—~~Transitional and savings provisions, repeals,~~ Repeals,  
revocations, and consequential amendments

~~237~~ ~~**Transitional and savings provisions**~~

~~The transitional and savings provisions set out in **Schedule 1** have effect for the purposes of this Act.~~ 25

**238 Repeals and revocations**

- (1) The Health and Safety in Employment Act 1992 (1992 No 96) is repealed.
- (2) The Machinery Act 1950 (1950 No 52) is repealed.
- (3) The following regulations and order are revoked: 30
- (a) ~~Lead Process Regulations 1950 (SR 1950/172):~~
- (a) Health and Safety in Employment (Prescribed Matters) Regulations 2003 (SR 2003/90):
- (b) Machinery (Exclusion of Some Pressure Equipment, Cranes, and Passenger Ropeways) Order 1999 (SR 1999/127): 35
- (c) Noxious Substances Regulations 1954 (SR 1954/128).
- (d) ~~Spray Coating Regulations 1962 (SR 1962/54):~~

**239 Consequential amendments**

Amend the enactments specified in **Schedule 3** as set out in that schedule.

**Part 6****Amendments to other Acts**

Subpart 1—Amendments to Accident Compensation Act 2001 5

**240 Principal Act**

This **subpart** amends the Accident Compensation Act 2001 (the **principal Act**).

**241 New section 5A inserted (Provisions affecting application of amendments to this Act) 10**

After section 5, insert:

**5A ~~Provisions affecting application of amendments to this Act~~ Transitional, savings, and related provisions**

~~**Schedule 1AA** contains application, savings, and transitional provisions relating to amendments made to this Act after **1 April 2015** that affect other provisions of the Act (see **section 402**).~~ 15

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

**241A Section 6 amended (Interpretation)**

In section 6, insert in its appropriate alphabetical order: 20

**health and safety regulator** has the same meaning as regulator in **section 12 of the Health and Safety Reform Act 2014**.

**242 Section 167 amended (Application and source of funds)**

Replace section 167(3)(g) with:

(g) audits and assessments referred to in sections **174D** and 175; and 25

**243 Section 169 amended (Rates of levies)**

After section 169(4)(a), insert:

(ab) **section 174A(2)**:

**244 New sections 174A to 174F inserted**

After section 174, insert: 30

**174A Corporation may develop and establish workplace incentive programmes**

- (1) The Corporation may develop and establish 1 or more workplace incentive programmes to provide incentives for employers and self-employed persons to reduce the incidence, severity, and impact of work-related personal injuries.
- (2) A Work Account levy determined for the purposes of section 168, 168B, or 211 may be adjusted up or down for a particular employer or a particular self-employed person in accordance with the terms and conditions of a workplace incentive programme. 5
- (3) Regulations made under section 333 may prescribe fees and charges payable by employers and self-employed persons who participate in a workplace incentive programme, including: 10
- (a) administration fees to meet the costs, or part of the costs, incurred in administering the programme; and
- (b) fees or charges for audits and assessments provided for under **section 174D(3).** 15

**174B Process to develop workplace incentive programme**

- (1) In developing a workplace incentive programme, the Corporation must—
- (a) have regard to the following matters:
- (i) the extent to which the programme is likely to lead to reductions in the incidence, severity, and impact of work-related personal injuries and to improvements in rehabilitation and durable return to work; and 20
- (ii) the extent to which the programme may affect the Work Account levies payable by levy payers who are not participating in the programme; and 25
- (iii) the expected administration costs of the programme; and
- (iv) the impact of the programme on the administration of the accident compensation scheme as a whole and on claims management processes; and
- (b) endeavour to ensure that programmes are available for a variety of types of employers and self-employed persons, including small and large businesses; and 30
- (c) endeavour to ensure that the rates of adjustment to Work Account levies that will be available under the programme are proportionate to the expected increases or decreases in costs to the Corporation as a result of employers and self-employed persons participating in the programme. 35
- (2) In developing a workplace incentive programme, the Corporation must consult the persons or organisations it considers appropriate, having regard to—
- (a) the potential participants in the programme; and

<ul style="list-style-type: none"> <li>(b) the potential impact of the programme on the Work Account levies of non-participating levy payers.</li> </ul>	
<ul style="list-style-type: none"> <li>(3) <b>Subsection (2)</b> does not apply if the Minister determines under <b>section 174C</b> that the workplace incentive programme must be approved by the Minister.</li> </ul>	5
<b>174C Minister's approval of certain workplace incentive programmes</b>	
<ul style="list-style-type: none"> <li>(1) The Minister may determine, in relation to any proposed workplace incentive programme, that the programme must be approved by the Minister before it is established under <b>section 174D</b>.</li> </ul>	
<ul style="list-style-type: none"> <li>(2) In deciding whether to make a determination under <b>subsection (1)</b>, the Minister may consider any relevant factors, including— <ul style="list-style-type: none"> <li>(a) the public interest; and</li> <li>(b) how the proposed workplace incentive programme aligns with the Government's broader objectives; and</li> <li>(c) the impact of the proposed workplace incentive programme on levy payers generally or on particular groups of levy payers; and</li> <li>(d) the impact of the proposed workplace incentive programme on levy payers who, despite being eligible to participate in the proposed programme, may choose not to participate.</li> </ul> </li> </ul>	10
<ul style="list-style-type: none"> <li>(3) If the Minister makes a determination under <b>subsection (1)</b>, before the Minister approves the establishment of the workplace incentive programme, the Minister must consult any persons or organisations that the Minister considers appropriate, having regard to— <ul style="list-style-type: none"> <li>(a) the potential participants in the programme; and</li> <li>(b) the potential impact of the programme on the Work Account levies of non-participating levy payers.</li> </ul> </li> </ul>	20
<b>174D Establishment of workplace incentive programmes</b>	
<ul style="list-style-type: none"> <li>(1) The Corporation may, by notice in the <i>Gazette</i>, establish a workplace incentive programme.</li> </ul>	
<ul style="list-style-type: none"> <li>(2) A notice in the <i>Gazette</i> under <b>subsection (1)</b> must set out the terms and conditions of the workplace incentive programme, including— <ul style="list-style-type: none"> <li>(a) any criteria that must be met before an employer or a self-employed person may participate in the programme; and</li> <li>(b) the basis and conditions on which, and periods for which, Work Account levies may be adjusted for participants in the programme; and</li> <li>(c) the level or levels of levy adjustment that may apply to participants in the programme.</li> </ul> </li> </ul>	30
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- (3) Without limiting **subsection (2)**, a notice in the *Gazette* under **subsection (1)** may provide for audits or assessments of participants in the workplace incentive programme, including—
- (a) the order in which applications for audits or assessments are to be dealt with: 5
  - (b) the approval of auditors and assessors:
  - (c) requirements that audits or assessments be conducted in accordance with an audit tool or audit tools developed or approved by the Corporation:
  - (d) the frequency of audits or assessments and the circumstances under which additional audits or assessments may be required. 10
- (4) A notice in the *Gazette* under **subsection (1)**, and an audit tool developed for the purposes of **subsection (3)(c)**, may incorporate by reference any material referred to in section 176, and that section and section 177 apply as if the notice were a regulation made for the purposes of section 175, the audit tool were an audit tool referred to in section 175(4), and the reference to the Minister in section 176(3) were a reference to the Corporation. 15
- (5) A notice in the *Gazette* under this section is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- 174E Amendments to workplace incentive programme** 20
- (1) A workplace incentive programme may be amended in the same manner as a workplace incentive programme is developed and established.
  - (2) **Sections 174B to 174D** apply, with all necessary modifications, in relation to an amendment to a workplace incentive programme.
  - (3) Despite **subsection (2)**, **sections 174B(2) and 174C(3)** do not apply if the amendment is a minor or technical amendment. 25
  - (4) A notice in the *Gazette* under this section is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- 174F Corporation must report on effectiveness of workplace incentive programmes** 30
- The Corporation must include in its annual report under section 150 of the Crown Entities Act 2004 a report on the effectiveness of workplace incentive programmes in reducing the incidence and impact of work-related personal injuries. 35
- 245 Section 175 amended (Risk adjustment of Work Account levies)**
- (1) Repeal section 175(1) and (2).
  - (2) In section 175(4), replace “An audit of an employer’s or a self-employed person’s safety management practices must, and an assessment of a self-employed

- person's safety management capabilities may," with "An audit of an employer's safety management practices must".
- (3) In section 175(7), replace "subsection (1)(a) or (3) must, and regulations made for the purposes of subsection (1)(b) may," with "subsection (3) must".
- (4) Replace section 175(7)(c) with: 5
- (c) the frequency of audits of an employer's safety management practices; and the circumstances under which additional audits may be required:
- 246 Section 176 amended (Incorporation by reference)**
- Replace section 176(1)(a) with:
- (a) New Zealand standard, or any requirement or recommended practice of any New Zealand organisation; or 10
- 247 Section 190 amended (Purchase of weekly compensation by shareholder-employees)**
- In section 190(2), replace "sections 175," with "sections **174D**, 175,".
- 248 Section 263 amended (Prevention of personal injury)** 15
- Replace section 263(5) with:
- (5) The Corporation must ensure that any measures undertaken or funded in accordance with this section—
- (a) are co-ordinated with similar activities of other government agencies to contribute to the overall injury prevention objectives in an efficient and effective way; and 20
- (b) to the extent that the measures will be funded from the Work Account, take account of the Health and Safety at Work Strategy published under **section 211** of the **Health and Safety Reform Act 2014**.
- 249 New sections 264A and 264B inserted** 25
- After section 264, insert:
- 264A Workplace injury prevention action plan**
- (1) The Corporation and WorkSafe must at all times have a workplace injury prevention action plan.
- (2) The Corporation and WorkSafe— 30
- (a) may amend the workplace injury prevention action plan at any time; and
- (b) must review the workplace injury prevention action plan at least once every 3 years.
- (3) The workplace injury prevention action plan must—



- (a) outline all workplace injury prevention programmes that will be undertaken by WorkSafe and the Corporation (jointly or separately) in the period to which the plan relates; and
- (b) state how those programmes are to be funded; and
- (c) if funding from one agency is to be used to fund programmes undertaken by the other agency, state the amount of that funding; and 5
- (d) in relation to programmes, or aspects of programmes, to be undertaken by WorkSafe, be consistent with the Health and Safety at Work Strategy published under **section 211** of the **Health and Safety Reform Act 2014**; and 10
- (e) in relation to programmes, or aspects of programmes, to be undertaken by the Corporation, be consistent with the Corporation's priorities for injury prevention measures relating to the Work Account.
- (4) The Corporation and WorkSafe must, to the extent practicable, ensure that—
- (a) the workplace injury prevention action plan outlines a coherent scheme of workplace injury prevention programmes that do not involve the duplication of activities carried out by the Corporation and WorkSafe; and 15
- (b) workplace injury prevention programmes are undertaken by the agency that is best suited to undertake them; and
- (c) programmes outlined in the workplace injury prevention action plan complement the agencies' other activities, such as enforcement and education activities. 20
- 264B Injury prevention measures undertaken by WorkSafe and funded by Corporation or jointly undertaken**
- (1) This section applies to injury prevention measures that are— 25
- (a) jointly undertaken by the Corporation and WorkSafe; or
- (b) undertaken by WorkSafe and partly or wholly funded by the Corporation.
- (2) Before ~~a measure~~ measures to which this section applies ~~is commenced~~ commence, the Corporation and WorkSafe must enter into ~~a written agreement that specifies~~ 1 or more written agreements that specify— 30
- (a) how the ~~measure~~ measures—
- (i) ~~is~~ are likely to result in a cost-effective reduction in actual or projected levy rates in the Work Account; and
- (ii) ~~is~~ are consistent with the Health and Safety at Work Strategy published under **section 211** of the **Health and Safety Reform Act 2014**; and 35
- (iii) ~~is~~ are consistent with the Corporation's priorities for injury prevention measures relating to the Work Account; and

- (b) the amount of funding to be provided by the Corporation and by WorkSafe; and
- (c) how and when that funding will be provided; and
- (d) how the ~~measure~~ measures will be evaluated, including the key performance indicators to be used and the expected outcomes; and 5
- (e) any requirements for reporting between the agencies.
- (3) If funding for ~~an~~ injury prevention ~~measure~~ measures undertaken by WorkSafe is to be provided by the Corporation, the agreement may also provide that the Corporation may cease providing funding if it is satisfied that— 10
- (a) key performance indicators are not being met; or
- (b) expected outcomes are not being achieved.

**249A Section 280 amended (Disclosure of information to Corporation)**

In section 280(2), replace “Worksafe” with “health and safety regulators”.

**249B Section 286 amended (Corporation to provide information to Ministry of Business, Innovation, and Employment and to WorkSafe)** 15

- (1) In the heading to section 286, replace “Worksafe” with “health and safety regulators”.
- (2) In section 286(1), replace “Worksafe” with “a health and safety regulator”.
- (3) In section 286(1)(b), replace “Worksafe” with “the health and safety regulator”.
- (4) In section 286(2), replace “Worksafe” with “the health and safety regulator” in each place. 20
- (5) In section 286(3), replace “Worksafe” with “health and safety regulators”.
- (6) In section 286(5)(e), replace “Health and Safety in Employment Act 1992” with “Parts 1 to 5 of the Health and Safety Reform Act 2014”.

**~~250 New section 402 and cross-heading inserted~~** 25

~~After section 401, insert:~~

~~*Application, savings, and transitional provisions relating to amendments to this Act after **1 April 2015***~~

**~~402 Application, savings, and transitional provisions relating to amendments to Act~~** 30

~~The application, savings, and transitional provisions set out in **Schedule 1AA**, which relate to amendments made to this Act after **1 April 2015**, have effect for the purposes of this Act.~~

**251 New Schedule 1AA inserted**

Before Schedule 1, insert the **Schedule 1AA** set out in **Schedule 4** of this Act.

Subpart 2—Amendments to Hazardous Substances and New Organisms Act 1996 5

**252 Principal Act**

This **subpart** amends the Hazardous Substances and New Organisms Act 1996 (the **principal Act**).

**253 Section 2 amended (Interpretation)**

(1) In section 2(1), insert in their appropriate alphabetical order: 10

**classification control** means a control imposed under this Act for any hazardous substance in any place that specifies any requirements for advertising, identification, labelling, packaging, or safety data sheets

**content control** means a control imposed under this Act that—

(a) specifies the allowable limits for the content of any— 15

(i) substance contained in any substance or product; or

(ii) element or compound that makes up any substance contained in any substance or product; or

(b) specifies the allowable limits for the properties of any substance or product; or 20

(c) prohibits the presence of any—

(i) substance contained in any substance or product; or

(ii) element or compound that makes up any substance contained in any substance or product

**document** has the same meaning as in section 4(1) of the Evidence Act 2006 25

**ecotoxic control** means a control imposed under this Act for the purposes of controlling the ecotoxic effects of a hazardous substance

~~**environmental control** means a control for the purpose of controlling the adverse effects of a hazardous substance on the environment~~

~~**EPA control** means any— 30~~

~~(a) **classification control**; or~~

~~(b) **content control**; or~~

~~(c) **disposal control**; or~~

~~(d) **environmental control**; or~~

~~(e) **non-workplace control** 35~~

**EPA control**—

- (a) means any control imposed by the Authority under this Act for the purpose of controlling the adverse effects of hazardous substances on people or on the environment; and
- (b) includes, but is not limited to, classification controls, content controls, disposal controls, and ecotoxic controls 5
- EPA notice** means a notice issued in the *Gazette* by the Authority under Part 6 or under any other provision of this Act that applies **section 76B**
- gases under pressure** means—
- (a) a compressed gas; or
- (b) a liquefied gas; or 10
- (c) a refrigerated liquefied gas; or
- (d) a dissolved gas
- ~~**non-workplace control** means a control for the purpose of controlling the adverse effects of a hazardous substance on people, other than in a workplace~~
- workplace** has the same meaning as in **section 15** of the **Health and Safety Reform Act 2014**. 15
- ~~**WorkSafe New Zealand** has the same meaning as in section 5 of the WorkSafe New Zealand Act 2013.~~
- (1A) In section 2(1), repeal the definition of **container**.
- (2) In section 2(1), definition of **controls**, replace “regulations, rules, codes, or other documents” with “regulations, rules, EPA notices, codes, or other instruments or documents”. 20
- (3) In section 2(1), definition of **exposure limit**, replace “, a tolerable exposure limit, or a workplace exposure standard” with “or a tolerable exposure limit”.
- (4) In section 2(1), definition of **hazardous substance**, replace “regulations” with “an EPA notice”. 25
- (4A) In section 2(1), repeal the definition of **landfill**.
- (5) In section 2(1), definition of **persistent organic pollutant**, paragraph (b), replace “but” with “and”.
- (6) In section 2(1), definition of **persistent organic pollutant**, after paragraph (b), insert: 30
- (ba) includes a manufactured article containing 1 or more of those substances; but
- (7) In section 2(1), repeal the definitions of **place of work** and **port of entry**.
- (8) In section 2(1), definition of **prescribed**, after “regulations made”, insert “or an EPA notice issued”. 35
- (9) ~~In section 2(1), definition of **public notice**, after paragraph (a), insert:~~

- ~~(ab) in relation to a decision about any hazardous substances, a notice published on an Internet site maintained by or on behalf of the Authority; or~~
- (9) In section 2(1), replace the definition of **public notice** with:
- public notice** means—
- (a) a notice published on an Internet site maintained by or on behalf of the Authority; or 5
- (b) a notice published in 1 or more daily newspapers circulating in the main metropolitan areas, together with any other public notice (if any) that the Authority or Minister (as applicable) thinks fit
- (9A) In section 2(1), repeal the definition of **serious harm**. 10
- (9B) In section 2(1), repeal the definition of **stationary container**.
- (10) In section 2(1), repeal the definition of **test certificate**.
- (11) In section 2(1), repeal the definition of **tracking system**.
- 254 Section 3 amended (Act to bind the Crown)**
- (1) In section 3(3), after “codes of practice for”, insert “EPA controls for”. 15
- (2) In section 3(4)(a)(i), (5)(a)(i), and (6), replace “controls” with “EPA controls”.
- (3) In section 3(4)(a)(ii) and (5)(a)(ii), replace “regulations made” with “EPA notices issued”.
- (4) In section 3(7), after “regulations”, insert “or EPA notices”.
- (5) In section 3(8), after “which involves any”, insert “breach of an EPA control relating to a”. 20
- 255 New section 3A inserted (Transitional and savings provisions relating to amendments to Act)**
- After section 3, insert:
- 3A Transitional and savings provisions relating to amendments to Act** 25
- The transitional and savings provisions set out in **Schedule 7**, which relate to amendments made to this Act by **subpart 2 of Part 6 of the Health and Safety Reform Act 2014**, have effect for the purposes of this Act.
- ~~**256 Section 9 amended (Methodology to be used)**~~
- ~~(1) In section 9(1), after “Part 5”, insert “relating to new organisms”.~~ 30
- ~~(2) After section 9(4), insert:~~
- ~~(4A) The Authority may from time to time, in accordance with **section 76B**, issue a notice in the *Gazette* establishing a methodology (which includes an assessment of adverse and positive effects) for making decisions under Part 5 that relate to any hazardous substances, and the Authority must consistently apply that methodology when making such decisions.~~ 35

~~(3) In section 9(5), after “subsection (1)”, insert “or (4A)”.~~

**257 Section 11 amended (Powers, functions, and duties of Authority)**

(1) After section 11(1)(b), insert:

(ba) carry out its enforcement functions under this Act:

(bb) issue certificates in accordance with **section 82** and revoke certificates in accordance with section 82C:

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(2) After section 11(2), insert:

(2A) In carrying out its powers, functions, and duties conferred on it by or under this Act that relate to hazardous substances, the Authority must foster a co-operative and consultative relationship with WorkSafe New Zealand and the persons to whom WorkSafe New Zealand owes duties and their representatives in relation to work health and safety.

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**258 Section 19 amended (Delegation by Authority)**

(1) After section 19(1)(a), insert:

(ab) the issuing of an EPA notice; and

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(1A) In section 19(2)(ha), delete “test”.

(2) After section 19(5A), insert:

(5B) Despite subsection (5A), if any function or power under section 26 or 51 in relation to hazardous substances or under section 28A, 29, or 32 is delegated under this section, the delegate may delegate the function or power to the chief executive or any employee of the Authority with the prior written consent of the Authority.

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**258A Section 20 amended (Obligation to prepare and maintain register)**

(1) Replace section 20(1) with:

(1) The Authority must keep a register of all applications for approvals for hazardous substances and new organisms made to the Authority, including pending and withdrawn applications.

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(2) Replace section 20(2)(f) with:

(f) all the controls on a hazardous substance imposed under this Act.

(3) After section 20(3), insert:

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(3A) The register must also include reference to controls on a hazardous substance imposed under the **Health and Safety Reform Act 2014**.

(3B) The register may also include reference to controls on a hazardous substance imposed under any other Act.

(4) After section 20(5), insert:

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(6) The Authority may withhold any information relating to transshipment applications that this section would otherwise require to be on the register if, in its opinion, the information could pose a risk to national safety and security.

**259 ~~New section 20B inserted (Register of importers and manufacturers)~~**

~~After section 20A, insert:~~

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**20B ~~Register of importers and manufacturers~~**

~~The Authority may keep and maintain a register of all importers and manufacturers of hazardous substances.~~

**260 Section 26 replaced (Determination of new organism or hazardous substance)**

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Replace section 26 with:

**26 Determination of new organism or hazardous substance**

(1) The Authority may, on application by any person, determine whether or not any organism is a new organism.

(2) A determination under **subsection (1)** must be issued by notice in the *Gazette*.

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(3) The Authority may, on application by any person, determine 1 or more of the following:

(a) whether or not any substance is a hazardous substance:

(b) a hazardous substance's classification:

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(c) the approvals that apply or are required to be obtained.

(4) A determination under **subsection (3)** must be publicly notified ~~in accordance with section 53A.~~

(5) Before issuing a determination under this section, the Authority must have regard to—

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(a) any information held by the Authority; and

(b) any information held by any department listed in Schedule 1 of the State Sector Act 1988 and any Crown entity; and

(c) any information provided by the applicant.

(6) The Authority may revoke or reissue a determination issued by it under this section if it receives further information.

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**261 Section 33 amended (Exemptions from Act for small-scale research on hazardous substances)**

In section 33(1)(a), (2)(a), and (2)(b)(i), replace “prescribed requirements” with “requirements prescribed under **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

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**262 Section 53 amended (Applications required to be publicly notified)**

- (1) Repeal section 53(1)(f).
- (2) After section 53(1), insert:
- (1A) The Authority must publicly notify, in 1 or more public notices,—
- (a) an application under section 96B to issue, amend, or revoke a group standard; and 5
  - (b) the proposal to issue or amend (as the case may be) a group standard; and
  - (c) the Authority’s assessment of the matters required under section 96C(1)(a), (b), (c), (d), and (e) in relation to a group standard as proposed to be issued or amended. 10
- (3) In section 53(4)(c)(ii), after “application”, insert “; and”.
- (4) After section 53(4)(c), insert:
- (d) if the application is an application for approval of a hazardous substance, WorkSafe New Zealand. 15

**~~263 Section 53A amended (Method of public notification)~~**

~~In section 53A(1), after “section 53”, insert “or of anything else required to be publicly notified in accordance with this section”.~~

**263 Section 53A repealed (Method of public notification)**

Repeal section 53A. 20

**264 Section 58 amended (Further information)**

Replace section 58(1)(c) with:

- (c) must consult with all departments or Crown entities notified of the application in accordance with section 53(4) and,—
  - (i) if any application is for approval to import, develop, field test, conditionally release, or release a new organism, have particular regard to any submissions made by the Department of Conservation; and 25
  - (ii) if any application is for approval to import or manufacture a hazardous substance, have particular regard to any submissions made by WorkSafe New Zealand. 30

**265 Section 59 amended (Time limits and waivers)**

- (1) In section 59(1)(a), replace “section 53” with “section 53(1), **(1A)(a)**, and (2)”.
- (2) In section 59(3)(a), after “regulation”, insert “or an EPA notice”.



**265A Section 62 amended (Grounds for reassessment of a substance or organism)**

After section 62(2)(a), insert:

- (aa) a change in any controls under **Parts 1 to 5 of the Health and Safety Reform Act 2014**; or

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**266 Section 63A amended (Modified reassessment procedure for amendments to approvals of hazardous substances)**

- (1) In section 63A(2)(a), after “may vary the”, insert “EPA”.
- ~~(2) In section 63A(7), replace “Section 77 applies” with “Sections 77, 77A, and 77B apply”.~~

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- (2) Replace section 63A(7) with:

- (7) Sections 77, 77A, and 77B apply to any hazardous substance that is approved under this section and, for the purposes of this section, controls previously imposed under section 77A have effect as other specified controls under that section.

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**267 New section 63C inserted (Modified reassessment to change controls in other cases)**

After section 63B, insert:

**63C Modified reassessment to change controls in other cases**

- (1) Despite anything to the contrary in this Act, the Authority may reassess a hazardous substance in accordance with this section if the Authority considers that—
- (a) a reassessment of the hazardous substance under section 63 is not appropriate because the reassessment will involve only a specific aspect of the approval; and
- (b) the amendment is not a minor or technical amendment to which section 67A applies; and
- (c) the reassessment is necessary because of a change in the hazard classification system, EPA controls, or controls under **Parts 1 to 5 of the Health and Safety Reform Act 2014**.
- (2) A reassessment under this section—
- (a) may vary 1 or more of the following:
- (i) the EPA controls that attach to a hazardous substance:
- (ii) the description of a hazardous substance:
- (iii) the hazard classification of a hazardous substance; but
- (b) may not revoke an approval given to import or manufacture a hazardous substance under this Act.

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- (3) A reassessment under this section is deemed to be an application, and sections 55 to 61 apply with all necessary modifications.
- (4) The Authority may reassess a hazardous substance under this section without publicly notifying the reassessment in accordance with section 53.
- (5) If the Authority does not publicly notify the reassessment in accordance with section 53, the Authority must— 5
- (a) do everything reasonably practicable on its part to consult with all persons who, in its opinion, may be affected by the reassessment; and
  - (b) give those persons a reasonable opportunity to make submissions and comments to the Authority on the reassessment; and 10
  - (c) consider all submissions and comments received.
- (6) The Authority may approve or decline an application for reassessment under this section as it considers appropriate after taking into account—
- (a) all the effects associated with the reassessment; and
  - (b) the best international practices and standards for the safe management of hazardous substances. 15
- (7) Section 65(e) applies, with all necessary modifications, to a reassessment under this section.
- (8) Sections 77, 77A, and 77B apply to any hazardous substance that is approved under this section and, for the purposes of this section, controls previously imposed under section 77A have effect as other specified controls under that section. 20
- (9) This section does not limit the operation of **section 77(2)(a)**.
- 268 Section 65 amended (No compensation following reassessment)**
- In section 65, after “section 63,”, insert “63A, or **63C** or a group standard is amended or revoked under section 96B(3).” 25
- 269 New section 67B inserted (Revoking duplicated approvals)**
- After section 67A, insert:
- 67B Revoking duplicated approvals**
- (1) The Authority may, by notice in the *Gazette*, revoke an approval ~~or a deemed approval.~~ a deemed approval, or a group standard for a substance if the Authority is satisfied that a corresponding approval to the same or a substantially similar effect applies to the substance under— 30
- (a) a group standard; or
  - (b) a Part 5 approval that is not a deemed approval. 35

- (2) The Authority may, but is not required to, consult any person or organisation before revoking an approval ~~or a deemed approval~~, a deemed approval, or a group standard under this section.
- 270 Section 68 amended (Minister’s power to call in applications with significant effects)** 5
- After section 68(1), insert:
- (1A) However, a direction under this section applies to an application that relates to any hazardous substances only if the application is one referred to in section 53.
- 271 Section 74 replaced (Establishment of hazard classification system)** 10
- Replace section 74 with:
- 74 Establishment of hazard classification system**
- The Authority may from time to time, in accordance with **section 76B**, issue ~~a notice in the Gazette~~ an EPA notice establishing a hazard classification system by— 15
- (a) prescribing, for each intrinsic hazardous substance property, a number of degrees or types of hazard, which may be done either by reference to an international system or by incorporation of material under section 141A;
- (b) prescribing, for each intrinsic hazardous substance property, a degree of hazard below which any substance is not considered hazardous, which may be done either by reference to an international system or by incorporation of material under section 141A; 20
- (ba) prescribing, for gases under pressure, a physical state when packaged;
- (c) prescribing substances as substances that are not hazardous for the purpose of this Act. 25
- 272 Section 75 amended (Regulations prescribing hazard classification control)**
- (1) ~~In the heading to section 75, replace “Regulations” with “Notice”.~~
- (1) Replace the heading to section 75 with “Authority may prescribe hazardous property controls”.
- (2) In section 75(1), replace “Subject to section 141, the Governor-General may, from time to time, by Order in Council make regulations prescribing controls” with “The Authority may from time to time, in accordance with **section 76B**, issue ~~a notice in the Gazette~~ an EPA notice prescribing any EPA controls”. 30
- (3) Replace section 75(1)(f) and (g) with:
- (f) for substances with ecotoxic properties— 35
- (i) to reduce the likelihood of unintended exposure to any such substance:

	(ii) to control the adverse effects of any exposure to such substances.	
(4)	Repeal section 75(2).	
(5)	In section 75(3), replace “regulations” with “notice”.	
<b>273</b>	<b>Section 76 replaced (Requirements for containers, identification, disposal, emergencies, tracking, and fireworks)</b>	<b>5</b>
	Replace section 76 with:	
<b>76</b>	<b>Authority may prescribe controls and requirements relating to hazardous substances</b>	
(1)	The Authority may, from time to time, in accordance with <b>section 76B</b> , issue <del>a notice in the Gazette</del> <u>an EPA notice</u> prescribing <u>EPA</u> controls that do 1 or more of the following:	10
(a)	prescribe requirements for packages or containers for hazardous substances:	
(b)	prescribe requirements for the identification, labelling, and advertising of hazardous substances, and requirements for safety data sheets:	15
(c)	prescribe requirements for disposal of hazardous substances:	
<del>(d)</del>	<del>prescribe qualifications and other requirements that persons must hold or meet in order to obtain or handle hazardous substances other than in a workplace:</del>	
<u>(d)</u>	<u>prescribe qualifications and other requirements that persons must hold or meet in order to obtain or handle—</u>	20
	<u>(i) hazardous substances other than in a workplace:</u>	
	<u>(ii) hazardous substances with ecotoxic properties:</u>	
(e)	prescribe requirements for content controls:	
(f)	prescribe <del>or provide for</del> EPA controls on any <del>compressed</del> <u>gases under pressure</u> , whether or not the properties of any gas that is <del>compressed</del> <u>under pressure</u> are intrinsically hazardous:	25
(g)	prescribe EPA controls for any hazardous substance to avoid or mitigate any adverse effects on the physical or chemical nature of the environment:	30
(h)	prescribe EPA controls to avoid or mitigate illness or injury to people or damage to the environment or chattels from any hazardous substance:	
(i)	prescribe EPA controls for by-products with hazardous properties, which result from the manufacture or use of any substance:	
<u>(i)</u>	<u>prescribe technical restrictions and prohibitions on the sale of specified fireworks.</u>	35

- (2) ~~Any requirements prescribed under **subsection (1)(a), (b), or (c)** must comply with any relevant requirements prescribed by a notice made under section 75.~~
- (3) ~~Compressed gases~~ Gases under pressure that are subject to EPA controls under **subsection (1)(f)** must be treated as hazardous substances for the purposes of Part 7, regardless of their properties. 5
- (4) ~~Controls~~ EPA controls may be prescribed under **subsection (1)(i)** only if the Authority is satisfied that the controls on any by-product with hazardous properties under this Act or any other Act are not sufficient to achieve the purposes of this Act. 10
- (5) The Authority may, in any EPA notice,—
- (a) prescribe EPA controls for any specified hazardous substance or hazardous substances of a specified class:
- (b) prescribe or provide for EPA controls by reference to controls prescribed under any other Act. 15
- 76A Authority may prescribe other matters relating to hazardous substances**
- The Authority may, in accordance with **section 76B**, issue ~~a notice in the *Gazette*~~ an EPA notice that does 1 or more of the following:
- (a) prescribes the method of estimating the quantity of any substance to be imported or manufactured: 20
- (b) prescribes countries for the purposes of sections 28 and 31:
- (c) prescribes information to be provided to the Authority with any application for approval of any hazardous substance:
- ~~(d) prescribes information to be provided to the Authority by importers and manufacturers of hazardous substances:~~ 25
- (d) prescribes, whether by reference to any specified classes of importers or manufacturers or on some other basis,—
- (i) information that importers or manufacturers must provide to the Authority; and
- (ii) related requirements, including the making available of, or the giving of, any notice or information about specified activities, matters, or things to the Authority or to an enforcement officer: 30
- (e) prescribes forms for the purposes of this Act that relate to any hazardous substances:
- (f) prescribes documentation to be issued in respect of any hazardous substance before importation into New Zealand: 35
- (g) prescribes qualifications for enforcement officers appointed under section 100:

<p>(h) <u>prescribes who is an importer or a manufacturer, which may be done by reference to any classes or otherwise.</u></p> <p>(2) <del>The Authority may, in any EPA notice, include transitional and savings provisions for the purpose of giving effect to any matters arising from the notice that are necessary because of the coming into effect of the notice.</del></p> <p><b>76AA Authority may prescribe transitional and savings provisions</b></p> <p><u>The Authority may, in any EPA notice, include transitional and savings provisions for the purpose of giving effect to any matters arising from the notice that are necessary because of the coming into effect of the notice.</u></p> <p><b>76B Procedure for issuing EPA notices</b></p> <p>(1) Before issuing an EPA notice, the Authority must—</p> <p>(a) publicly notify <del>in accordance with section 53A</del> its intention to issue the notice; and</p> <p>(b) give interested persons a reasonable time, which must be specified in the notification published under <b>paragraph (a)</b>, to make submissions on the proposal; and</p> <p>(c) consult any persons, representative groups within the hazardous substances industry or elsewhere, government departments, WorkSafe <del>New Zealand</del>, and Crown entities that the Authority considers appropriate in each case.</p> <p>(2) Before issuing an EPA notice, the Authority must have regard, and give any weight that it considers appropriate in each case, to the following:</p> <p>(a) the costs <u>and benefits</u> of implementing measures for which the notice is being proposed;</p> <p><del>(b) the international best practice in respect of hazardous substances management;</del></p> <p><u>(b) the best international practices and standards for the safe management of hazardous substances;</u></p> <p>(c) any other matters that the EPA considers appropriate in the circumstances.</p> <p>(3) An EPA notice must—</p> <p>(a) be signed by the chairperson of the Authority; and</p> <p>(b) set out fully the requirements of the notice, except where certain information is incorporated in the notice by reference; and</p> <p>(c) include a statement of the objective of the notice; <u>and</u></p> <p><u>(d) be published in the Gazette.</u></p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
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- (4) An EPA notice must be publicly notified ~~in accordance with section 53A~~, along with a statement stating the extent of consultation that took place before the notice was made.
- (5) The Authority may amend or revoke any EPA notice and the amendment or revocation is subject to **subsections (1) to (3)**, except as provided by **subsection (6)**. 5
- (6) The Authority may, on its own initiative, amend an EPA notice without complying with **subsections (1) and (2)**, if it considers that the amendment is minor in effect or corrects a minor or technical error.
- (7) A failure to comply with **subsections (1), (3), and (4)** does not affect the validity of any EPA notice made under this Act. 10
- 76C Application of Legislation Act 2012 to EPA notices**
- An EPA notice is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 15
- 274 Section 77 amended (Controls on hazardous substances)**
- (1AA) In the heading to section 77, replace “Controls” with “EPA controls”.
- (1AB) In section 77(1), replace “degree of hazard of that substance” with “degree or type of hazard of that substance, if applicable”.
- (1) Replace section 77(2) and (2A) with: 20
- (2) The controls prescribed by any regulations, and the EPA controls prescribed by any EPA notice, for each hazard classification attach to the substance, but may be varied,—
- (a) from time to time, by amendments to the regulations or notice prescribing the controls for the relevant hazard classification: 25
- (b) at the time the substance is approved, in accordance with subsections (3), (4), and (5).
- (2A) Nothing in any regulations or EPA notice referred to in **subsection (2)(a)** affects any variations made by the Authority under subsections (3) to (5) before the commencement of the regulations or notice, unless the Authority determines otherwise. 30
- ~~(2) In section 77(3) and (6), replace “any controls” with “any EPA controls”.~~
- ~~(3) In section 77(4), replace “any or all controls” with “any or all EPA controls”.~~
- (4) Replace section 77(7) with:
- (7) Any restrictions and prohibitions on the sale of fireworks prescribed under section **76(1)(j)** or 140(1)(r) are in addition to any EPA controls placed on fireworks under this section to control their explosive properties. 35

**275 Section 77A amended (Authority’s power to impose controls and vary specified controls)**

(1AA) In the heading to section 77A, after “impose”, insert “EPA”.

(1) In section 77A(1), after “the Authority thinks fit”, insert “for the purpose of setting EPA controls”.

~~(2) Replace section 77A(2) with:~~

~~(2) Without limiting anything in subsection (1), the Authority may, in approving a substance, specify as an EPA control under this section an obligation to obtain a permission under section 95A for general or particular use of the substance.~~

(2) Replace section 77A(2) with:

(2) Without limiting anything in subsection (1), the Authority may, in approving a substance, specify as an EPA control under this section—

(a) an obligation to obtain a permission under section 95A for general or particular use of the substance; or

(b) a restriction on the use of a substance.

(2A) In section 77A(3), after “this section are”, insert “EPA”.

(2B) Replace section 77A(4) with:

(4) Before imposing a control under this section, the Authority must be satisfied that, either—

(a) against any other specified controls that apply to the substance,—

(i) the proposed control is more effective in terms of its effect on the management, use, and risks of the substance; or

(ii) the proposed control is more cost-effective in terms of its effect on the management, use, and risks of the substance; or

(iii) the proposed control is more likely to achieve its purpose; or

(b) in the case of a control that is a restriction on the use of a hazardous substance, the positive effects of the substance when restricted to that use outweigh the adverse effects.

~~(3) In section 77A(5), after “by regulations made”, insert “or an EPA notice is issued”.~~

(3) Replace section 77A(5) with:

(5) In this section, **other specified controls** means controls imposed by or under any other section of this Act, and includes controls imposed by regulations made under this Act or EPA controls made under an EPA notice.

**276 Section 77B amended (Exposure limits for substances with toxic or ecotoxic properties)**

(1) Repeal section 77B(2)(c).

(2A) In section 77B(4), after “this section are”, insert “EPA”.



- (2) In section 77B(6), definition of **environmental exposure limit**, replace “regulations made under section 75” with “EPA notices”.
- (3) In section 77B(6), definition of **tolerable exposure limit**, replace “regulations made under section 75” with “EPA notices”.
- (4) In section 77B(6), repeal the definition of **workplace exposure standard**. 5

### 277 Section 78 amended (Codes of practice)

(1AA) In section 78(1), after “included in”, insert “EPA”.

- (1) In section 78(1), after “regulations”, insert “or an EPA notice”.
- (2) Replace section 78(6) with:
- (6) The Authority must not, without the written consent of the relevant Minister,— 10
- (a) adopt with modification any documents previously approved by a Minister of the Crown; or
- (b) approve any amendment of any part of a code of practice that comprises a document approved by a Minister of the Crown and later adopted by the Authority. 15

### 278 Section 82 replaced (Issue of test certificates by test certifiers)

Replace section 82 with:

#### 82 Certificates

Regulations made under this Act, EPA notices, approvals granted by the Authority, and requirements imposed in accordance with Part 3 of Schedule 3 may require a person to obtain a certificate— 20

- (a) from a certifier authorised under **section 221(i) of the Health and Safety Reform Act 2014** that certifies that any specified requirement has been met; or
- ~~(b) under this Act or any other relevant enactment that certifies that any specified requirement has been met.~~ 25
- (b) from the Authority under this Act that certifies that any specified requirement has been met; or
- (c) under any other relevant enactment that certifies that any specified requirement has been met. 30

### ~~279 Sections 82A to 86 repealed~~

~~Repeal sections 82A to 86.~~

### 279 Sections 82A, 82B, and 83 to 86 repealed

Repeal sections 82A, 82B, and 83 to 86.

**279A Section 82C amended (Revocation of test certificates)**

- (1) In the heading to section 82C, delete “test”.
- (2) In section 82C(1), (2), and (8) delete “test” in each place where it appears.

**280 Cross-heading above section 95A amended**

In the cross-heading above section 95A, delete “*and licences*”. 5

**281 Section 95B repealed (Licences)**

Repeal section 95B.

**282 Section 96B amended (Group standards)**

Replace section 96B(1)(b) with:

- (b) impose as conditions that apply to the identified group of hazardous substances or products any obligations and restrictions that the Authority thinks fit for the purpose of setting EPA controls. 10

**283 Section 96C amended (When group standards may be issued or amended)**

(1AA) In section 96C(1)(g), after “types of”, insert “EPA”.

- (1) Replace section 96C(1)(h) with: 15
- (h) comply with the requirements of **section 53(1A)** (which relates to public notification).
- (2) In section 96C(3), after “this section”, insert “or **section 53(1A)**”.

**283A Section 96D amended (Revocation of group standards)**

In section 96D(1), replace “section 53” with “**section 53(1A)**”. 20

**284 Section 97 amended (Enforcement of Act)**

(1) Replace section 97(1)(a) with:

- (a) WorkSafe must ensure that ~~disposal and environmental controls~~ the provisions of this Act in respect of disposal and ecotoxic controls, and equivalent conditions in group standards issued under section 96B that relate to hazardous substances, are enforced in any workplace: 25

(1A) After section 97(1)(d), insert:

- (da) in relation to the retail sale of fireworks, the Commissioner of Police must ensure that any restrictions and prohibitions imposed under this Act are enforced: 30

(1B) In section 97(1)(e), after “any aircraft”, insert “and that the provisions of this Act relating to the discharge of hazardous substances from an aircraft are enforced”.

~~(2) After section 97(2), insert:~~

- ~~(3) The Authority must ensure that classification controls, content controls, and equivalent conditions in group standards issued under section 96B that relate to hazardous substances are enforced.~~
- ~~(4) The Authority must ensure that the following are enforced:~~
- ~~(a) the requirement to obtain approval for the import or manufacture of hazardous substances:~~ 5
- ~~(b) the prohibitions relating to persistent organic pollutants.~~
- (2) After section 97(2), insert:
- (3) The Authority must ensure that the following matters are enforced:
- (a) provisions of this Act in respect of classification controls and content controls, and equivalent conditions in group standards issued under section 96B that relate to hazardous substances: 10
- (b) the requirement for a hazardous substance to have an approval before being imported or manufactured:
- (c) prohibitions relating to persistent organic pollutants: 15
- (d) requirements imposed under any EPA notice made under **section 76A**.
- (4) The Authority must ensure the provisions of this Act in respect of EPA controls and equivalent conditions in group standards issued under section 96B that relate to hazardous substances are enforced in any workplace to the extent that responsibility for enforcement is not provided for in subsection (1)(a) to (g). 20
- 285 Section 97B amended (Enforcement of Act in respect of hazardous substances in place of work)**
- ~~(1) In the heading to section 97B, replace “place of work” with “workplace”.~~
- ~~(2) In section 97B(1), replace “place of work” with “workplace”.~~
- ~~(3) Replace section 97B(2) with:~~ 25
- ~~(2) An inspector appointed under **section 181** of the **Health and Safety Reform Act 2014** may also exercise the powers of an enforcement officer under this Act in relation to hazardous substances in any workplace, whether or not the person is appointed as an enforcement officer under this Act.~~
- ~~(4) In section 97B(3), definition of **enforcement agency**, replace “section 28B(1) of that Act” with “**section 207** of the **Health and Safety Reform Act 2014**”.~~ 30
- ~~(5) In section 97B(3), replace the definition of **inspector** and **place of work** with:~~
- ~~**inspector** has the same meaning as in **section 12** of the **Health and Safety Reform Act 2014**.~~ 35
- 285 Section 97B replaced (Enforcement of Act in respect of hazardous substances in place of work)**
- Replace section 97B with:

**97B Enforcement of Act in respect of hazardous substances in workplace**

An inspector appointed under **section 181** of the **Health and Safety Reform Act 2014** may also exercise the powers of an enforcement officer under this Act in relation to hazardous substances in any workplace, whether or not the person is appointed as an enforcement officer under this Act.

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**285A Section 99 amended (Supervision of inspection)**

In section 99(4), replace “compressed gases” with “gases under pressure”.

**285B Section 103 amended (Powers of entry for inspection)**

- (1) In the heading to section 103, after “inspection”, insert “relating to new organisms”.
- (2) In section 103(1)(c), delete “hazardous substance or” in each place where it appears.
- (3) In section 103(1)(d), delete “substance or”.

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**285C New section 103A inserted (Powers of entry for inspection relating to hazardous substances)**

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After section 103, insert:

**103A Powers of entry for inspection relating to hazardous substances**

- (1) Any enforcement officer may, at any reasonable time, for the purposes referred to in **subsection (2)**,—
  - (a) go on, into, under, and over any premises (excluding dwellings); or
  - (b) with the consent of the occupier, go on, into, under, and over a dwelling.
- (2) The purposes concerned are to—
  - (a) monitor or enforce compliance with this Act and any conditions, controls, or requirements on any hazardous substance; or
  - (b) determine the nature of any hazardous substance; or
  - (c) determine whether or not any person is complying with a compliance order.
- (3) For the purposes of this section, an enforcement officer may—
  - (a) take samples of water, air, soil, any substance, or any organism; and
  - (b) open containers or packages (including secured or sealed containers or packages) to inspect the contents; and
  - (c) take photographs and measurements and make sketches and recordings; and
  - (d) take or remove any thing for analysis or testing; and
  - (e) conduct examinations, tests, inquiries, demonstrations, and inspections; and

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- (f) require that any place or thing specified by the enforcement officer is not disturbed for a reasonable time pending any examination, test, inquiry, demonstration, or inspection; and
- (g) require any person in charge of relevant premises to—
- (i) make statements, in any form or manner specified by the enforcement officer, about conditions, material, or equipment relevant to the purpose of the inspection; or 5
- (ii) produce information relevant to the purpose of the inspection, and take copies of the information or extracts from the information.
- (4) An enforcement officer may do any of the things referred to in **subsection (3)** whether or not— 10
- (a) the enforcement officer or the person the enforcement officer is dealing with has gone on, into, under, or over premises or a dwelling described in **subsection (1)(a) or (b)**; or
- (b) in respect of any information, the information is— 15
- (i) on premises or in a dwelling that is described in **subsection (1)(a) or (b)**; or
- (ii) in the place where the enforcement officer is; or
- (iii) in another place.
- (5) If any enforcement officer has taken any thing in accordance with **subsection (3)(d)**, the enforcement officer must give the occupier of the premises written notice of the things that have been taken, the reason for taking the things, and where the things will be kept. 20
- (6) Within 5 working days of removing a thing, the enforcement officer must give the person in charge of the premises written notice stating— 25
- (a) whether or not the thing will be returned or destroyed; and
- (b) either—
- (i) the time and date of the return of the thing to the premises; or
- (ii) the results of the analysis of the thing and why it is being destroyed. 30
- (7) Every enforcement officer exercising any of the powers conferred under this section must, at the time of exercising that power, and after that on request, produce—
- (a) evidence of that person’s appointment as an enforcement officer; and
- (b) evidence of that person’s identity. 35
- (8) An enforcement officer may take any person with relevant experience or expertise on to the premises to assist the officer with the inspection.
- (9) Nothing in this section limits or affects the privilege against self-incrimination.

(10) In this section,—  
information includes any document  
relevant premises means premises where hazardous substances are located or that are used or are likely to be used for activities related to the manufacture, import, or supply of hazardous substances, including the keeping of documents related to those activities.

## **286 Section 109 amended (Offences)**

(1AA) In section 109(1)(a), before “manufactures”, insert “imports or”.

(1AB) After section 109(1)(d), insert:

(da) fails to comply with any requirements in an EPA notice made under **section 76A(d) or (f)**; or

(1AC) Replace section 109(1)(e) with:

(e) fails to comply with—  
(i) any controls imposed by an approval relating to a new organism granted under this Act; or  
(ii) any EPA controls imposed by an approval relating to a hazardous substance granted under this Act; or  
(iii) any controls specified in any regulations relating to a new organism; or  
(iv) any controls specified in any regulations or an EPA notice relating to a hazardous substance; or  
(v) any requirement to obtain a certificate specified in any regulations or an EPA notice; or

(1) In section 109(1)(eb), after “substances”, insert “or products”.

## **287 Section 111 amended (Commission of infringement offence)**

In section 111, insert as subsection (2):

~~(2) Subsection (1)(a) does not apply if the infringement offence is an offence against section 109 and is specified as an infringement offence by regulations made under section 140.~~

(2) Proceedings commenced in the way described in subsection (1)(a) do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.

## **287A Section 113 amended (Entitlement to infringement fees)**

In section 113, insert as subsections (2) and (3):

(2) A regional council is entitled to retain all infringement fees received by it in respect of infringement offences where the infringement notice was issued by an enforcement officer employed by that council.

(3) Except as provided in subsections (1) and (2), all infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account.

**287B Section 117 amended (Strict liability and defences)**

Repeal section 117(4).

**288 Section 125 amended (Appeals)**

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(1AA) In section 125(5)(a), replace “controls” with “EPA controls”.

(1) After section 125(7), insert:

(8) An appeal under this section must be made and determined in accordance with the District Courts Act 1947 and the District Courts Rules ~~2009~~ 2014.

**289 Section 140 amended (Regulations)**

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(1) Repeal section 140(1)(c), (e), (f), (g), (n), and (p).

(2) In section 140(1)(d), delete “substance or” and “or manufactured”.

(2A) In section 140(1)(j), replace “\$1,000” with “\$3,000”.

(3) Replace section 140(1)(k) with:

(k) prescribing countries or organisations for the purposes of sections 34, 38A, and 40 (which relate to new organisms):

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(4) In section 140(1)(l), after “approval”, insert “relating to new organisms”.

(5) In section 140(1)(m), after “this Act”, insert “relating to new organisms and prescribing forms of search warrants under this Act”.

(6) Replace section 140(1)(o) with:

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(o) prescribing qualifications for enforcement officers appointed under section 100 who perform functions relating to new organisms:

(6A) After section 140(1), insert:

(1A) Regulations made under subsection (1)(i) may (without limitation) prescribe as an infringement offence the failure to comply with—

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(a) any control referred to in section 109(1)(e)(ii) or (iv) that is specified or described in the regulations;

(b) any condition referred to in section 109(1)(eb) that is specified or described in the regulations, including any condition that is referred to as being equivalent to a control;

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(c) any requirement referred to in section 109(1)(e)(v) or (vi).

(7) Repeal section 140(2), (4), and (5).

(8) In section 140(3), after “Any regulations”, insert “or other instrument”.

**290 Section 141 amended (Procedure for making Orders in Council)**

After section 141(2), insert:

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(2A) Subsection (1) does not apply in respect of an Order in Council if its sole purpose is to revoke any regulations ~~or methodology~~ replaced or to be replaced, or otherwise provided for, by an EPA notice or by any regulations or safe work instrument made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**.

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**290A Section 142 amended (Relationship to other Acts)**

After section 142(6), insert:

(7) Nothing in this Act affects the requirements of **Parts 1 to 5 of the Health and Safety Reform Act 2014**, or of any regulations or safe work instruments made under that Act, that relate to hazardous substances in a workplace.

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**290B Section 144 amended (Reporting of incidents)**

Replace section 144(1) with:

(1) Every person in charge of a substance involved in an incident resulting in death, or a notifiable injury or illness as defined by **section 18 of the Health and Safety Reform Act 2014**, or serious environment damage must, unless an enforcement officer attended the incident or subsection (2) applies, report that incident to an enforcement officer.

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**291 Schedule 2A amended**

In Schedule 2A, first column, insert in its appropriate alphabetical order:

Polychlorinated dibenzo-  
p-dioxins and dibenzofur-  
ans (PCDD/PCDF)

**292 Schedule 7 replaced**

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Replace Schedule 7 with the **Schedule 7** set out in **Schedule 5** of this Act.

**293 Consequential and other amendments to principal Act**

Amend the principal Act as set out in **Schedule 6**.

**294 Amendments to other enactments**

Amend the enactments specified in **Schedule 7** in the manner set out in that schedule.

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Subpart 3—Amendments to Employment Relations Act 2000

**295 Principal Act**

This **subpart** amends the Employment Relations Act 2000 (the **principal Act**).

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- 296 Section 67B amended (Effect of trial provision under section 67A)**  
 In section 67B(3), replace “section 103(1)(b) to (g)” with “**section 103(1)(b) to (h)**”.
- 297 Section 103 amended (Personal grievance)**  
 After section 103(1)(g), insert: 5
- (h) that the employee’s employer has, in relation to the employee,—
- (i) engaged in adverse conduct for a prohibited health and safety reason; or
- (ii) contravened **section 114** of the **Health and Safety Reform Act 2014** (which prohibits coercion or inducement). 10
- 298 Section 104 amended (Discrimination)**  
 In section 104(1), delete “or by reason directly or indirectly of that employee’s refusal to do work under section 28A of the Health and Safety in Employment Act 1992.”.
- 299 Section 107 amended (Definition of involvement in activities of union for purposes of section 104)** 15  
 Repeal section 107(2).
- 300 New section 110A inserted (Adverse conduct for prohibited health and safety reason)**  
 After section 110, insert: 20
- 110A Adverse conduct for prohibited health and safety reason**
- (1) For the purposes of this Part, an employer engages in **adverse conduct for a prohibited health and safety reason** if the employer or a representative of the employer, for a prohibited health and safety reason,—
- (a) dismisses an employee; or 25
- (b) refuses or omits to offer or afford to the employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available to other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or 30
- (c) subjects the employee to any detriment in circumstances in which other employees employed by the employer in work of that description are not or would not be subjected to such detriment; or
- (d) retires the employee, or requires or causes the employee to retire or resign. 35

- (2) For the purposes of **subsection (1)**, conduct described in that section is engaged in for a prohibited health and safety reason if it is engaged in for a reason described in **section 111** of the **Health and Safety Reform Act 2014**.
- (3) An employer may be found to have engaged in adverse conduct for a prohibited health and safety reason only if the prohibited health and safety reason was a substantial reason for the conduct. 5
- (4) For the purposes of **subsection (3)**, a prohibited health and safety reason is presumed to be a substantial reason for the conduct unless the employer proves, on the balance of probabilities, that the reason was not a substantial reason for the conduct. 10
- (5) It is a defence to an action for a personal grievance under **section 103(1)(h)(i)** if the employer proves that—
- (a) the conduct was reasonable in the circumstances; and
  - (b) a substantial reason for the conduct was to comply with the requirements of **Parts 1 to 5 of the Health and Safety Reform Act 2014** or other relevant health and safety legislation (as defined in **section 12** of that Act). 15
- (6) For the purposes of this section,—
- (a) an employer also engages in adverse conduct if the employer or a representative of the employer, in relation to the employee,— 20
    - (i) organises to take any action referred to in **subsection (1)** or threatens to organise or take that action; or
    - (ii) requests, instructs, induces, encourages, authorises, or assists another person to engage in adverse conduct for a prohibited health and safety reason: 25
  - (b) **detriment** includes anything that has a detrimental effect on the employee's employment ~~or engagement~~, job performance, or job satisfaction.

**301 Section 111 amended (Definitions relating to personal grievances)**

In section 111, replace “and **duress** have in any employment agreement the meanings given to those terms by sections 103, 104, 105, 106, 107, 108, 109, and 110” with “**duress**, and **adverse conduct for prohibited health and safety reason** have in any employment agreement the meanings given to those terms by sections 103, 104, 105, 106, 107, 108, 109, 110, and **110A**”. 30

**302 Section 137 amended (Power of Authority to order compliance)**

Repeal section 137(1)(a)(xi) and (4)(b). 35

**303 Section 138 amended (Further provisions relating to compliance order by Authority)**

Repeal section 138(1)(b)(ii).

- 304 Schedule 1A amended**
- In paragraph (f), replace “place of work (within the meaning of the Health and Safety in Employment Act 1992)” with “workplace”.
- Subpart 4—Amendments to WorkSafe New Zealand Act 2013
- 305 Principal Act** 5
- This **subpart** amends the WorkSafe New Zealand Act 2013 (the **principal Act**).
- 306 Section 3 amended (Interpretation)**
- (1) In section 3, replace the definition of **relevant health and safety legislation** with: 10
- relevant health and safety legislation** has the same meaning as in **section 12 of the Health and Safety Reform Act 2014**
- (2) In section 3, definition of **transferred employee**, after “section 11” insert “or **clause 1 of Schedule 2**”.
- (3) In section 3, replace the definition of **workplace** with: 15
- workplace** has the same meaning as in **section 15 of the Health and Safety Reform Act 2014**.
- (4) In section 3, insert in their appropriate alphabetical order: 20
- EPA** means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011
- PCBU** has the same meaning as in **section 13 of the Health and Safety Reform Act 2014**
- worker** has the same meaning as in **section 14 of the Health and Safety Reform Act 2014**
- 307 Section 7 amended (WorkSafe New Zealand’s board)** 25
- (1) In section 7(2)(c) and (f), replace “workplace” with “work” in each place.
- (2) In section 7(2)(e), replace “employers” with “PCBUs”.
- 308 Section 8 amended (Advisory groups)**
- In section 8(1)(a) and (b), replace “employers, and workers on workplace” with “PCBUs, and workers on work”. 30
- 309 Section 9 amended (WorkSafe New Zealand’s main objective)**
- (1) In section 9(1), after “contribute to”, insert “a balanced framework for”.
- (2) After section 9(1), insert:
- (1A) An additional objective of WorkSafe New Zealand is to promote and contribute to the safe supply and use of electricity and gas in New Zealand. 35

**310 Section 10 amended (WorkSafe New Zealand's functions)**

- (1) In section 10, replace “workplace” with “work” in each place.
- ~~(2) In section 10(e), after “with”, insert “the”.~~
- (3) After section 10(c), insert:
- ~~(ea) publish information about its approach to enforcing compliance with relevant health and safety legislation (including in circumstances where a provision of relevant health and safety legislation overlaps with a provision in another enactment):~~ 5
- (ca) publish information about—
- (i) its approach to enforcing compliance with relevant health and safety legislation (including where a provision of relevant health and safety legislation overlaps with a provision in another enactment); and 10
- (ii) its performance standards for completing investigations in relation to enforcing compliance with relevant health and safety legislation: 15
- (4) After section 10(e), insert:
- (ea) develop safe work instruments:
- (5) In section 10(g), delete “on or”.
- (6) After section 10(j), insert: 20
- (ja) foster a co-operative and consultative relationship with the EPA when carrying out its functions, duties, and powers in respect of hazardous substances:

**311 New section 21A and cross-heading inserted**

After section 21 insert: 25

*Transfer of EPA employees and contracts*

**21A Transfer of EPA employees and contracts to WorkSafe New Zealand**

**Schedule 2** contains provisions relating to the transfer of EPA employees and contracts to WorkSafe New Zealand.

**312 New Schedule 2 inserted** 30

After the Schedule, insert as **Schedule 2** the schedule set out in **Schedule 8 of the Health and Safety Reform Act 2014**.

## Schedule 1

### Transitional and savings provisions

ss 4, 237

#### 1 Interpretation

In this schedule, **former Acts** means— 5

- (a) the Health and Safety in Employment Act 1992:
- (b) the Machinery Act 1950.

#### *Legislative instruments*

#### 2 ~~Transitional provision relating to regulations and order made under former Acts~~ Transitional provision relating to regulations made under former Acts and Factories Act 1946 10

~~(1) The following regulations and order made under the former Acts are to be treated as having been made under **section 224 of the Health and Safety Reform Act 2014** and may be amended or revoked accordingly:~~

- ~~(a) Amusement Devices Regulations 1978 (SR 1978/294):~~ 15
- ~~(b) Health and Safety in Employment (Adventure Activities) Regulations 2011 (SR 2011/367):~~
- ~~(c) Health and Safety in Employment (Asbestos) Regulations 1998 (SR 1998/443):~~
- ~~(d) Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013 (2013/483):~~ 20
- ~~(e) Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013 (SR 2013/208):~~
- ~~(f) Health and Safety in Employment (Pipelines) Regulations 1999 (SR 1999/350):~~ 25
- ~~(g) Health and Safety in Employment (Prescribed Matters) Regulations 2003 (SR 2003/90):~~
- ~~(h) Health and Safety in Employment (Pressure Equipment, Cranes, and Passenger Ropeways) Regulations 1999 (SR 1999/128):~~
- ~~(i) Health and Safety in Employment (Rates of Funding Levy) Regulations 1994 (SR 1994/49):~~ 30
- ~~(j) Health and Safety in Employment Regulations 1995 (SR 1995/167):~~
- ~~(k) Health and Safety in Employment (Tunnelling Operations—Excluded Operations) Order 2013 (SR 2013/484):~~

(1) The following regulations made under the former Acts and the Factories Act 1946 are to be treated as regulations made under **this Act** and may be amended or revoked accordingly: 35

- (a) Amusement Devices Regulations 1978:
- (b) Health and Safety in Employment (Pipelines) Regulations 1999:
- (c) Health and Safety in Employment (Pressure Equipment, Cranes, and Passenger Ropeways) Regulations 1999:
- (d) Health and Safety in Employment Regulations 1995: 5
- (e) Lead Process Regulations 1950:
- (f) Spray Coating Regulations 1962.
- (1A) The regulations specified in **subclause (1)** may be amended from time to time under the corresponding empowering provisions (if any) in this Act or (if there is no corresponding empowering provision) as if this clause contained the relevant empowering provision (as it read immediately before the commencement of **section 238**). 10
- (1B) Despite the repeal of the Machinery Act 1950 by **section 238**, section 21A of that Act is to be treated as continuing in force until the Amusement Devices Regulations 1978 are revoked. 15
- (2) A person who contravenes a provision of any regulations specified in **subclause (1)(a) to (d)** commits an offence and is liable on conviction to a fine not exceeding ~~\$250,000~~ \$50,000.  
Compare: 1992 No 96 s 50(1)(b)
- 3 Transitional provision relating to Geothermal Energy Regulations 1961** 20
- (1) The Geothermal Energy Regulations 1961 (SR 1961/124) made under the Geothermal Energy Act 1953 are to be treated as ~~having been made under **section 221 of the Health and Safety Reform Act 2014**~~ regulations made under this Act and may be amended or revoked accordingly.
- (2) A person who contravenes a provision of ~~any~~ the regulations specified in **subclause (1)** commits an offence and is liable on conviction to a fine not exceeding ~~\$250,000~~ \$50,000. 25
- Approved codes of practice*
- 4 Transitional provision relating to approved codes of practice**
- An approved code of practice issued under section 20 of the Health and Safety in Employment Act 1992 continues in force as if it had been made under this Act subject to any other necessary modifications. 30
- Exemptions*
- 4A Transitional provision relating to exemptions granted from regulations under Health and Safety in Employment Act 1992** 35
- (1) This clause applies to an exemption granted by WorkSafe under regulations made under the Health and Safety in Employment Act 1992 (including any

- conditions or limitations imposed on the exemption) and in force immediately before the commencement of this clause.
- (2) On and after the commencement of this clause, the exemption (and any conditions or limitations imposed on the exemption) continues to apply until it is sooner replaced or revoked as if it were granted by the regulator under **section 228A** of this Act. 5
- 4B** Transitional provision relating to exemptions granted from regulations and instruments under Hazardous Substances and New Organisms Act 1996
- (1) This clause applies if— 10
- (a) an exemption from a requirement is granted by WorkSafe, the EPA, or any other regulator, under a regulation or other instrument (for example, a transfer notice) made under the Hazardous Substances and New Organisms Act 1996; and
- (b) the exemption is in effect on the commencement of this clause; and 15
- (c) the requirement from which the exemption is granted is revoked and replaced, or continued in force, by regulations made under **this Act**.
- (2) On and after the making of the regulations, notice, or other instrument referred to in **subclause (1)(c)**, the exemption (and any conditions or limitations imposed on the exemption) continues to apply, with any necessary modifications, until— 20
- (a) it expires; or
- (b) it is sooner revoked or replaced under **section 228A** or under any other enactment or instrument.
- Pre-commencement consultation* 25
- 4C** Pre-commencement consultation relating to regulations, codes of practice, and safe work instruments
- (1) **Sections 218, 224A(4), and 226(1) and (2)** are satisfied in relation to any regulations if action of the kind described in those provisions was taken before their commencement for the purpose of facilitating the making of the regulations. 30
- (2) **Section 229(2)** is satisfied in relation to any code of practice if action of the kind described in that provision was taken before its commencement for the purpose of facilitating the making of the code of practice.
- (3) **Section 234(3)** is satisfied in relation to any safe work instrument if action of the kind described in that subsection was taken before its commencement for the purpose of facilitating the making of the instrument. 35

*Re-incorporation of existing material incorporated by reference***4D Re-incorporation of existing material incorporated by reference**

- (1) This clause applies to material (**existing material**) that, as at the commencement of this clause, is incorporated by reference into:
- (a) the following regulations: 5
    - (i) Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001:
    - (ii) Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001:
    - (iii) Hazardous Substances (Compressed Gases) Regulations 2004:
    - (iv) Hazardous Substances (Emergency Management) Regulations 2001: 10
    - (v) Hazardous Substances (Exempt Laboratories) Regulations 2001:
    - (vi) Hazardous Substances (Fireworks, Safety Ammunition, and Other Explosives Transfer) Regulations 2003:
    - (vii) Hazardous Substances (Identification) Regulations 2001: 15
    - (viii) Hazardous Substances (Tank Wagons and Transportable Containers) Regulations 2004:
    - (ix) Hazardous Substances (Tracking) Regulations 2001; and
  - (b) any transfer notice made under section 160A of the Hazardous Substances and New Organisms Act 1996; and 20
  - (c) any group standard made under section 96B of the Hazardous Substances and New Organisms Act 1996; and
  - (d) any reassessment under section 63 of the Hazardous Substances and New Organisms Act 1996.
- (2) Section 51 of the Legislation Act 2012 (which requires consultation about material proposed to be incorporated by reference) does not apply to regulations made under **this Act** or safe work instruments approved under **section 234** that incorporate existing material by reference in reliance on section 49 of that Act. 25
- (3) Existing material that is incorporated by reference in accordance with this clause may— 30
- (a) include corrections or changes:
  - (b) include new material that replaces or supersedes the existing material in whole or in part (for example, a new standard that replaces an earlier standard): 35
  - (c) exclude material that is no longer required.



*Inspectors, enforcement officers, and health and safety medical practitioners***5 Transitional provision relating to inspectors and enforcement officers**

- (1) A person who, immediately before the commencement of this clause, held office as an inspector, a geothermal inspector, or an enforcement officer (as the case may be) under a provision specified in **subclause (2)** continues in office on and after that commencement, as if the person were appointed as an inspector under this Act. 5
- (2) The provisions are—
- (a) section 29 of the Health and Safety in Employment Act 1992:
  - (b) section 5 of the Machinery Act 1950: 10
  - (c) regulation 3 of the Geothermal Energy Regulations 1961:
  - (d) section 97B of the Hazardous Substances and New Organisms Act 1996.
- (3) A person who continues to hold office under **subsection (1)** remains subject to any direction or condition that applied to the person's appointment before the commencement of this clause. 15

**6 Transitional provision relating to health and safety medical practitioners**

- (1) A person's appointment as a health and safety medical practitioner under section 34 of the Health and Safety in Employment Act 1992 before the commencement of this clause continues on and after that commencement as if the person had been appointed as a health and safety medical practitioner under **section 198 of the Health and Safety Reform Act 2014**. 20
- (2) A person who continues to hold office under **subsection (1)** remains subject to any direction or condition that applied to the person's appointment before the commencement of this clause.

*Funding levy* 25**7 Transitional provision relating to funding levy**

- If, before the commencement of this clause, a person is liable to pay a levy under section 59 of the Health and Safety in Employment Act 1992 and the levy remains unpaid after payment is due, then, on and after the commencement of this clause,— 30
- (a) the person must pay the levy as if the levy were payable under **section 217 of the Health and Safety Reform Act 2014**; and
  - (b) ~~that~~ this Act applies to the levy in all respects.

*Employee participation systems, health and safety representatives, and health and safety committees*

**7A Transitional provision relating to employee participation systems**

An employee participation system developed, agreed, and implemented under section 19C of the Health and Safety in Employment Act 1992 that is in force immediately before the commencement of this clause continues on and after that commencement and must be treated as if it were a worker participation practice under **section 64** and all references in the system to— 5

- (a) an employer were references to a PCBU as defined in **section 13**; and
- (b) an employee were references to a worker as defined in **section 14**; and 10
- (c) a health and safety representative were references to a health and safety representative elected in accordance with **subpart 2 of Part 3**; and
- (d) a health and safety committee were references to a health and safety committee established in accordance with **section 86A**.

**7B Transitional provision relating to health and safety representatives** 15

- (1) This clause applies to a person who, immediately before the commencement of this clause, was a health and safety representative in accordance with an employee participation system established under section 19C of the Health and Safety in Employment Act 1992 or in accordance with Part 3 of Schedule 1A of that Act. 20
- (2) The person continues in that role on and after that commencement and must be treated as if the person had been elected as a health and safety representative in accordance with **subpart 2 of Part 3**.
- (3) **Part 3** applies, with any necessary modifications, to a person who continues in his or her role under **subclause (1)** as if, in relation to the representative, references to a work group or members of a work group were references to the group of workers described in the employee participation system or, if none, the workers in the workplace. 25
- (4) **Subclause (3)** is to avoid doubt.
- (5) However, a person to whom this clause applies may not exercise a power conferred by a provision referred to in **subclause (6)** unless he or she has completed the prescribed training requirements relating to the exercise of the power. 30
- (6) The provisions are—
  - (a) **section 92** (which relates to the power to issue a provisional improvement notice); 35
  - (b) **section 107** (which relates to the power to direct unsafe work to cease).

- 7C Transitional provision relating to training of health and safety representatives**
- (1) This clause applies if **clause 12 of Schedule 1A** commences during a year, being a period starting on 1 April in a year and ending on 31 March in the following year. 5
- (2) The training requirements for health and safety representatives under **clause 12 of Schedule 1A** do not take effect until the start of the following year.
- 7D Transitional provision relating to health and safety committees**
- A health and safety committee established as part of an employee participation system under section 19C of the Health and Safety in Employment Act 1992 or in accordance with Part 3 of Schedule 1A of that Act continues on and after the commencement of this clause as if it were a health and safety committee established under **section 86A of this Act.** 10
- Health and safety in mining sector*
- 8 Transitional provision relating to worker participation systems** 15
- A worker participation system developed, agreed, and implemented under section 19R of the Health and Safety in Employment Act 1992 that is in force immediately before the commencement of this clause continues on and after that commencement and must be treated as if it were a worker participation practice agreed under ~~section 64 of the Health and Safety Reform Act 2014~~ **this Act** and all references in the system to— 20
- (a) a site health and safety representative were ~~a reference~~ references to a health and safety representative elected in accordance with ~~section 65 subpart 2 of Part 3~~ **section 86A**; and
- (b) a site health and safety committee were references to a health and safety committee established in accordance with ~~section 88~~ **86A**. 25
- 9 Transitional provision relating to site health and safety representatives**
- (1) This section applies to a person who, immediately before the commencement of this clause, was elected as a site health and safety representative in accordance with a worker participation system established under section 19R of the Health and Safety in Employment Act 1992 or with regulations made under that Act. 30
- (2) The person continues in that role on and after that commencement and must be treated as if the person had been elected as a health and safety representative in accordance with ~~section 65 of the Health and Safety Reform Act 2014~~ **subpart 2 of Part 3**. 35
- (3) **Part 3** applies, with any necessary modifications, to a person who continues in his or her role under **subclause (1)** as if, in relation to the representative,—

- (a) references to a PCBU (except in **section 107**) were references to a mine operator; and
- (ab) references to a PCBU in **section 107** were references to a site senior executive; and
- (b) references to a work group or members of a work group were references to the group of mine workers described in the worker participation system or, if none, to the mine workers in a mining operation; and 5
- (c) references to a business or an undertaking were references to a mining operation.
- (4) In addition, the person may exercise the specific powers of a health and safety representative in the mining sector specified in **clauses 6 and 7 of Schedule 2 of the Health and Safety Reform Act 2014**. 10
- (5) **Subclauses (3) and (4)** are to avoid doubt.
- (6) However, a person to whom this clause applies may not exercise a power conferred by a provision referred to in **subclause (7)** unless he or she has completed the prescribed training requirements relating to the exercise of the power. 15
- (7) The provisions are—
- (a) **section 92** (which relates to the power to issue a provisional improvement notice): 20
- (b) **section 107** (which relates to the power to direct unsafe work to cease):
- (c) **clauses 6 and 7 of Schedule 2** (which relates to the power to give notice requiring suspension of a mining operation and the power to require a mining operation to stop in case of serious risk to health and safety). 25
- 10 Transitional provision relating to site health and safety committees**
- (1) A site health and safety committee established as part of a worker participation system under section 19R of the Health and Safety in Employment Act 1992 continues on and after the commencement of this clause as if it were a health and safety committee established under ~~**section 88 of the Health and Safety Reform Act 2014**~~ **section 86A of this Act**. 30
- (2) **Part 3** applies, with any necessary modifications, to a committee continued under **subclause (1)** as if, in relation to the committee,—
- (a) references to a PCBU were references to a mine operator; and 35
- ~~(b) references to a work group or members of a work group were references to mine workers in a mining operation; and~~
- (c) references to a business or an undertaking were references to a mining operation.

- (3) **Subclause (2)** is to avoid doubt.
- 11 Transitional provision relating to industry health and safety representatives**
- (1) A person who, immediately before the commencement of this clause, was appointed as an industry health and safety representative under section 19ZU of the Health and Safety in Employment Act 1992 continues in that role on and after that commencement and must be treated as if the person had been appointed under **clause 13 of Schedule 2 of the Health and Safety Reform Act 2014 this Act.** 5
- (2) **Schedule 2** applies to a person who continues in his or her role as an industry health and safety representative. 10
- 11A Transitional provision relating to identity cards issued to industry health and safety representatives**
- (1) This clause applies to an identity card given to an industry health and safety representative under section 19ZY of the Health and Safety in Employment Act 1992. 15
- (2) On and after the commencement of this clause, the identity card must be treated as if it were issued under **clause 18 of Schedule 2** until it expires or is sooner revoked.
- 11B Transitional provision relating to register of industry health and safety representatives** 20
- (1) This clause applies to the register of industry health and safety representatives kept under section 19ZZB of the Health and Safety in Employment Act 1992.
- (2) On and after the commencement of this clause, the register must be treated as if it were kept under **clause 20 of Schedule 2.** 25
- New Zealand Mining Board of Examiners*
- 12 Continuation of New Zealand Mining Board of Examiners**
- (1) The New Zealand Mining Board of Examiners (the **Board**) established under section 20D of the Health and Safety in Employment Act 1992 is continued.
- (2) A person who, immediately before the commencement of this clause, held office as a member of the Board continues in office on and after that commencement and must be treated as if the person were appointed under **clause 25 of Schedule 2 of the Health and Safety Reform Act 2014.** 30
- 13 Savings of Board levy**
- If, before the commencement of this clause, a mine operator is liable to pay a levy under section 20H of the Health and Safety in Employment Act 1992 and 35

the levy remains unpaid after payment is due, then, on and after the commencement of this clause,—

- (a) the mine operator must pay the levy to the Board as if the levy were payable under ~~clause 26~~ **clause 27 of Schedule 2 of the Health and Safety Reform Act 2014**; and
- (b) that Act applies to the levy in all respects.

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*Register of accidents and serious harm*

**14 Continuation of register of accidents and serious harm for transitional period**

- (1) This clause applies to a register of accidents and serious harm kept by an employer under section 25 of the Health and Safety in Employment Act 1992.
- (2) The employer must retain the register until the close of the day that is 5 years after the date of the commencement of this clause.

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*Notices, offences, and contraventions under former Acts*

**15 Transitional provision relating to notices issued under Health and Safety in Employment Act 1992**

15

- (1) This clause applies to an improvement notice, a prohibition notice, or a hazard notice issued under the Health and Safety in Employment Act 1992 and in force immediately before the commencement of **section 238** of this Act.
- (2) The notice continues to have effect as if this Act had not been passed for the purpose of completing any matter relating to the notice.

20

**16 Transitional provision for existing offences and contravention under former Acts**

- (1) This clause applies to an offence committed under, or a contravention of,—
  - (a) the former Acts before the commencement of **section 238** of this Act; and
  - (b) regulations made under the former Acts and in force immediately before the commencement of **section 238** of this Act but not saved by **clause 2(1)**.
- (2) The former Acts, and the regulations referred to in **subclause (1)(b)**, continue to have effect as if this Act had not been passed for the purpose of—
  - (a) investigating an offence or a contravention to which this clause applies;
  - (b) commencing or completing proceedings for an offence or a contravention to which this clause applies;
  - (c) imposing a penalty or other remedy, or making an order, in relation to an offence or a contravention to which this clause applies.

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**Schedule 1A**  
**Health and safety representatives and health and safety committees**

s 86B

**Part 1**  
**Health and safety representatives**

5

*Functions and powers of health and safety representatives*

**1 Functions of health and safety representatives**

The functions of a health and safety representative for a work group are—

- (a) to represent the workers in the work group in matters relating to health and safety: 10
- (b) to investigate complaints from workers in the work group regarding health and safety:
- (c) if requested by a worker in the work group, to represent the worker in relation to a matter relating to health and safety (including a complaint):
- (d) to monitor the measures taken by the PCBU that are relevant to health and safety: 15
- (e) to inquire into anything that appears to be a risk to the health or safety of workers in the work group arising from the conduct of the business or undertaking:
- (f) to make recommendations relating to work health and safety: 20
- (g) to provide feedback to the PCBU about whether the requirements of this Act or regulations are being complied with:
- (h) to promote the interests of workers in the work group who have been harmed at work, including in relation to arrangements for rehabilitation and return to work. 25

Compare: 1992 No 96 s 19W; Model Work Health and Safety Act (Aust) s 68

**2 Health and safety representative may attend interview**

- (1) With the consent of the worker concerned, a health and safety representative may attend an interview concerning work health and safety between a worker whom the health and safety representative represents and— 30
  - (a) an inspector; or
  - (b) the PCBU or the PCBU's representative.
- (2) With the consent of the workers concerned, a health and safety representative may attend an interview concerning work health and safety between a group of workers whom the health and safety representative represents and— 35
  - (a) an inspector; or

- (b) the PCBU or the PCBU's representative.
- (3) If **subclause (1)(a) or (2)(a)** applies, an inspector may refuse to allow a health and safety representative to be present—
- (a) during any discussion in which personal information may be disclosed (unless the person who is the subject of the information has expressly consented to the health and safety representative being present): 5
- (b) if the inspector believes that the presence of the health and safety representative would prejudice the maintenance of the law, including the investigation and prosecution of offences.
- Compare: 1992 No 96 s 19Z 10
- 3** **Health and safety representative may enter and inspect workplace**
- (1) A health and safety representative may, at any reasonable time, enter and inspect any area of a workplace to perform the functions, or exercise the powers, of the health and safety representative.
- (2) Before exercising the power under **subclause (1)**, the health and safety representative must give reasonable notice to the PCBU at that workplace, including reasonable notice of whether the health and safety representative intends to be accompanied by another person in accordance with **clause 5(1)**. 15
- (3) In exercising the power under this section, the health and safety representative must comply with any reasonable procedures and requirements that relate to work health and safety. 20
- (4) Despite **subclauses (1) and (2)**, a health and safety representative may, at any time and without notice, enter and inspect any area of a workplace (including when the health and safety representative is accompanied by another person) in the event of an incident, or any situation involving a serious risk to the health or safety of a person arising from an immediate or imminent exposure to a hazard. 25
- Compare: 1992 No 96 s 19ZA
- 4** **Health and safety representative may request information**
- (1) A health and safety representative may request a PCBU to provide any information necessary to enable the health and safety representative to perform his or her functions or exercise his or her powers, including information relating to— 30
- (a) hazards (including associated risks) at the workplace affecting workers in the work group; and 35
- (b) subject to **clause 11**, the health and safety of workers in the work group.
- (2) The health and safety representative may retain and copy any document containing information provided by the PCBU following a request under **subclause (1)**. 40



- 5** **Health and safety representative may be assisted by another person**
- (1) A health and safety representative may, for the purposes of performing or exercising his or her functions or powers under this Act, be accompanied or assisted by another person.
- (2) The following provisions apply, with all necessary modifications, to any person accompanying or assisting a health and safety representative under **subclause (1)**: 5
- (a) **clause 3(3)** (compliance with any reasonable procedures and requirements that relate to work health and safety); and
- (b) **clause 13** (functions and powers for health and safety purposes only); and 10
- (c) **clause 14** (information to be used for health and safety purposes only).
- Compare: Model Work Health and Safety Act (Aust) s 68(2)(g)
- 6** **Health and safety representative in one work group may assist, or act in the capacity of, health and safety representative in another work group** 15
- (1) This clause sets out the circumstances in which a health and safety representative (**HSR-A**, whose ordinary role is to represent workers in work group A) may, for the purposes of performing or exercising his or her functions or powers under this Act, be accompanied and assisted by another health and safety representative (**HSR-B**, whose ordinary role is to represent workers in work group B), and when HSR-B may act in the capacity of HSR-A. 20
- (2) HSR-B may accompany and assist HSR-A, or act in the capacity of HSR-A, in the circumstances in **subclause (3)**, if—
- (a) work group A and work group B consist of workers carrying out work for the same business or undertaking; or 25
- (b) work group A and work group B are within the same multiple PCBU work group arrangement (as defined in **section 66(5)**).
- (3) The circumstances are—
- (a) HSR-B may accompany and assist HSR-A, on HSR-A's request, in the performance or exercise of HSR-A's functions or powers under this Act; and 30
- (b) HSR-B may act in the capacity of HSR-A, if—
- (i) a worker in work group A asks for HSR-B's assistance, and HSR-A is found, after reasonable inquiry, to be unavailable; or
- (ii) HSR-A requests that HSR-B perform his or her functions and exercise his or her powers during a period of absence or in other circumstances that will render HSR-A unavailable to the workers of work group A. 35
- (4) This clause overrides **clause 9(1)**.

- 7 Health and safety representative may accompany inspector**
- (1) A health and safety representative may accompany an inspector who has entered a workplace under **section 185**.
- (2) An inspector may refuse to allow a health and safety representative accompanying the inspector under this section to be present— 5
- (a) during any discussion in which personal information may be disclosed (unless the person who is the subject of the information has expressly consented to the health and safety representative being present):
- (b) if the inspector believes that the presence of the health and safety representative would prejudice the maintenance of the law, including the investigation and prosecution of offences. 10
- Compare: 1992 No 96 s 19ZD
- 8 Health and safety representative may consult regulator or inspector**
- A health and safety representative may consult the regulator or an inspector about any work health and safety issue. 15
- Compare: 1992 No 96 s 19ZE
- 9 Functions and powers of health and safety representative generally limited to particular work group**
- (1) A health and safety representative for a work group may perform his or her functions and exercise his or her powers under this Act only in relation to matters that affect, or may affect, the health and safety of workers in that work group. 20
- (2) **Subclause (1)** does not apply if—
- (a) there is a serious risk to health or safety arising from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group; or 25
- (b) any of the circumstances specified in **clause 6(3)** apply.
- (3) In this clause, **another work group** means—
- (a) another work group carrying out work for a business or undertaking that relates to the work group that the health and safety representative represents; 30
- (b) for a multiple PCBU work group arrangement (as defined in **section 66(5)**), another work group within that arrangement.
- Compare: Model Work Health and Safety Act (Aust) s 69
- Obligations of PCBU to health and safety representatives* 35
- 10 Obligations of PCBU to health and safety representative**
- (1) Subject to **clause 11**, the PCBU must—

- (a) consult, so far as is reasonably practicable, about health and safety matters with any health and safety representative for a work group of workers carrying out work as part of the conduct of the business or undertaking; and
- (b) confer with a health and safety representative for a work group, whenever reasonably requested by the representative, for the purpose of ensuring the health and safety of the workers in the work group; and 5
- (c) allow a health and safety representative to spend as much time as is reasonably necessary to perform his or her functions or exercise his or her powers under this Act; and 10
- (d) provide any health and safety representative for a work group with any information necessary to enable the health and safety representative to perform his or her functions or exercise his or her powers, including information relating to—
- (i) hazards (including associated risks) at the workplace affecting workers in a work group; and 15
- (ii) the health and safety of the workers in a work group; and
- (e) allow the health and safety representative to be present at an interview relating to health and safety between a worker and—
- (i) an inspector; or 20
- (ii) the PCBU at that workplace or the PCBU’s representative; and
- (f) allow the health and safety representative to be present at an interview concerning health and safety between a group of workers and—
- (i) an inspector; or
- (ii) the PCBU at that workplace or the PCBU’s representative; and 25
- (g) provide to a health and safety representative for the work group, any resources, facilities, and assistance that are reasonably necessary or prescribed by regulations to enable the representative to perform his or her functions and exercise his or her powers under this Act; and
- (h) allow a person assisting a health and safety representative for the work group to have access to the workplace if that is necessary to enable the assistance to be provided; and 30
- (i) permit a health and safety representative for the work group to accompany an inspector during an inspection of any part of the workplace where a worker in the work group works. 35
- (2) If a health and safety representative makes a recommendation regarding work health and safety, the PCBU must, within a reasonable time,—
- (a) adopt the recommendation; or
- (b) provide a written statement to the health and safety representative setting out the reasons for not adopting the recommendation. 40

- (3) Any time that a health and safety representative spends for the purposes of performing or exercising his or her functions or powers under this Act must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.
- (4) A person who contravenes **subclause (1) or (2)** commits an offence and is liable on conviction,— 5
- (a) for an individual, to a fine not exceeding \$10,000;
- (b) for any other person, to a fine not exceeding \$50,000.
- Compare: Model Work Health and Safety Act (Aust) s 70
- 11** **Exceptions to clauses 4(1) and 10(1)** 10
- (1) Despite **clauses 4(1) and 10(1)**, a PCBU—
- (a) must not allow a health and safety representative to have access to any personal information concerning a worker without the worker’s consent unless the information is in a form that—
- (i) does not identify the worker; and 15
- (ii) could not reasonably be expected to identify the worker; and
- (b) is not required to give financial assistance to a health and safety representative for the purpose of the assistance referred to in **clause 5**; and
- (c) may refuse on reasonable grounds to grant access to the workplace to a person assisting a health and safety representative. 20
- (2) A person who contravenes **subclause (1)(a)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
- (b) for any other person, to a fine not exceeding \$50,000.
- Compare: Model Work Health and Safety Act (Aust) s 71 25
- 12** **Requirement to allow health and safety representatives to attend certain training**
- (1) Subject to **subclause (2)**, if a health and safety representative has been elected to represent workers who carry out work for a business or undertaking, the PCBU must— 30
- (a) allow the health and safety representative, for the purpose of attending health and safety training,—
- (i) 2 days’ paid leave each year; or
- (ii) the number of days’ paid leave that a PCBU must allow a health and safety representative in specific industries to take in a year, as specified in regulations made under **section 224(b)(ivc)**; and 35

- (b) comply with any prescribed requirements relating to access to training for health and safety representatives (including any requirement to meet the costs of that training).
- (2) The number of days' paid leave that a PCBU must allow a health and safety representative to take in a year is subject to the maximum total number of days' paid leave that that PCBU is required to allow for health and safety representatives in the whole business or undertaking, as specified in, or determined under, regulations made under **section 224(b)(ivb).** 5
- (3) The PCBU must pay a health and safety representative for every day or part of a day that the health and safety representative is given time off work to attend training,— 10
- (a) in the case of a health and safety representative who is an employee of the PCBU, the health and safety representative's relevant daily pay, as defined in section 9 of the Holidays Act 2003, or average daily pay calculated in accordance with section 9A of that Act (as the case may be): 15
- (b) in the case of a worker who is not an employee of the PCBU, the pay that the health and safety representative would otherwise be entitled to receive for performing the health and safety representative's normal duties during that period.
- (4) **Subclause (3)** does not apply in respect of any day for which the eligible employee or other worker is paid weekly compensation under the Accident Compensation Act 2001. 20
- (5) A person who contravenes **subclause (1)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000; 25
- (b) for any other person, to a fine not exceeding \$50,000.
- (6) For the purposes of this clause, **year** means a period starting on 1 April in a year and ending on 31 March in the following year.
- Compare: 1992 No 96 ss 19E, 19F; Model Work Health and Safety Act (Aust) s 72(1)–(4)

Other matters 30

**13** **Functions and powers for health and safety purposes only**

A health and safety representative must not perform a function or exercise a power under this Act for a purpose other than a health and safety purpose.

Compare: 1992 No 96 s 19ZM

**14** **Information to be used by health and safety representative for health and safety purposes only** 35

- (1) This section applies to any information obtained by a health and safety representative in the performance of his or her functions or exercise of his or her powers under this Act.

- (2) The health and safety representative may—
- (a) disclose or use the information,—
- (i) if the information is about a person, only with the person’s consent:
- (ii) only to the extent necessary for the performance or exercise of the health and safety representative’s functions or powers under this Act: 5
- (b) disclose the information—
- (i) to the regulator or a person authorised by the regulator only if the health and safety representative reasonably believes the disclosure is necessary for administering, monitoring, or enforcing compliance with the relevant health and safety legislation: 10
- (ii) only if the disclosure is authorised or required by law.
- (3) In **subclause (2)**, **disclose** includes to give any person access to information. 15  
Compare: 1992 No 96 s 19ZN
- 15** **No duty on health and safety representative**  
Nothing in this Act imposes or is taken to impose a duty on a health and safety representative in that capacity.  
Compare: 1992 No 96 s 19X; Model Work Health and Safety Act (Aust) s 68(4)
- 16** **Immunity of health and safety representatives** 20  
A health and safety representative is protected from civil and criminal liability for any act done or omitted to be done—
- (a) in the performance or intended performance of his or her functions or the exercise or intended exercise of his or her powers; and
- (b) in good faith. 25  
Compare: 1992 No 96 s 19ZP; Model Work Health and Safety Act (Aust) s 66
- 17** **Regulator may remove health and safety representative**
- (1) The regulator may, at its discretion, remove a health and safety representative from office if the regulator considers that the representative has not performed or exercised his or her functions or powers satisfactorily, including if the health and safety representative has— 30
- (a) performed a function or exercised a power as a health and safety representative for an improper purpose; or
- (b) used or disclosed any information he or she acquired as a health and safety representative in contravention of **clause 14**. 35
- (2) The regulator must give written notice of a decision under **subclause (1)** to—
- (a) the health and safety representative affected by the decision; and

- (b) the PCBU of the health and safety representative.
- (3) The notice under **subclause (2)** must state—
- (a) the reasons for the regulator’s decision; and
- (b) whether the removal from office is for a specified period or indefinite.
- Compare: 1992 No 96 s 19ZR 5
- 18 Appeal against removal from office**
- (1) A health and safety representative may appeal to a District Court against a decision of the regulator to remove him or her from office.
- (2) An appeal must be brought within 28 days of the date of the notice given under **clause 17(2)**. 10
- Compare: 1992 No 96 s 19ZT
- 19 PCBU may request regulator to exercise discretion to remove health and safety representative**
- (1) A PCBU may,—
- (a) request the regulator to exercise its discretion under **clause 17(1)** to remove a health and safety representative in the PCBU’s business or undertaking; and 15
- (b) provide any relevant information to support the request.
- (2) After receiving the request, the regulator must decide whether to exercise its discretion to remove the health and safety representative. 20
- (3) If the regulator decides not to exercise its discretion to remove the health and safety representative, the regulator must give written notice to the PCBU stating the reasons for the regulator’s decision.
- (4) The PCBU may appeal to a District Court against a decision of the regulator not to exercise its discretion to remove the health and safety representative. 25
- (5) An appeal must be brought within 28 days of the date of the notice given under **subclause (3)**.

## **Part 2**

### **Health and safety committees**

- 20 Functions of health and safety committee** 30
- The functions of a health and safety committee are—
- (a) to facilitate co-operation between the PCBU and workers in instigating, developing, and carrying out measures designed to ensure the workers’ health and safety at work; and

- (b) to assist in developing any standards, rules, policies, or procedures relating to health and safety that are to be followed or complied with at the workplace; and
- (c) to make recommendations relating to work health and safety; and
- (d) to perform any other functions that are—
  - (i) agreed between the PCBU and the committee; or
  - (ii) prescribed by regulations.

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Compare: Model Work Health and Safety Act (Aust) s 77

## **21 Obligations of PCBU in relation to health and safety committees**

- (1) The PCBU must—
  - (a) consult, so far as is reasonably practicable, about health and safety matters with a health and safety committee; and
  - (b) allow each member of a health and safety committee to spend as much time as is reasonably necessary to attend meetings of the committee or to carry out functions as a member of the committee; and
  - (c) provide the health and safety committee with any information that is necessary to enable the committee to perform its functions, including information relating to—
    - (i) hazards (including associated risks) at the workplace; and
    - (ii) the health and safety of the workers at the workplace.
- (2) If a health and safety committee makes a recommendation regarding work health and safety, the PCBU must, within a reasonable time,—
  - (a) adopt the recommendation; or
  - (b) provide a written statement to the health and safety committee setting out the reasons for not adopting the recommendation.
- (3) Any time that a member of a health and safety committee spends for the purposes set out in **subclause (1)** must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.
- (4) Despite **subclause (1)(c)**, the PCBU must not allow the health and safety committee to have access to any personal information concerning a worker without the worker's consent unless the information is in a form that—
  - (a) does not identify the worker; and
  - (b) could not reasonably be expected to identify the worker.
- (5) A person who contravenes **subclause (1), (2), or (4)** commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000:

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(b) for any other person, to a fine not exceeding \$50,000.

Compare: 1996 No 96 s 19B(4); Model Work Health and Safety Act (Aust) s 79

**22 Information to be used by health and safety committee for health and safety purposes only**

- (1) This section applies to any information obtained by a member of a health and safety committee in the performance of the committee's functions under this Act. 5
- (2) The member may—
- (a) disclose or use the information,—
- (i) if the information is about a person, only with the person's consent: 10
- (ii) only to the extent necessary for the performance of the health and safety committee's functions under this Act:
- (b) disclose the information—
- (i) to the regulator or a person authorised by the regulator only if the member reasonably believes the disclosure is necessary for administering, monitoring, or enforcing compliance with the relevant health and safety legislation: 15
- (ii) only if the disclosure is authorised or required by law.
- (3) In **subclause (2), disclose** includes to give any person access to information. 20
- Compare: 1992 No 96 s 19ZN

## Schedule 2

### Health and safety in mining sector

s 87

#### Part 1

#### ~~Worker participation in health and safety in mining sector~~ General provisions 5

##### 1 Interpretation

In this schedule,—

**alluvial mining operation** means a mining operation carried out above ground and associated with— 10

- (a) the extraction of gold from river deposits of sand or gravel:
- (b) the extraction of ironsand from sand or gravel

**Board** means the New Zealand Mining Board of Examiners established under **clause 23**

**coal** means anthracite, bituminous coal, sub-bituminous coal, and lignite, and— 15

- (a) includes every other substance worked or normally worked with coal; but
- (b) does not include coal in the form of peat

**industry health and safety representative** means a person appointed in accordance with **clause 13** 20

**licence or other permission** means a lease, licence, or other instrument under which a person with an interest in land (including, for example, the owner of the land) permits another person to carry out a mining operation on the land

**mine operator** means,— 25

- (a) for a mining operation carried out under a permit granted under the Crown Minerals Act 1991,—
  - (i) the person appointed by the permit operator to manage and control the mining operation; or
  - (ii) the permit operator, if no such person has been appointed: 30
- (b) for a mining operation (not being a mining operation described in **paragraph (a)**) carried out under a licence or other permission,—
  - (i) the person appointed to manage and control the mining operation by the person who holds the licence or other permission to carry out mining operations; or 35

- (ii) the person who holds the licence or other permission to carry out mining operations, if no such person has been appointed:
- (c) in any other case,—
- (i) the person appointed to manage and control the mining operation by the owner of the land where the mining operation is being carried out; or 5
- (ii) the owner of the land where the mining operation is being carried out, if no such person has been appointed
- mine worker** means a worker in a mining operation
- mineral** means a naturally occurring inorganic substance beneath or at the surface of the earth, and— 10
- (a) includes metallic minerals, non-metallic minerals, and precious stones; but
- (b) does not include clay, coal, gravel, limestone, sand, or stone
- mining operation** has the meaning given to it in **clause 2** 15
- peat** means combustible, soft, porous, or compressed sedimentary deposit of plant origin with a high water content
- permit operator** has the same meaning as in section 2(1) of the Crown Minerals Act 1991
- quarrying operation** has the meaning given to it in **clause 3** 20
- site senior executive** means a worker appointed as the site senior executive by the mine operator
- tourist mining operation** means an operation that has the purpose of—
- (a) mine education; or
- (b) mine research; or 25
- (c) mine tourism
- tunnelling operation** has the meaning given to it in **clause 4**.
- 2 Meaning of mining operation**
- In this schedule, **mining operation**—
- (a) means the extraction of coal and minerals and the place at which the extraction is carried out; and 30
- (b) includes any of the following activities and the place at which they are carried out:
- (i) exploring for coal:
- (ii) mining for coal or minerals: 35
- (iii) processing coal or minerals associated with a mine:
- (iv) producing or maintaining tailings, spoil heaps, and waste dumps:

- (v) the excavation, removal, handling, transport, and storage of coal, minerals, substances, contaminants, and wastes at the place where the activities described in **subparagraphs (i) to (iv)** are carried out:
- (vi) the construction, operation, maintenance, and removal of plant and buildings at the place where the activities described in **subparagraphs (i) to (iv)** are carried out: 5
- (vii) preparatory, maintenance, and repair activities associated with the activities described in **subparagraphs (i) to (iv)**; and
- (c) includes— 10
- (i) a tourist mining operation:
- (ii) a tunnelling operation; but
- (d) does not include—
- (i) exploring for minerals:
- (ii) an alluvial mining operation: 15
- (iii) a mining operation wholly on or under the seabed on the seaward side of the mean high-water mark:
- (iv) a quarrying operation.
- Compare: 1992 No 96 s 19M
- 3 Meaning of quarrying operation** 20
- (1) In this schedule, **quarrying operation**—
- (a) means an activity carried out above ground for the purpose of—
- (i) extracting any material, other than coal or any mineral, from the earth; or
- (ii) processing any material, other than coal or any mineral, at the place where the material is extracted; and 25
- (b) includes the place where an activity described in **paragraph (a)** is carried out; and
- (c) includes any place in which any material extracted or processed in a quarry is crushed or screened. 30
- (2) **Subclause (1)** applies whether or not the material is to be extracted or processed for commercial gain and whether or not the material is extracted or processed by the use of explosives.
- Compare: 1992 No 96 s 19N
- 4 Meaning of tunnelling operation** 35
- In this schedule, **tunnelling operation**—

- (a) means an operation involving extraction of fill with the purpose of creating a tunnel or shaft or enlarging or extending any tunnel or shaft; and
- (b) includes the place where an operation described in **paragraph (a)** is carried out; but
- (c) excludes any tunnelling operation of a kind declared under **clause 5** not to be a tunnelling operation. 5

Compare: 1992 No 96 s 190

## **5 Regulations excluding tunnelling operations from clause 4**

The Governor-General may, by Order in Council made on the recommendation of the Minister, ~~declare~~ make regulations declaring that certain operations or classes of operation are not tunnelling operations for the purposes of **clause 4**. 10

Compare: 1992 No 96 s 19P

### Engagement, worker participation, and representation in mining sector

#### **5A How Part 3 applies in mining sector**

- (1) For the purposes of the mining sector, the provisions in **Part 3**, unless the context otherwise requires, must be read as if— 15
  - (a) every reference to a PCBU were a reference to the mine operator;
  - (b) every reference to a work group or members of a work group were a reference to—
    - (i) a group of mine workers who are represented by a health and safety representative; or 20
    - (ii) mine workers in a mining operation;
  - (c) every reference to a business or undertaking were a reference to a mining operation.
- (2) Despite **subclause (1)(a)**, references to a PCBU in **section 107** must be read as references to the site senior executive. 25

### Specific provision relating to competency of inspectors who inspect mining operations

#### **5B Competency of inspectors appointed under this Act who inspect mining operations** 30

A person appointed as an inspector under **section 181** and who is to inspect mining operations must, unless the person already has experience relevant to health and safety in mining operations, have passed an examination or examinations in areas of knowledge that the regulator is satisfied are specifically relevant to health and safety in mining operations. 35

Compare: SR 2013/483 r 51(2)

*Specific powers of health and safety representatives in mining sector***6 Power of health and safety representative to give notice requiring suspension of mining operation**

- (1) This section applies if a health and safety representative—
- (a) believes on reasonable grounds that the whole, or a part or an aspect, of a mining operation ~~would involve~~ is likely to cause a serious risk to the health and safety of a person; and 5
  - (b) has discussed or attempted to discuss the matter likely to involve a serious risk to the health and safety of a person with the site senior executive. 10
- (2) The health and safety representative may give a written notice to the site senior executive ordering the suspension of the whole, or a part or an aspect, of the mining operation.
- (3) The notice must set out the reasons for the health and safety representative's belief. 15
- (4) If the site senior executive receives a notice under **subclause (2)**, the site senior executive must stop the mining operation, or the part or aspect of the mining operation, specified in the notice.
- (5) If a notice ordering the suspension of the whole, or a part or an aspect, of the mining operation has been given by a health and safety representative, the site senior executive must notify the regulator of that fact. 20
- (6) A person who contravenes—
- (a) **subclause (4)** commits an offence and is liable on conviction to a fine not exceeding \$50,000;
  - (b) **subclause (5)** commits an offence and is liable on conviction to a fine not exceeding \$2,000. 25

Compare: 1992 No 96 s 19ZG

**7 Power of health and safety representative to require mining operation to stop in case of serious risk to health and safety**

- (1) This section applies if a health and safety representative believes on reasonable grounds that a serious risk to any person's health and safety arising from an immediate or imminent exposure to a hazard is likely to be caused by the whole, or a part or an aspect, of a mining operation. 30
- (2) The health and safety representative may—
- (a) stop the whole, or a part or an aspect, of the mining operation and immediately advise the person in charge of the operation or part or aspect of the operation; or 35
  - (b) require the person in charge of the operation or part or aspect of the operation to stop the operation.

- (3) If a health and safety representative requires a person to stop the whole, or a part or an aspect, of a mining operation, that person must do so.
- (4) The health and safety representative must, as soon as practicable after exercising the power under **subclause (2)**, advise the site senior executive of the action taken under that subclause and the reasons for the action taken. 5
- (5) If a health and safety representative has advised the site senior executive of action taken under **subclause (2)**, the site senior executive must notify the regulator of that fact.
- (6) A person who contravenes—
- (a) **subclause (3)** commits an offence and is liable on conviction ~~to a fine not exceeding \$50,000; —~~ 10
- (i) for an individual who is not a mine operator or site senior executive, to a fine not exceeding \$10,000;
- (ii) for an individual who is a mine operator or a site senior executive, to a fine not exceeding \$50,000; 15
- (iii) for any other person, to a fine not exceeding \$250,000;
- (b) **subclause (5)** commits an offence and is liable on conviction to a fine not exceeding \$2,000.
- Compare: 1992 No 96 s 19ZH
- 8 Inspector may cancel order to suspend mining operation** 20
- An inspector may cancel the whole or part of a notice given under **clause 6** (whether or not mining operations have stopped pursuant to the notice) or an action taken by a health and safety representative under **clause 7** if the inspector does not consider that the operation or the part or aspect of the mining operation concerned is likely to cause a serious risk to the health and safety of a person. 25
- Compare: 1992 No 96 s 19ZI
- 9 Competency and experience requirements for exercise of powers under clauses 6 and 7** 30
- A health and safety representative must not exercise any power under **clause 6 or 7** unless he or she meets the competency and experience requirements for a health and safety representative at a mining operation prescribed by or under regulations made under this Act.
- Compare: 1992 No 96 s 19Y
- 10 Mine workers must do other work** 35
- (1) This section applies if the whole or a part or an aspect of a mining operation is stopped under **clause 6 or 7**.

- (2) **Section 108** applies with any necessary modifications to a mine worker who has stopped work under **clause 6 or 7**.  
Compare: 1992 No 96 s 19ZJ
- 11 Work not to restart until no likelihood of serious-harm risk to health and safety** 5
- (1) The site senior executive must ensure that the operation or part or aspect of the mining operation stopped because a notice is given under **clause 6**, or stopped or required to be stopped under **clause 7**, is not restarted until the site senior executive is satisfied that it is not likely to involve a serious risk to the health and safety of a person. 10
- (2) A person who contravenes **subclause (1)** commits an offence and is liable on conviction to a fine not exceeding \$50,000.  
Compare: 1992 No 96 s 19ZK
- 12 Health and safety representative not to unnecessarily impede production** 15
- A health and safety representative must not unnecessarily impede production at a mining operation when performing functions or exercising powers under this schedule.  
Compare: 1992 No 96 s 19ZO
- 12A Power to require assistance**
- (1) A health and safety representative may require the senior site executive or person in charge of the relevant part or aspect of a mining operation to give the health and safety representative reasonable assistance in the exercise of a power under **clause 3 or 4 of Schedule 1A**. 20
- (2) A person who fails to comply with **subclause (1)** commits an offence and is liable on conviction to a fine not exceeding \$10,000. 25  
Compare: 1992 No 96 s 19ZC
- 12B Obstructing health and safety representatives performing functions or exercising powers**
- (1) A mine operator or site senior executive must not prevent or attempt to prevent a health and safety representative from performing his or her functions or exercising his or her powers. 30
- (2) A person who contravenes **subclause (1)** commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
- (b) for any other person, to a fine not exceeding \$50,000. 35  
Compare: 1992 No 96 s 19ZL(a)



*Industry health and safety representatives*

- 13 Appointment of industry health and safety representatives**
- (1) This clause and **clauses 14 to 19** apply only to—
- (a) a mining operation associated with the extraction of coal and where any person works below ground (**underground coal mining operation**): 5
  - (b) mine workers who work in an underground coal mining operation:
  - (c) any union that represents mine workers who work in an underground coal mining operation.
- (2) A union or group of mine workers may, in any manner determined by the union or group, appoint a person to be an industry health and safety representative. 10
- (3) The person appointed must meet the competency requirements for industry health and safety representatives prescribed in regulations made under this Act.
- (4) The union or group of mine workers that appoints an industry health and safety representative must meet the costs of the representative. 15
- Compare: 1992 No 96 s 19ZU
- 14 Notice to regulator of appointment or cessation of appointment of representative**
- A union or group of mine workers that appoints an industry health and safety representative must—
- (a) give notice to the regulator of that appointment; and 20
  - (b) provide the prescribed information in relation to that appointment, and a photograph of the representative authenticated in accordance with any prescribed requirements; and
  - (c) give notice to the regulator within 14 days after the date on which the person ceases to be a representative. 25
- Compare: 1992 No 96 s 19ZV
- 15 Functions and powers of industry health and safety representatives**
- (1) In addition to the functions and powers conferred on a health and safety representative specified in **Part 3**, an industry health and safety representative has the following functions and powers: 30
- (a) to give notice requiring suspension of a mining operation under **clause 6**:
  - (b) to require a mining operation to stop in the case of an immediate or imminent serious risk to any person's health and safety under **clause 7**:
  - (ba) to require the senior site executive or person in charge of the relevant part or aspect of a mining operation to give the industry health and safety representative reasonable assistance under **clause 12A**: 35

- (c) to participate in investigations into accidents in mining operations that resulted, or could have resulted, in a serious risk to a person's health and safety:
- (d) to assist with industry-wide initiatives to improve health and safety in mining operations. 5
- (2) Clauses 8, 10 to 12, and 12B apply with any necessary modifications in the case of an industry health and safety representative performing his or her functions or exercising his or her powers.**
- Compare: 1992 No 96 s 19ZW
- 16 Further provision concerning scope of functions and powers of industry health and safety representatives 10**
- An industry health and safety representative may perform his or her functions and exercise his or her powers in relation to any mining operation or mine worker whether or not,—
- (a) if the representative is appointed by a union, any worker at the mining operation or the relevant mine worker (as the case may be) is a member of that union; or 15
- (b) if the representative is appointed by a group of mine workers, any worker at the mining operation or relevant mine worker (as the case may be) is a member of that group. 20
- Compare: 1992 No 96 s 19ZX
- 17 Application of ~~section 78~~ certain provisions to industry health and safety representatives 25**
- Section 78(1)(b) to (i) Clause 10(1)(b), (d) to (f), and (h) to (i) and (2) of Schedule 1A and clauses 11, and 13 to 18 of Schedule 1A apply to an industry health and safety representative as if in those provisions—**
- (a) references to a PCBU were references to a mine operator; and
- (b) references to a health and safety representative for a work group were references to an industry health and safety representative.
- 18 Identity cards 30**
- (1) The regulator must give each industry health and safety representative an identity card.
- (2) The identity card must be in the prescribed form.
- (3) A person who ceases to be an industry health and safety representative must return his or her identity card to the regulator as soon as ~~possible~~ practicable, but within 14 days, after the date on which the person ceases to be a representative. 35

- (4) A person who contravenes **subclause (3)** commits an offence and is liable on conviction to a fine not exceeding \$2,000.

Compare: 1992 No 96 s 19ZY

### 19 Production or display of identity card

- (1) Before an industry health and safety representative exercises a power under this schedule in relation to any person, the representative must— 5
- (a) produce his or her identity card to the person; or
  - (b) display the identity card so it is clearly visible to that person.
- (2) An industry health and safety representative who exercises a power under ~~section 74~~ **clause 3 of Schedule 1A** must— 10
- (a) produce his or her identity card to the person apparently in charge of the part of the mining operation being entered; or
  - (b) display the identity card so it is clearly visible to that person.
- (3) If the representative is unable, despite reasonable efforts, to comply with **subclause (2)**, the representative must, before leaving the mining operation, leave a written notice stating— 15
- (a) the representative's identity; and
  - (b) the address of a place where the representative may be contacted; and
  - (c) the date and time of entry onto the mining operation; and
  - (d) the representative's reasons for entering onto the mining operation. 20

Compare: 1992 No 96 s 19ZZ

### 20 Register of industry health and safety representatives

- (1) The regulator must keep and maintain a register of industry health and safety representatives.
- (2) The purpose of the register is to enable members of the public to know the names and contact details of industry health and safety representatives. 25
- (3) The register may be kept in any manner that the regulator thinks fit.
- (4) The register must contain the prescribed information.

Compare: 1992 No 96 s 19ZZB

### 21 Alterations to register 30

The regulator may at any time make any amendments to the register that are necessary to reflect any changes in the information referred to in **clause 20**.

Compare: 1992 No 96 s 19ZZC

### 22 Search of register

- (1) A person may search the register for a purpose set out in **clause 20(2)**. 35
- (2) The regulator must—

- (a) make the register available for public inspection, without fee, at reasonable hours at the head office of the regulator; and
- (b) supply to any person, on request and on payment of a reasonable charge, a copy of the register or any extract from it.

Compare: 1992 No 96 s 19ZZD

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## Part 2

### New Zealand Mining Board of Examiners

#### 23 New Zealand Mining Board of Examiners

WorkSafe must establish a board to be known as the New Zealand Mining Board of Examiners.

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Compare: 1992 No 96 s 20D

#### 24 Functions of Board

The functions of the Board are—

- (a) to advise WorkSafe on competency requirements for mine workers:
- (b) to examine applicants, or have applicants examined, for certificates of competence: 15
- (c) to issue, renew, cancel, and suspend certificates of competence:
- (d) any other function relating to training and competency requirements for participants in the extractives industry conferred on the Board by regulations made under this Act. 20

Compare: 1992 No 96 s 20E

#### 25 Membership of Board

- (1) WorkSafe may at any time appoint a member of the Board.
- (2) The appointment of a member of the board must be for a specified period.
- (3) WorkSafe must appoint one of the members of the Board as the chairperson of the Board. 25
- (4) When appointing a member of the Board, WorkSafe must have regard to the need to ensure that the Board has among its members knowledge and experience of—
  - (a) mining operations: 30
  - (b) health and safety inspection in the mining industry:
  - (c) mining education:
  - (d) mining industry training.
- (5) Without limiting **subclause (4)**, the Board may include 1 or more employees of WorkSafe. 35
- (6) A member of the board may resign by notice in writing to WorkSafe.

- (7) Clause 15 of Schedule 5 of the Crown Entities Act 2004 (**Schedule 5**) applies to the members of the Board as if they were members of a committee appointed under clause 14 of Schedule 5 by the board of a Crown entity.  
Compare: 1992 No 96 s 20F
- 26 Proceedings of Board** 5  
The Board may determine its own procedure.  
Compare: 1992 No 96 s 20G
- 27 Board levy**
- (1) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, make regulations imposing a levy on mine operators to fund the direct and indirect costs incurred by the Board in performing the Board's functions to the extent that they relate to mining operations. 10
- (2) The regulations must—
- (a) specify how the levy rate or rates are calculated:
- (b) specify the mine operators or classes of mine operators responsible for paying the levy: 15
- (c) specify, if the levy is to be paid at different rates, the mine operators, mining operations, thing being extracted, or other things or the classes of mine operators, mining operations, thing being extracted, or other things to which the different rates apply: 20
- (d) specify when and how the levy is to be paid:
- (e) specify the persons or classes of persons (if any) exempt from paying the levy.
- (3) Without limiting **subclauses (1) and (2)**, regulations may—
- (a) specify the returns to be made to WorkSafe or some other person or body for the purpose of enabling or assisting the determination of amounts of levy payable: 25
- (b) specify the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for paying the levy:
- (c) for the purpose of ascertaining whether regulations are being complied with,— 30
- (i) require the keeping of accounts, statements, and records of a specified class or description by either or both of WorkSafe and the persons responsible for paying the levy; and
- (ii) require the retention of the accounts, statements, and records for a specified period: 35
- (d) provide for the establishment of a dispute resolution process for disputes relating to levies, including—

- (i) the appointment of persons to resolve the disputes; and
  - (ii) the procedures to be followed by the persons; and
  - (iii) the remuneration of the persons.
- (4) Before making a recommendation under this clause, the Minister must—
- (a) receive advice from WorkSafe on the proposed levy; and
  - (b) consult the people responsible for paying the proposed levy.

Compare: 1992 No 96 s 20H

**Schedule 2A**  
**Provisions relating to classified security information**

s 180A

- 1 Application of this schedule** 5
- This schedule applies to any civil or criminal proceedings in a court (including public law and judicial review proceedings) that relate to the administration or enforcement of this Act.
- 2 Interpretation**
- In this schedule,—
- classified security information** has the meaning in **clause 3**: 10
- security, intelligence or law enforcement agency** means—
- (a) the New Zealand Defence Force;
- (b) the Government Communications Security Bureau;
- (c) the New Zealand Police;
- (d) the New Zealand Security Intelligence Service; 15
- (e) any agency declared by the Governor-General from time to time by Order in Council as an intelligence and security agency for the purposes of the Inspector-General of Intelligence and Security Act 1996
- special advocate** means a person appointed under **clause 6**
- specified agency** means— 20
- (a) the New Zealand Defence Force;
- (b) the New Zealand Police;
- (c) the New Zealand Security Intelligence Service;
- (d) a government department named in Schedule 1 of the State Sector Act 1988. 25
- 3 Meaning of classified security information**
- (1) In this schedule, **classified security information** means information—
- (a) held by a specified agency; and
- (b) that the head of the specified agency certifies in writing cannot be disclosed except to the extent provided in **clause 4** because, in the opinion of the head of the specified agency,— 30
- (i) the information is information of a kind specified in **subclause (2)**; and
- (ii) disclosure of the information would be disclosure of a kind specified in **subclause (3)**. 35
- (2) Information falls within **subclause (1)(b)(i)** if it—

- (a) might lead to the identification of, or provide details of, the source of the information, the nature, content, or scope of the information, or the nature or type of the assistance or operational methods available to a security, intelligence or law enforcement agency; or
- (b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in pursuance of any of the functions of a security, intelligence or law enforcement agency; 5
- (c) has been provided to the specified agency by the Government of another country or by an agency of a Government of another country or by an international organisation, and is information that cannot be disclosed by the agency because the Government or agency or organisation by which the information has been provided will not consent to the disclosure. 10
- (3) Disclosure of information falls within **subclause (1)(b)(ii)** if the disclosure would be likely—
- (a) to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or 15
- (b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of another country or any agency of such a Government, or by any international organisation; or 20
- (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
- (d) to endanger the safety of any person.
- Compare: 2013 No 91 s 102(1)–(3)
- 4** **Obligation to provide court with access to classified security information** 25
- (1) A specified agency must, after proceedings are commenced, provide the court with access to the classified security information that is relevant to those proceedings.
- (2) If a special advocate is appointed before proceedings are commenced, the specified agency must provide the court with access to the classified security information that is relevant to the intended proceedings. 30
- (3) The court must keep confidential and must not disclose any information provided as classified security information, even if it considers that the information does not meet the criteria set out in **clause 3(2) and (3)**, unless the head of the specified agency that holds the information consents to its release. 35
- (4) **Subclause (3)** applies both during and after completion of the proceedings.
- Compare: 2013 No 91 s 103



**5 Court orders**

- (1) The court may, in order to comply with **clause 4(3)**, make 1 or more of the following orders:
- (a) an order forbidding publication of any report or account of the whole or any part of the evidence adduced or the submissions made in the proceedings: 5
  - (b) an order forbidding the publication of the name of any witness or witnesses, or any name or particulars likely to lead to the identification of any witness or witnesses:
  - (c) an order forbidding the publication of classified security information or information about classified security information: 10
  - (d) an order excluding any person from the whole or any part of the court's proceedings, including—
    - (i) any party or any party's representative; or
    - (ii) staff of the court. 15
- (2) An order made under **subclause (1)**—
- (a) may be made for a limited period or permanently; and
  - (b) if it is made for a limited period, may be renewed for a further period or periods by the court; and
  - (c) if it is made permanently, may be reviewed by the court at any time. 20

Compare: 2013 No 91 s 104

**6 Appointment of special advocate**

- (1) This clause applies if—
- (a) it appears to a court that—
    - (i) a person (the **intended party**) is or may be entitled to commence proceedings to which this schedule will or may apply but it is necessary for a special advocate to be appointed before the proceedings can be commenced; and 25
    - (ii) the intended party has notified the specified agency that the party intends to commence those proceedings and that the party will apply for the appointment of a special advocate; or 30
  - (b) proceedings have been commenced and information presented, or proposed to be presented, in those proceedings includes classified security information; or
  - (c) proceedings have been commenced but a party's claim or defence cannot be fully particularised without the party being able to consider classified security information. 35

- (2) The court may, on the application of an intended party or a party referred to in **subclause (1)(c)**, appoint a barrister or solicitor as a special advocate to represent the party's interests on the terms that the court may direct if the court is satisfied that it is necessary to do so in order to ensure either or both of the following: 5
- (a) that the party can properly prepare and commence proceedings;
- (b) that a fair hearing will occur.
- (3) The court must, before appointing a person as a special advocate, be satisfied that the person—
- (a) holds an appropriate security clearance that allows the person to see information that is or may be classified security information; and 10
- (b) is suitably qualified and experienced to fulfil the role of a special advocate.
- (4) A special advocate appointed to represent an intended party may, after the proceedings are commenced, continue to act as the special advocate on behalf of that person, subject to the terms that the court may direct. 15
- (5) The court may make directions as to the terms of the appointment, and on the matters referred to in **clauses 9 and 10(3)**, before or after the proceedings are commenced.
- (6) The appointment of a special advocate does not create an obligation requiring the intended party to commence proceedings. 20
- (7) The specified agency to which the proceedings or intended proceedings relate must meet the actual and reasonable costs of a special advocate on a basis—
- (a) agreed between the special advocate and the head of the specified agency; or 25
- (b) determined by the court (in default of agreement).

Compare: 2013 No 91 s 105

## 7 **Nomination of person for appointment**

- (1) Each of the following may nominate a barrister or solicitor to be appointed as the special advocate: 30
- (a) the specified agency;
- (b) the intended party;
- (c) the party referred to in **clause 6(1)(c)**.

- (2) The court may appoint a person nominated under **subclause (1)** or another person. 35

Compare: 2013 No 91 s 106

## 8 **Role of special advocates**

- (1) The role of a special advocate is to represent—

- (a) an intended party; or
- (b) a party referred to in **clause 6(1)(c)**.
- (2) In particular, a special advocate may—
- (a) prepare and commence proceedings on behalf of the person:
- (b) examine and cross-examine witnesses: 5
- (c) make oral and written submissions to the court:
- (d) assist in the settlement of the proceedings.
- (3) At all times, a special advocate must act in accordance with his or her duties as an officer of the High Court.
- (4) A special advocate must keep confidential and must not disclose classified security information, except as expressly provided or authorised under this Act. 10  
Compare: 2013 No 91 s 107
- 9** **Court may provide access to classified security information to special advocate**
- (1) A special advocate may, before or after the commencement of proceedings, apply to the court for access to the classified security information. 15
- (2) The court may provide access to the classified security information to the special advocate on the terms that the court may direct.  
Compare: 2013 No 91 s 108
- 10** **Communication between special advocate and other persons** 20
- (1) A special advocate may communicate with the relevant party or the relevant party's representative on an unlimited basis until the special advocate has been provided with access to the classified security information.
- (2) After the special advocate has been given access to the classified security information, he or she must not communicate with any person about any matter connected with the classified security information except in accordance with this clause. 25
- (3) A special advocate who, after having been given access to the classified security information, wishes to communicate with the relevant party, the relevant party's representative, or any other person not referred to in **subclause (4)** may do so on the terms that the court may direct. 30
- (4) A special advocate may, without the approval of the court, communicate about any matter connected with the classified security information with—
- (a) the court:
- (b) the head of the specified agency to which the proceedings relate, or the specified agency's security-cleared representative. 35
- (5) In this clause, **relevant party** means—
- (a) the intended party; or

(b) the party referred to in **clause 6(1)(c)**.

Compare: 2013 No 91 s 109

**11 Protection of special advocates from liability**

(1) To the extent that a special advocate is acting in accordance with the requirements of this Act, he or she is not guilty of— 5

(a) misconduct within the meaning of section 7 or 9 of the Lawyers and Conveyancers Act 2006; or

(b) unsatisfactory conduct within the meaning of section 12 of that Act.

(2) This subpart applies despite the requirements of any practice rules made and approved under the Lawyers and Conveyancers Act 2006. 10

(3) No person is personally liable for any act done or omitted to be done in good faith, in his or her capacity as a special advocate, in accordance with the requirements or provisions of this Act.

Compare: 2013 No 91 s 110

**12 Other matters relating to procedure in proceedings involving classified security information** 15

(1) The court must determine the proceedings on the basis of information available to it (whether or not that information has been disclosed to or responded to by all parties to the proceedings).

(2) If information presented, or proposed to be presented, in the proceedings by the specified agency includes classified security information,— 20

(a) except where proceedings are before the Court of Appeal or the Supreme Court, the proceedings must be heard and determined by the Chief High Court Judge, or by 1 or more Judges nominated by the Chief High Court Judge, or both; and 25

(b) the court must, on a request by the Attorney-General and if satisfied that it is necessary to do so for the protection of all or part of the classified security information, receive or hear the relevant part or all of the classified security information in the absence of all or any of—

(i) a party other than the specified agency; and 30

(ii) the barristers or solicitors (if any) representing that party; and

(iii) journalists; and

(iv) members of the public.

(3) Without limiting **subclause (2)**,—

(a) the court may approve a summary of the classified security information that is presented by the Attorney-General except to the extent that a summary of any particular part of the information would itself involve disclosure that would be likely to prejudice the interests referred to in **clause 2(3)**; and 35

- (b) on being approved by the court, a copy of the summary must be given to every party referred to in **subclause (2)(b)(i)**.
- (4) **Subclauses (1) to (3)** apply despite any enactment or rule of law to the contrary.  
Compare: 2013 No 91 s 111 5
- 13** **Nothing in this subpart limits other rules of law that authorise or require withholding of document, etc**  
Nothing in this subpart limits section 27 of the Crown Proceedings Act 1950 or any rule of law that authorises or requires the withholding of a document or the refusal to answer a question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest. 10  
Compare: 2013 No 91 s 112
- 14** **Ancillary general practices and procedures to protect classified security information**
- (1) Any general practices and procedures that may be necessary to implement the procedures specified in this schedule and to ensure that classified security information is protected in all proceedings to which this schedule applies must be agreed between the Chief Justice and the Attorney-General as soon as practicable after the commencement of this clause, and revised from time to time. 15
- (2) General practices and procedures may be agreed under **subclause (1)** on the following matters: 20
- (a) measures relating to the physical protection of the information during all proceedings to which this schedule relates:
- (b) the manner in which the information may be provided to the court:
- (c) measures to preserve the integrity of the information until any appeals are withdrawn or finally determined. 25
- (3) **Subclause (2)** does not limit **subclause (1)**.  
Compare: 2013 No 91 s 113

## Schedule 3 Consequential amendments

s 226

### Part 1 Amendments to Acts

5

#### Building Act 2004 (2004 No 72)

In section 9(b), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

Replace section 9(g) and (h) with:

- (g) containers as defined in regulations made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**; or 10
- (h) magazines as defined in regulations made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**; or

#### Civil Defence Emergency Management Act 2002 (2002 No 33)

Replace section 17(3)(g) with:

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- (g) **Parts 1 to 5 of the Health and Safety Reform Act 2014:**

#### Coroners Act 2006 (2006 No 38)

In section 9, definition of **other investigating authority**, replace paragraph (h) with:

- (h) a regulator as defined in **section 12 of the Health and Safety Reform Act 2014** or an inspector appointed under **section 181** of that Act: 20

In section 118(3), replace “section 28 (coroner may call for report on fatal accident) of the Health and Safety in Employment Act 1992” with “**section 216 (coroner may call for report on fatal accident) of the Health and Safety Reform Act 2014**”.

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In section 120(4), replace “section 28 (coroner may call for report on fatal accident) of the Health and Safety in Employment Act 1992” with “**section 216 (coroner may call for report on fatal accident) of the Health and Safety Reform Act 2014**”.

#### Costs in Criminal Cases Act 1967 (1967 No 129)

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In section 4(5), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In section 7(3), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In section 10(2), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

35

**Crown Minerals Act 1991 (1991 No 70)**

In section 2(1), after the definition of **good industry practice**, insert:

**health and safety regulator** has the same meaning as regulator in **section 12 of the Health and Safety Reform Act 2014**

In section 2(1), definition of **specified Act**, paragraph (a), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

~~In section 2(1), insert in the appropriate alphabetical order:~~

~~**health and safety regulator** has the same meaning as **regulator** in **section 12 of the Health and Safety Reform Act 2014**~~

In section 2(1), repeal the definition of **WorkSafe**.

In section 29A(3)(b), replace “WorkSafe” with “the health and safety regulator”.

In section 33(1)(a)(iii), replace “the Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

Replace sections 33A and 33B with:

**33A Exercise of permit conditional on authorisation**

(1) This section applies if—

- (a) in accordance with regulations made under the **Parts 1 to 5 of the Health and Safety Reform Act 2014** an activity must be authorised (as defined in ~~section 54~~ **section 218A** of that Act); and
- (b) the activity is an activity of a type authorised under a permit; and
- (c) the regulations referred to in **paragraph (a)** specify that it is an authorisation for the purposes of this section.

(2) Despite the activity being authorised under a permit, it must not be carried out until—

- (a) it has been authorised in accordance with ~~subpart 5 of Part 2~~ **subpart 1A of Part 5 of the Health and Safety Reform Act 2014** or regulations made under that Act; and
- (b) the health and safety regulator has advised the chief executive that the activity has been so authorised; and
- (c) the chief executive has notified the permit holder of the health and safety regulator’s advice.

**33B Health and Safety regulator to notify chief executive of breaches of legislation**

(1) The health and safety regulator must notify the chief executive if—

- (a) a permit holder is issued with a prohibition notice under **section 127 of the Health and Safety Reform Act 2014**; or

**Crown Minerals Act 1991 (1991 No 70)**—*continued*

- (b) an enforcement action (as defined in **section 162** of that Act) is taken against the permit holder under that Act.
- (2) Nothing in this Act derogates from the health and safety regulator’s responsibility for the administration and enforcement of **Parts 1 to 5 of the Health and Safety Reform Act 2014**.

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Replace section 41C(3)(b) with:

- (b) if the change of operator relates to a Tier 1 permit for exploration or mining, if the health and safety regulator—
- (i) is satisfied that any requirements of **Parts 1 to 5 of the Health and Safety Reform Act 2014**, or regulations made under that Act, that the proposed operator must meet before carrying out day-to-day management of activities under the permit have been, or are likely to be, met; and
- (ii) has advised the chief executive that it is so satisfied.

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Replace section 90E(1) with:

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- (1) The Minister, an appropriate Minister, or the chief executive may provide to the health and safety regulator any information, or a copy of any document, that he or she—
- (a) holds in relation to the performance or exercise of his or her functions, duties, or powers under this Act that relate to a permit or an application for a permit; and
- (b) considers may assist the health and safety regulator in the performance or exercise of ~~his or her~~ the regulator’s functions, duties, or powers under any relevant health and safety legislation (as defined in **section 12 of the Health and Safety Reform Act 2014**).

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In Schedule 1, heading to clause 15, replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In Schedule 1, replace clause 15(7) with:

- (7) ~~Despite clause 12(1)(d) or section 4 of the Health and Safety in Employment Act 1992, the health and safety regulator or an inspector may exercise or perform the functions, powers, and duties—~~
- (a) ~~that would have been exercisable or performable by any person in respect of an existing privilege before the commencement of the Health and Safety in Employment Act 1992; and~~
- (b) ~~that concern matters that are within the functions, powers, and duties of the regulator or an inspector under **Parts 1 to 5 of the Health and Safety Reform Act 2014** or the WorkSafe New Zealand Act 2013; and~~

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**Crown Minerals Act 1991 (1991 No 70)**—*continued*

- (e) ~~the Acts referred to in **paragraph (b)** apply accordingly with any necessary modifications.~~
- (7) Despite clause 12(1)(d) or section 4 of the Health and Safety in Employment Act 1992,—
- (a) the health and safety regulator or an inspector may exercise or perform the functions, powers, and duties— 5
- (i) that would have been exercisable or performable by any person in respect of an existing privilege before the commencement of the Health and Safety in Employment Act 1992; and
- (ii) that concern matters that are within the functions, powers, and duties of the regulator or an inspector under **Parts 1 to 5 of the Health and Safety Reform Act 2014** or the WorkSafe New Zealand Act 2013; and 10
- (b) the Acts referred to in **paragraph (a)(ii)** apply accordingly with any necessary modifications. 15

In Schedule 1, clause 15(8)(b), replace “an Inspector under section 29(1) of the Health and Safety in Employment Act 1992” with “the regulator or an inspector under **Parts 1 to 5 of the Health and Safety Reform Act 2014** or the WorkSafe New Zealand Act 2013”.

**Crown Organisations (Criminal Liability) Act 2002 (2002 No 37)** 20

In section 3(b), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

Replace section 6(1)(b) with:

- (b) an offence ~~against~~ under **Parts 1 to 5 of the Health and Safety Reform Act 2014**: 25

In section 7(a), replace “the Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In section 8(4), replace “section 6” with “section 6(1)(a), (c), or (d)”.

Replace section 8(5) with:

- (5) This section is subject to sections 176 and 246 of the Criminal Procedure Act 2011 and section 4(9) of the Resource Management Act 1991. 30

In section 10(1)(b)(i), replace “section 31 of the Health and Safety in Employment Act 1992” with “**section 185 of the Health and Safety Reform Act 2014**”.

In section 12(1), replace “or costs” with “fine, or costs”.

**Electricity Act 1992 (1992 No 122)** 35

In section 2(1), repeal the definition of **all practicable steps**.

In section 2(1), replace the definition of **Minister** with:

**Electricity Act 1992 (1992 No 122)**—*continued*

**Minister**, in any provision of this Act, means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of that provision

In section 2(1), after the definition of **provisional licence**, insert:

**reasonably practicable**, in relation to a duty to ensure health and safety or to protect property, means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety or protecting property, taking into account and weighing up all relevant matters, including—

- (a) the likelihood of the hazard or the risk concerned occurring; and
- (b) the degree of harm or damage that might result from the hazard or risk; and
- (c) what the person concerned knows, or ought reasonably to know, about—
  - (i) the hazard or risk; and
  - (ii) ways of eliminating or minimising the risk; and
- (d) the availability and suitability of ways to eliminate or minimise the risk; and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk

In section 2(1), definition of **serious harm**, replace paragraph (c) with:

- (c) a notifiable injury or illness as defined in **section 18 of the Health and Safety Reform Act 2014**

Replace section 16(6)(b) with:

- (b) **section 52 of the Health and Safety Reform Act 2014.**

In section 17(3), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In section 42(3)(a), replace “WorkSafe” with “the chairperson of WorkSafe”.

In section 42(3)(b), replace “the signature” with “a signature purporting to be the signature of the chairperson”.

Replace section 61A(1) with:

- (1) Every electricity generator and every electricity distributor that owns or operates an electricity supply system must implement and maintain, in accordance with regulations made under section 169, a safety management system.
- (1A) The safety management system must prevent, so far as is reasonably practicable, the electricity supply system from presenting a significant risk of—
  - (a) serious harm to any member of the public; or

**Electricity Act 1992 (1992 No 122)—continued**

(b) significant damage to property owned by a person other than the electricity generator or electricity distributor.

Replace section 163C(1)(c) with:

(c) the person fails to prevent, so far as is reasonably practicable, the serious harm or significant property damage.

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Replace section 163C(2)(c) with:

(c) the person fails to prevent, so far as is reasonably practicable, the serious harm or significant property damage.

Replace section 163C(5) with:

(5) To avoid doubt, a person required by this section to prevent, so far as is reasonably practicable, serious harm or significant property damage is required to take action only in respect of circumstances that the person knows, or ought reasonably to know, about.

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In section 169(2)(b)(ii), replace “section 20A of the Health and Safety in Employment Act 1992” with “**section 229 of the Health and Safety Reform Act 2014**”.

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Replace section 169A(1)(b) with:

(b) the elimination, isolation, or minimisation of those hazards, so far as is reasonably practicable; and

Replace section 169B(1) with:

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(1) To avoid doubt, a person required by a safety management system to eliminate, isolate, or minimise hazards so far as is reasonably practicable is required to take action only in respect of circumstances that the person knows, or ought reasonably to know, about.

After section 169B, insert:

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*Safe work instruments—Legal effect*

**169C Legal effect of safe work instruments**

(1) For the purposes of this Act, a safe work instrument made under **section 234 of the Health and Safety Reform Act 2014** has legal effect only to the extent that any regulations made under this Act refer to it.

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(2) For the purposes of **subsection (1)**, regulations may refer to—

(a) a particular safe work instrument as amended or replaced from time to time; or

(b) any safe work instrument that may be made for the purposes of regulations (even if the instrument is not or has not been made at the time the regulations are made).

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**Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (2012 No 72)**

In section 39(4), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In section 63(4), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

**Gas Act 1992 (1992 No 124)**

In section 2(1), repeal the definition of all practicable steps.

In section 2(1), after the definition of price, insert:

- reasonably practicable, in relation to a duty to ensure health and safety or to protect property, means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety or protecting property, taking into account and weighing up all relevant matters, including—
- (a) the likelihood of the hazard or the risk concerned occurring; and
  - (b) the degree of harm or damage that might result from the hazard or risk; and
  - (c) what the person concerned knows, or ought reasonably to know, about—
    - (i) the hazard or risk; and
    - (ii) ways of eliminating or minimising the risk; and
  - (d) the availability and suitability of ways to eliminate or minimise the risk; and
  - (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk

In section 2(1), definition of **serious harm**, replace paragraph (d) with:

- (d) a notifiable injury or illness as defined in section 18 of the Health and Safety Reform Act 2014**

Replace section 17(6)(b) with:

- (b) section 52 of the Health and Safety Reform Act 2014.**

In section 18(3), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In section 43(3)(a), replace “WorkSafe” with “the chairperson of WorkSafe”.

In section 43(3)(b), replace “the signature” with “a signature purporting to be the signature of the chairperson”.

In section 46A(1), replace “that requires all practicable steps to be taken to prevent” with “that prevents, so far as is reasonably practicable.”

**Gas Act 1992 (1992 No 124)—continued**

In section 54(2)(b)(ii), replace “section 20A of the Health and Safety in Employment Act 1992” with “**section 229 of the Health and Safety Reform Act 2014**”.

Replace section 54A(1)(b) with:

- (b) the elimination, isolation, or minimisation of those hazards, so far as is reasonably practicable; and

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Replace section 54B(1) with:

- (1) To avoid doubt, a person required by a safety management system to eliminate, isolate, or minimise hazards so far as is reasonably practicable is required to take action only in respect of circumstances that the person knows, or ought reasonably to know, about.

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After section 56A, insert:

*Safe work instruments—Legal effect*

**56AB Legal effect of safe work instruments**

- (1) For the purposes of this Act, a safe work instrument made under **section 234 of the Health and Safety Reform Act 2014** has legal effect only to the extent that any regulations made under this Act refer to it.
- (2) For the purposes of **subsection (1)**, regulations may refer to—
- (a) a particular safe work instrument as amended or replaced from time to time; or
- (b) any safe work instrument that may be made for the purposes of regulations (even if the instrument is not or has not been made at the time the regulations are made).

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Replace section 56B(1)(c) with:

- (c) the person fails to prevent, so far as is reasonably practicable, the serious harm or significant property damage.

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Replace section 56B(2)(c) with:

- (c) the person fails to prevent, so far as is reasonably practicable, the serious harm or significant property damage.

Replace section 56B(5) with:

- (5) To avoid doubt, a person required by this section to prevent, so far as is reasonably practicable, serious harm or significant property damage is required to take action only in respect of circumstances that the person knows, or ought reasonably to know, about.

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**Income Tax Act 2007 (2007 No 97)**

Replace section CX 24(b) with:

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**Income Tax Act 2007 (2007 No 97)—continued**

- (b) is aimed at managing risks to health and safety in the workplace as provided under **Parts 1 to 5 of the Health and Safety Reform Act 2014**; and

**Inspector-General of Intelligence and Security Act 1996 (1996 No 47)**

After section 11(1)(b), insert:

- (bb) to inquire into a request by a worker who is an employee of the New Zealand Security Intelligence Service or the Government Communications Security Bureau for a determination under **section 6A(7) of the Health and Safety Reform Act 2014**:

**Maritime Transport Act 1994 (1994 No 104)**

In section 2(1), replace the definition of **serious harm** with:

- serious harm** means—
- (a) death; or
- (b) a notifiable injury or illness as defined in **section 18 of the Health and Safety Reform Act 2014**

Replace section 57(6)(b)(iv) with:

- (iv) the regulator, an inspector, or any other person under **Parts 1 to 5 of the Health and Safety Reform Act 2014**,—

**Mines Rescue Act 2013 (2013 No 96)**

~~In section 4(1),—~~

- (a) ~~definition of **coal**, replace “section 19L of the Health and Safety in Employment Act 1992” with “**clause 1 of Schedule 2 of the Health and Safety Reform Act 2014**”;~~
- (b) ~~definition of **mineral**, replace “section 19L of the Health and Safety in Employment Act 1992” with “**clause 1 of Schedule 2 of the Health and Safety Reform Act 2014**”;~~
- (e) ~~definition of **tourist mining operation**, replace “section 19L of the Health and Safety in Employment Act 1992” with “**clause 1 of Schedule 2 of the Health and Safety Reform Act 2014**”.~~

In section 4(1), definition of **coal**, replace “section 19L of the Health and Safety in Employment Act 1992” with “**clause 1 of Schedule 2 of the Health and Safety Reform Act 2014**”.

In section 4(1), definition of **mineral**, replace “section 19L of the Health and Safety in Employment Act 1992” with “**clause 1 of Schedule 2 of the Health and Safety Reform Act 2014**”.

**Mines Rescue Act 2013 (2013 No 96)—continued**

In section 4(1), definition of **tourist mining operation**, replace “section 19L of the Health and Safety in Employment Act 1992” with “**clause 1 of Schedule 2 of the Health and Safety Reform Act 2014**”.

~~In section 4(2), definition of **mining operation**,~~

(a) ~~replace “section 19M of the Health and Safety in Employment Act 1992” with “**clause 2 of Schedule 2 of the Health and Safety Reform Act 2014**”.~~ 5

(b) ~~replace “section 19O” with “**clause 4 of Schedule 2**”.~~

In section 4(2), definition of **mining operation**, replace “section 19M of the Health and Safety in Employment Act 1992” with “**clause 2 of Schedule 2 of the Health and Safety Reform Act 2014**”.

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In section 4(2), definition of **mining operation**, replace “section 19O” with “**clause 4 of Schedule 2**”.

~~In section 4(3), definition of **mining operation**,~~

(a) ~~replace “section 19M of the Health and Safety in Employment Act 1992” with “**clause 2 of Schedule 2 of the Health and Safety Reform Act 2014**”.~~ 15

(b) ~~replace “section 19O” with “**clause 4 of Schedule 2**”.~~

In section 4(3), definition of **mining operation**, paragraph (a), replace “section 19M of the Health and Safety in Employment Act 1992” with “**clause 2 of Schedule 2 of the Health and Safety Reform Act 2014**”

In section 4(3), definition of **mining operation**, paragraph (b), replace “section 19O” with “**clause 4 of Schedule 2**”.

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~~**Modern Apprenticeship Training Act 2000 (2000 No 94)**~~

~~Repeal section 19 and the cross heading above that section.~~

**Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74)**

In section 4, definition of **serious harm**, replace paragraph (d) with: 25

(d) a notifiable injury or illness as defined in **section 18 of the Health and Safety Reform Act 2014**

**Prostitution Reform Act 2003 (2003 No 28)**

In the heading to section 10, replace “**Health and Safety in Employment Act 1992**” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

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In section 10(1), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

**Railways Act 2005 (2005 No 37)**

~~In section 4(1),~~

**Railways Act 2005 (2005 No 37)—continued**

- (a) ~~definition of **railway**, paragraph (a), delete “as defined in section 21A(1) of the Machinery Act 1950”; and~~
- (b) ~~definition of **railway line**, paragraph (c), delete “as defined in section 21A(1) of the Machinery Act 1950”; and~~
- (c) ~~insert in their appropriate alphabetical order:~~

~~**amusement device—**~~

- (a) ~~means an appliance—~~
- ~~(i) to which the motion of a prime mover is transmitted; and~~
- ~~(ii) that is used, or designed or intended to be used, for the amusement, recreation, or entertainment of persons being carried, raised, lowered, or moved by the appliance or any part of the appliance while it is in motion; and~~
- (b) ~~includes the prime mover, transmission machinery, supporting structure, and any equipment used or intended to be used in connection with the appliance~~

~~**prime mover** means an engine, motor, or other appliance which provides mechanical energy derived from steam, water, wind, electricity, gas, gaseous products, compressed air, the combustion of fuel, or any other source~~

~~**transmission machinery** means any shaft, wheel, drum, pulley, system of fast and loose pulleys, gearing, coupling, clutch, driving belt, chain, rope, band, or other device by which the motion of a prime mover is transmitted to or received by any machine or appliance~~

In section 4(1), definition of **railway**, paragraph (a), delete “as defined in section 21A(1) of the Machinery Act 1950”.

In section 4(1), definition of **railway line**, paragraph (c), delete “as defined in section 21A(1) of the Machinery Act 1950”.

In section 4(1), insert in their appropriate alphabetical order:

~~**amusement device—**~~

- (a) ~~means an appliance—~~
- ~~(i) to which the motion of a prime mover is transmitted; and~~
- ~~(ii) that is used, or designed or intended to be used, for the amusement, recreation, or entertainment of persons being carried, raised, lowered, or moved by the appliance or any part of the appliance while it is in motion; and~~
- (b) ~~includes the prime mover, transmission machinery, supporting structure, and any equipment used or intended to be used in connection with the appliance~~



**Railways Act 2005 (2005 No 37)—continued**

**health and safety regulator** has the same meaning as **regulator** in **section 12 of the Health and Safety Reform Act 2014**

**prime mover** means an engine, motor, or other appliance that provides mechanical energy derived from steam, water, wind, electricity, gas, gaseous products, compressed air, the combustion of fuel, or any other source

**transmission machinery** means any shaft, wheel, drum, pulley, system of fast and loose pulleys, gearing, coupling, clutch, driving belt, chain, rope, band, or other device by which the motion of a prime mover is transmitted to or received by any machine or appliance

In section 4(1), repeal the definition of **WorkSafe**.

Replace section 5 with:

**5 Meaning of reasonably practicable**

In this Act, unless the context otherwise requires, **reasonably practicable**, in relation to a duty to ensure health and safety or to protect property, means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety or the protection of property, taking into account and weighing up all relevant matters, including—

- (a) the likelihood of the hazard or the risk concerned occurring; and
- (b) the degree of harm or damage that might result from the hazard or risk; and
- (c) what the person concerned knows, or ought reasonably to know, about—
  - (i) the hazard or risk; and
  - (ii) ways of eliminating or minimising the risk; and
- (d) the availability and suitability of ways to eliminate or minimise the risk; and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

Replace section 7(1) with:

- (1) A rail participant must ensure, so far as is reasonably practicable, that none of the rail activities for which it is responsible causes, or is likely to cause, the death of, or serious injury to, individuals.

In the heading to section 8, replace “**Health and Safety in Employment Act 1992**” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In section 8, replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**” in each place.

In section 8(2), replace “**WorkSafe**” with “the health and safety regulator”.

**Railways Act 2005 (2005 No 37)—continued**

Replace section 9(1) with:

- (1) Every person on or near a rail vehicle, railway infrastructure, or railway premises commits an offence who fails to ensure, so far as is reasonably practicable, that no individual dies or is seriously injured, and that no property is significantly damaged, as a result of any act or omission of that person.

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In section 32(1), replace “the chief executive of the Department of Labour” with “WorkSafe”.

Replace section 65(a)(ii) with:

- (ii) failed to prevent, so far as was reasonably practicable, the commission of the offence; and

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Replace section 65(b) with:

- (b) the other person failed to remedy, so far as was reasonably practicable, the effects of the act or omission that gave rise to the offence.

Replace section 66(b) with:

- ~~(b) he or she failed to prevent or stop, so far as was reasonably practicable, that act, or remedy that omission.~~
- (b) he or she failed, so far as was reasonably practicable, to prevent or stop that act or remedy that omission.

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**Search and Surveillance Act 2012 (2012 No 24)**

In the Schedule, insert in its appropriate alphabetical order:

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<b>Health and Safety Reform Act 2014</b>	<b>186(2)</b>	<del>Power of inspectors to enter homes</del> <u>Inspector may obtain and execute search warrant to enter a home (or part of a home) and exercise section 185 powers if satisfied that there are reasonable grounds for believing that the home is a workplace or has a workplace within it, or that the home is the only practicable means through which the inspector or may enter the workplace</u>	<b>Subpart 3</b>
	<del>489(6) and (7)</del> <b>189(1)</b>	<del>Powers to take samples and other objects and things</del> <u>Inspector who has entered a workplace or a former workplace under section 185 or 186 may take or remove sample of any material, substance, or thing for analysis, or seize and retain any material, substance, or thing for specified purposes</u>	<b>Sections 154, 155, and 159</b>
	<del>490(3)</del>	<del>An issuing officer may issue a search warrant in relation to a place, vehicle, or thing</del>	<b>Subpart 3</b>

**Search and Surveillance Act 2012 (2012 No 24)—continued**

<del><b>490(6)</b></del> <del><b>190(1)</b></del> <del><b>and (3)</b></del>	<del>Powers of regulator to authorise making of applications for search warrants—Specified person may enter and search place, vehicle, or other thing by consent or with warrant to ascertain if person is contravening relevant health and safety legislation</del>	<b>All (except sections 118 and 119)</b>
<del><b>499(3)</b></del> <del><b>199(1)</b></del> <del><b>and (3)</b></del>	<del>Powers of entry and inspection of health and safety medical practitioners—Health and safety medical practitioner may obtain and execute search warrant to enter a home (or part of a home) and exercise powers of examination, inspection, and related powers if satisfied that there are reasonable grounds for believing that the home is a workplace or has a workplace within it, or that the home is the only practicable means through which the health and safety medical practitioner may enter the workplace</del>	<b>Subpart 3</b>

**Sentencing Act 2002 (2002 No 9)**

In section 4(4), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

**Sharemilking Agreements Act 1937 (1937 No 37)**

In the Schedule, clause 124, replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

**Smoke-free Environments Act 1990 (1990 No 108)**

In section 2(1), repeal the definition of **prescribed petroleum operations**.

In section 10(c), replace “prescribed petroleum operations in New Zealand continental waters” with “mining operations within the meaning of the Crown Minerals Act 1991”.

In section 14(1)(d), replace “the Health and Safety in Employment Act 1992” with “**section 181 of the Health and Safety Reform Act 2014**”.

Replace section 20A with:

<b>20A</b>	<b>Parts 1 to 5 of Health and Safety Reform Act 2014 not affected</b>	15
	Nothing in this Part, and no steps taken in compliance or purported compliance with this Part, limits or affects—	
	(a) <b>Parts 1 to 5 of the Health and Safety Reform Act 2014</b> ; or	
	(b) the obligations of any person under that Act.	

**Social Security Act 1964 (1964 No 136)**

In the heading to section 123C, replace “**Health and Safety in Employment Act 1992**” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In section 123C(2), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

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**Summary Proceedings Act 1957 (1957 No 87)**

In section 2(1), definition of **infringement notice**, after paragraph (ja), insert:

(jb) **section 159 of the Health and Safety Reform Act 2014**; or

**Terrorism Suppression Act 2002 (2002 No 34)**

In section 13B(2), replace “Hazardous Substances and New Organisms Act 1996” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

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**Victims’ Rights Act 2002 (2002 No 39)**

In section 50A(2)(c), replace “Department of Labour” with “Ministry of Business, Innovation, and Employment”.

**Part 2**

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**Amendments to legislative instruments****Biosecurity (Costs) Regulations 2010 (SR 2010/135)**

In regulation 3(1), replace the definition of **machinery** with:

**machinery** means an engine, a motor, or any appliance that provides mechanical energy derived from compressed air, electricity, gas, gaseous products, steam, water, wind, the combustion of fuel, or any other source; and includes—

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- (a) any plant by or to which the motion of any machinery is transmitted; and
- (b) a tractor, a lifting machine, a lifting vehicle, and a machine whose motive power is wholly or partly generated by the human body

**Education (Playgroups) Regulations 2008 (SR 2008/205)**

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Replace regulation 21(b) with:

- (b) ensure, so far as is reasonably practicable, the health and safety of children attending the playgroup; and

**Electricity (Safety) Regulations 2010 (SR 2010/36)**

In regulation 4(1), definition of **alluvial mine operator**, replace “regulation 3(1) of the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013” with “regulations made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

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**Electricity (Safety) Regulations 2010 (SR 2010/36)—continued**

In regulation 4(1), definition of **alluvial mining operation**, replace “section 19L of the Health and Safety in Employment Act 1992” with “**clause 1 of Schedule 2 of the Health and Safety Reform Act 2014**”.

In regulation 4(1), definition of **ERZ0**, replace “regulation 3(1) of the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013” with “regulations made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In regulation 4(1), definition of **ERZ1**, replace “regulation 3(1) of the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013” with “regulations made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In regulation 4(1), definition of **mine operator**, replace “section 19L of the Health and Safety in Employment Act 1992” with “**clause 1 of Schedule 2 of the Health and Safety Reform Act 2014**”.

In regulation 4(1), definition of **mining electrical equipment**, paragraph (a), replace “section 19M(a) or (b), 19N(1)(a), or 19O(a) of the Health and Safety in Employment Act 1992” with “**clause 2(a) and (b), 3(1)(a), or 4(a) of Schedule 2 of the Health and Safety Reform Act 2014**”.

In regulation 4(1), definition of **mining operation**, replace “section 19M of the Health and Safety in Employment Act 1992” with “**clause 2 of Schedule 2 of the Health and Safety Reform Act 2014**”.

In regulation 4(1), definition of **opencast mining operation**, replace “regulation 3(1) of the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013” with “regulations made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In regulation 4(1), definition of **quarry operator**, replace “regulation 3(1) of the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013” with “regulations made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In regulation 4(1), definition of **quarrying operation**, replace “section 19N of the Health and Safety in Employment Act 1992” with “**clause 3 of Schedule 2 of the Health and Safety Reform Act 2014**”.

In regulation 4(1), replace the definition of **safety management system** with:

**safety management system** means a system that is implemented by a safety management system operator for the purpose of ensuring, so far as is reasonably practicable, that an electricity supply system (as defined in section 61A(2) of the Act) or other works is prevented from presenting a significant risk of—

- (a) serious harm to any member of the public; or
- (b) significant damage to property owned by a person other than the safety management system operator

**Electricity (Safety) Regulations 2010 (SR 2010/36)—continued**

In regulation 4(1), definition of **tourist mining operation**, replace “section 19L of the Health and Safety in Employment Act 1992” with “**clause 1 of Schedule 2 of the Health and Safety Reform Act 2014**”.

In regulation 4(1), definition of **tunnelling operation**, replace “section 19O of the Health and Safety in Employment Act 1992” with “**clause 4 of Schedule 2 of the Health and Safety Reform Act 2014**”.

In regulation 4(1), definition of **underground mining operation**, replace “regulation 3(1) of the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013” with “regulations made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

Replace regulation 13(3) with:

- (3) A person who does work on any works, installations, fittings, or appliances must, while doing the work, ensure, so far as is reasonably practicable, that people and property are protected from dangers arising from the work.

Replace regulations 13(5)(c) with:

- (c) while doing work on any works, installations, fittings, or appliances, fails to ensure, so far as is reasonably practicable, that people and property are protected from dangers arising from the work, where the person doing the work knows, or can reasonably be expected to know, of the dangers that may arise from the work.

In regulation 16(1), replace “take all practicable steps to minimise” with “minimise, so far as is reasonably practicable.”.

In regulation 24B(2), replace “Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013” with “regulations made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

Replace section 51(1)(c) with:

- (c) the effect of the safety management system is to prevent, so far as is reasonably practicable, the works from presenting a significant risk of—
- (i) serious harm to any member of the public; or
- (ii) significant damage to property owned by a person other than the safety management system operator.

In regulation 100(1), replace “must take all practicable steps,—” with “must, so far as is reasonably practicable,—”.

In regulation 100(1)(a), replace “to check” with “check”.

In regulation 100(1)(b), replace “to follow” with “follow”.

In regulation 100(1)(c), replace “to use” with “use”.

In regulation 100(1)(d), replace “to comply” with “comply”.

**Electricity (Safety) Regulations 2010 (SR 2010/36)—continued**

In regulation 100(2), replace “the Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

Replace regulation 101(1) with:

- (1) An employer who employs a person to carry out any prescribed electrical work, or any work referred to in clause (2)(e) to (h) of Schedule 1, must ensure, so far as is reasonably practicable, the safety of the employee while carrying out the work and must take the steps described in subclauses (2) and (3) in particular.

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In regulation 101(2), replace “The employer must take all practicable steps to—” with “The employer must, so far as is reasonably practicable,—”.

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In regulation 101(3), replace “must take all practicable steps to ensure” with “must ensure, so far as is reasonably practicable.”.

In regulation 101(5), replace “the Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

Replace regulation 104(6) with:

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- (6) A person may remove an earthing device to test a fitting, but must ensure, so far as is reasonably practicable, his or her own safety and the safety of others in the vicinity.

In regulation 107, replace “take all practicable steps to comply” with “comply, so far as is reasonably practicable.”.

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In Schedule 8, clause 1, definition of **NERZ**, replace “regulation 3(1) of the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013” with “regulations made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In Schedule 8, clause 1, definition of **underground coal mining operation**, replace “regulation 3(1) of the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013” with “regulations made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

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In Schedule 8, clause 1, definition of **underground metalliferous mining operation**, replace “regulation 3(1) of the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013” with “regulations made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

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In Schedule 8, clause 37(3), replace “the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013” with “regulations made under **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

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**Gas (Safety and Measurement) Regulations 2010 (SR 2010/76)**

In regulation 3(1), revoke the definition of **all practicable steps**.

In regulation 3(1), after the definition of **point of supply**, insert:

**Gas (Safety and Measurement) Regulations 2010 (SR 2010/76)—continued**

**reasonably practicable** has the meaning given in section 2(1) of the Act

In regulation 3(1), replace the definition of **safety management system** with:

**safety management system** means a system that is implemented by a safety management system operator for the purpose of ensuring, so far as is reasonably practicable, that the gas supply system is prevented from presenting a significant risk of—

- (a) serious harm to any member of the public; or
- (b) significant damage to property owned by a person other than the safety management system operator

In regulation 26(1) replace “must take all practicable steps to ensure” with “must ensure, so far as is reasonably practicable,”.

In regulation 26(4) replace “fails to take all practicable steps to ensure” with “fails to ensure, so far as is reasonably practicable,”.

In regulation 27(1), replace “must take all practicable steps to ensure” with “must ensure, so far as is reasonably practicable,”.

Replace regulation 35(1)(c) with:

- (c) the effect of the safety management system is to prevent, so far as is reasonably practicable, the gas supply system from presenting a significant risk of—
  - (i) serious harm to any member of the public; or
  - (ii) significant damage to property owned by a person other than the safety management system operator.

In regulation 53(2), replace “must take all practicable steps to ensure” with “must ensure, so far as is reasonably practicable,”.

In regulation 74(1), replace “must take all practicable steps to ensure” with “must ensure, so far as is reasonably practicable,”.

In regulation 74(4), replace “before taking all practicable steps to ensure” with “before ensuring, so far as is reasonably practicable,”.

Replace regulation 75(1) with:

- (1) Every person who hires or leases out, or who offers to hire or lease out, any gas appliance, fittings, or gas installation or any property or premises containing a gas appliance, fittings, or gas installation must ensure, so far as is reasonably practicable,—
  - (a) that before hiring, leasing, or offering to hire or lease, the gas appliance, fittings, or gas installation is safe; and
  - (b) that the gas appliance, fittings, or gas installation is accompanied by instructions for its safe use, including information on any maintenance or ongoing safety inspections that are required.



**Gas (Safety and Measurement) Regulations 2010 (SR 2010/76)—continued**

In regulation 78(2), replace “must take all practicable steps to ensure” with “must ensure, so far as is reasonably practicable.”.

In regulation 80(1), replace “must take all practicable steps to ensure” with “must ensure, so far as is reasonably practicable.”.

**Hazardous Substances (Packaging) Regulations 2001 (SR 2001/118)** 5

In regulation 3, revoke the definition of **employee**.

In regulation 3, after the definition of **UN Model Regulations**, insert:

**worker** has the same meaning as in **section 14 of Parts 4 to 6 of the Health and Safety Reform Act 2014**.

**Health and Safety in Employment (Pipelines) Regulations 1999 (SR 1999/350)** 10

In regulation 2, replace definition of **the Act** with:

**Act** means the **Health and Safety Reform Act 2014**

In regulation 3, replace “place of work” with “workplace” in each place.

In regulation 5(1), (2), and (3), replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”. 15

In regulation 6(1), replace “must take all practicable steps to” with “must, so far as is reasonably practicable.”.

In regulation 7(1), replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

In regulation 8(1) and (2), replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”. 20

In regulation 9(4), replace “his or her” with “its”.

In regulation 11(1), (3), and (6), replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

In regulation 12(3), (4), and (5) replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”. 25

In regulation 13(1) and (2), replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

In regulation 14, replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”. 30

In regulation 15(1), replace “must take all practicable steps to notify” with “must, so far as is reasonably practicable, notify”.

Replace regulation 16(1) with:

(1) An employer—

**Health and Safety in Employment (Pipelines) Regulations 1999 (SR 1999/350)—**  
*continued*

- (a) must, so far as is reasonably practicable, ensure that any work on, in, or around a pipeline is undertaken in such a manner as to minimise any significant hazards that may arise; and
- (b) must ensure that, before work is undertaken, the manager is notified of those activities specified in subclause (4) that are likely to adversely affect the structural integrity or operation of any pipeline and create a significant hazard.

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In regulation 16(2), replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

In regulation 17(1), replace “place of work must take all practicable steps to develop” with “workplace must, so far as is reasonably practicable, develop”.

10

Revoke the cross-heading above regulation 19.

Revoke regulation 19.

**Health and Safety in Employment (Pressure Equipment, Cranes, Passenger Ropeways) Regulations 1999 (SR 1999/128)**

15

In regulation 3, replace “place of work” with “workplace”.

In regulation 8(1), replace “must take all practicable steps in relation to equipment, to ensure” with “must, so far as is reasonably practicable, in relation to equipment, ensure”.

In regulation 8(2), replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

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In regulation 8(5), replace “place of work” with “workplace” in each place.

In regulation 9(1), replace “must take all practicable steps to ensure that” with “must, so far as is reasonably practicable, take steps to ensure that”.

In regulation 9(2)(a), replace “place of work” with “workplace”.

25

In regulation 10(1), (2), (3), and (5), replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

In regulation 11, replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

In regulation 12, replace “must, as soon as practicable, take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

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In regulation 13(2) and (3), replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

In regulation 14, replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

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In regulation 15(3), replace “must take all practicable steps to notify” with “must, so far as is reasonably practicable, notify”.

**Health and Safety in Employment (Pressure Equipment, Cranes, Passenger Ropeways) Regulations 1999 (SR 1999/128)—continued**

In regulation 17(6), replace “takes all practicable steps” with “takes steps, so far as is reasonably practicable.”

In regulation 18, replace “must take all practicable steps to” with “must, so far as is reasonably practicable.”

In regulation 19(1), replace “must take all practicable steps, in relation to equipment, to ensure” with “must, so far as is reasonably practicable, in relation to equipment, ensure”. 5

In regulation 19(2), (3), and (4), replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

In regulation 20(1), (2), and (3), replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”. 10

In regulation 21(3), (4), (5), and (6), replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

In regulation 28(2), replace “must take all practicable steps to comply” with “must, so far as is reasonably practicable, comply”. 15

In regulation 29(4), replace “him or her” with “it”.

In regulation 36(1), replace “must take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

Revoke Part 6.

In Schedule 1, replace the definition of **Act** with: 20

**Act means the Health and Safety Reform Act 2014**

In Schedule 1, definition of **manufacture**, replace “place of work” with “workplace”.

In Schedule 1, definition of **manufacturer**, replace “place of work” with “workplace”.

In Schedule 1, definition of **supplier**, replace “place of work” with “workplace” in each place. 25

**Health and Safety in Employment Regulations 1995 (SR 1995/167)**

In regulation 2, replace the definition of **Act** with:

**Act means the Health and Safety Reform Act 2014**

In regulation 2, definition of **plant**, replace “place of work” with “workplace”. 30

In regulation 10(1)(a) and (b), replace “place of work” with “workplace”.

In regulation 10(2)(a), replace “place of work” with “workplace” in each place.

In regulation 11(1), replace “shall take all practicable steps to ensure, in relation to every place of work” with “must, so far as is reasonably practicable, ensure, in relation to every workplace”. 35

**Health and Safety in Employment Regulations 1995 (SR 1995/167)—continued**

In regulation 11(2)(b), replace “place of work” with “workplace”.

In regulation 11(3), replace “has taken all practicable steps to ensure that no employee at any place of work” with “has, so far as is reasonably practicable, taken steps to ensure that no employee at any workplace”.

In regulation 11(3)(a), replace “place of work” with “workplace”.

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In regulation 12, replace “place of work” with “workplace” in each place.

In regulation 17(1), replace “shall take all practicable steps to ensure, in relation to every place of work” with “must, so far as is reasonably practicable, ensure, in relation to every workplace”.

In regulation 17(2), replace “shall take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

10

In regulation 18, replace “place of work under the control of any employer, that employer shall take all practicable steps to ensure” with “workplace under the control of any employer, that employer must, so far as is reasonably practicable, ensure”.

In regulation 19(1)(a), replace “place of work” with “workplace”.

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In regulation 19(3), replace “takes all practicable steps to ensure that every employee at every place of work” with “has, so far as is reasonably practicable, taken steps to ensure that every employee at every workplace”.

In regulation 20(1) and (2), replace “shall take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

20

In regulation 21(1), replace “place of work” with “workplace”.

In regulation 21(2), replace “shall take all practicable steps to ensure, in relation to every place of work” with “must, so far as is reasonably practicable, ensure, in relation to every workplace”.

In regulation 22(1), replace “place of work” with “workplace” in each place.

25

In regulation 22(2), replace “shall take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

In regulation 23(1) and (2), replace “place of work” with “workplace” in each place.

In regulation 24(1), replace “shall take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

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In regulation 24(2)(d), replace “takes all practicable steps to ensure” with “has, so far as is reasonably practicable, taken steps to ensure”.

In regulation 24(3), replace “shall take all practicable steps to ensure that any shoring used in any excavation at the place of work” with “must, so far as is reasonably practicable, ensure that any shoring used in any excavation at the workplace”.

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In regulation 25, replace “shall take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

In regulation 26(1), replace “place of work” with “workplace”.

**Health and Safety in Employment Regulations 1995 (SR 1995/167)—continued**

In regulation 26(2), replace “shall take all practicable steps to lodge” with “must, so far as is reasonably practicable, take steps to lodge”.

In regulation 47, replace “place of work” with “workplace” in each place.

In regulation 48(1), replace “shall take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

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In regulation 49, replace “shall take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

In regulation 50, replace “place of work” with “workplace” in each place.

In regulation 52(1), replace “shall take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

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In regulation 53(1), replace “shall take all practicable steps to ensure” with “must, so far as is reasonably practicable, ensure”.

Revoke Part 8.

**Health Entitlement Cards Regulations 1993 (SR 1993/169)**

~~In regulation 17, definition of general medical services, paragraph (e)(x), replace “any place of work (within the meaning given to that term by the Health and Safety in Employment Act 1992)” with “a workplace as defined in section 15 of the Health and Safety Reform Act 2014”.~~

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**Mines (Rescue) Levy Regulations 2014 (LI 2014/21)**

In regulation 4, definition of **opencast coal mining operation**, replace “section 19M of the Health and Safety in Employment Act 1992” with “**clause 2 of Schedule 2 of the Health and Safety Reform Act 2014**”.

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In regulation 4, definition of **suspended**, replace “section 19M(a) and (b) of the Health and Safety in Employment Act 1992” with “**clause 2(a) and (b) of Schedule 2 of the Health and Safety Reform Act 2014**”.

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In regulation 4, definition of **tunnelling operation**, replace “section 19O of the Health and Safety in Employment Act 1992” with “**clause 4 of Schedule 2 of the Health and Safety Reform Act 2014**”.

In regulation 4, definition of **underground coal mining operation**, replace “section 19M of the Health and Safety in Employment Act 1992” with “**clause 2 of Schedule 2 of the Health and Safety Reform Act 2014**”.

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In regulation 4, definition of **underground metalliferous mining operation**, replace “section 19M of the Health and Safety in Employment Act 1992” with “**clause 2 of Schedule 2 of the Health and Safety Reform Act 2014**”.

**Railways Regulations 2008 (SR 2008/108)**

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In regulation 9(b)(ii), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

**Railways Regulations 2008 (SR 2008/108)**—*continued*

In regulation 10(d), replace “Health and Safety in Employment Act 1992” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

**Schedule 4**  
**New Schedule 1AA inserted in Accident Compensation Act 2001**

s 251

**Schedule 1AA**

**Transitional and savings provisions relating to amendments to this Act made by subpart 1 of Part 6 of the Health and Safety Reform Act 2014**

ss 5A, 402

- 1 Transitional provision relating to risk adjustment of Work Account levies**
- (1) This clause applies to any employer or self-employed person if the Work Account levy payable by that person immediately before the commencement of this schedule has been adjusted down in accordance with regulations made for the purposes of section 175(1). 10
- (2) A person to whom this clause applies continues to be eligible to pay a Work Account levy at an adjusted rate until— 15
- (a) the person gives notice in writing to the Corporation that the person no longer wishes to pay the levy at the adjusted rate; or
- (b) the person's adjusted levy is cancelled or discontinued in accordance with the regulations; or
- (c) the period to which the adjustment relates expires. 20
- (3) For the purposes of **subclause (2)**,—
- (a) section 175, including the power to make regulations, continues to apply as if it had not been amended by **subpart 1 of Part 6 of the Health and Safety Reform Act 2014**; and
- (b) the regulations in force immediately before the commencement of this schedule in accordance with which the person's rate was adjusted, or the person's adjusted rate was continued, continue to apply until— 25
- (i) they are replaced by regulations made under **paragraph (a)**; or
- (ii) this clause is repealed.
- (4) This clause is repealed on ~~1 April 2018~~ 30 June 2019. 30
- 2 Transitional provision relating to Accredited Employers Programme**
- (1) This clause applies to any employer who—
- (a) is an accredited employer under the accredited employers programme framework established by the Minister under section 183; and
- (b) is entitled to a safety management practices discount set out in regulations made under section 175. 35

- (2) For the purposes of calculating the premium payable by a person to whom this clause applies, the regulations made under section 175 that were in force immediately before the commencement of this schedule, and any replacement regulations made under **clause 1(3)(a)**, continue to apply until—
- (a) the accredited employers programme framework is amended or revoked;
  - or
  - (b) this clause is repealed.
- (3) This clause is repealed on 30 June 2019.

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**Schedule 5**  
**Schedule 7 replaced in Hazardous Substances and New Organisms**  
**Act 1996**

s 292

<b>Schedule 7</b>		5
<b>Transitional and savings provisions relating to amendments to Act</b>		
		s 3A
<b>1</b>	<del><b>Existing controls applying to approvals (including deemed approvals)</b></del>	
(1)	<del>This clause applies to—</del>	
	(a) <del>an approval for a hazardous substance or group of hazardous substances given under Part 5 that is in force immediately before the commencement of this schedule;</del>	10
	(b) <del>an approval for a hazardous substance or group of hazardous substances deemed to have been given under section 29 by—</del>	
	(i) <del>the Hazardous Substances (Fireworks, Safety Ammunition, and Other Explosives Transfer) Regulations 2003; or</del>	15
	(ii) <del>a notice issued under section 160A that is in force immediately before the commencement of this schedule.</del>	
(2)	<del>All controls prescribed by regulations made under this Act that apply to the approval (as varied in the approval in accordance with section 77, 77A, or 77B (if applicable)) and that are in force immediately before the commencement of this schedule (<b>existing prescribed controls</b>) continue to apply to the approval according to their terms until—</del>	20
	(a) <del>the existing prescribed controls are revoked or replaced by controls prescribed under this Act or under <b>Parts 1 to 5 of the Health and Safety Reform Act 2014 (new controls)</b>; and</del>	25
	(b) <del>the Authority has—</del>	
	(i) <del>reviewed and amended the approval under <b>subclause (4)</b>; or</del>	
	(ii) <del>revoked the approval under <b>section 67B</b>.</del>	
(3)	<del>However, if any new controls conflict with the existing prescribed controls or other controls included in the approval, the new controls override the existing prescribed controls and the other controls to the extent of the conflict.</del>	30
(4)	<del>Despite sections 62 and 63, the Authority may review and, by public notice, amend the approval for the purpose of updating the approval to—</del>	
	(a) <del>take into account the revocation of existing prescribed controls or the replacement of existing prescribed controls with new controls; or</del>	35

- (b) ~~omit controls added by the Authority under section 77 or 77A to control the adverse effects of a hazardous substance on people in a workplace.~~
- (5) ~~The amendment of the approval under this clause is not a reassessment of a hazardous substance to which section 63 applies.~~
- (6) ~~If the Authority amends an approval or a deemed approval, it must reissue the amended approval—~~ 5
- (a) ~~under the provision under which the approval was granted; or~~
- (b) ~~in the case of an approval described in **subclause (1)(b)**, under section 29.~~
- 2 Existing group standards** 10
- (1) ~~This clause applies to a group standard issued under section 96B that is in force immediately before the commencement of this schedule.~~
- (2) ~~Any conditions imposed on a hazardous substance by a group standard that are controls prescribed by regulations made under this Act and that are in force immediately before the commencement of this schedule (**existing prescribed controls**) continue to apply to the hazardous substance according to the terms of the group standard until—~~ 15
- (a) ~~the existing prescribed controls are revoked or replaced by controls prescribed under this Act or under **Parts 1 to 5 of the Health and Safety Reform Act 2014** (**new controls**); and~~ 20
- (b) ~~the Authority has reviewed and amended the group standard under **subclause (4)**.~~
- (3) ~~However, if new controls conflict with the existing prescribed controls or other conditions of the group standard, the new controls override the existing prescribed controls and the conditions to the extent of the conflict.~~ 25
- (4) ~~The Authority may review and, by notice in the *Gazette*, amend a group standard for the purpose of updating the group standard to—~~
- (a) ~~take into account the revocation of existing prescribed controls or the replacement of existing prescribed controls with new controls; or~~
- (b) ~~omit conditions imposed by the Authority under section 96B to control the adverse effects of a hazardous substance on people in a workplace.~~ 30
- (5) ~~Sections 53 and 96C do not apply to the amendment of a group standard under this clause.~~
- 3 Existing regulations and codes of practice**
- (1) ~~This clause applies to—~~ 35
- (a) ~~regulations in force under this Act immediately before the commencement of this schedule that include any requirements that apply in relation to hazardous substances in workplaces; and~~

- (b) ~~codes of practice issued by the Authority for the purpose of implementing any requirement included in those regulations that are in force immediately before the commencement of this schedule.~~
- (2) ~~The regulations and codes of practice to which this clause applies continue in force until revoked or replaced.~~ 5
- (3) ~~The Authority may revoke any code to which this clause applies without complying with section 79(2) if satisfied that a corresponding code has been or is to be issued by WorkSafe New Zealand under **Parts 1 to 5 of the Health and Safety Reform Act 2014.**~~
- 4 Test certifiers and certificates** 10
- (1) This clause applies to —
- (a) ~~approvals of test certifiers in force under this Act immediately before the commencement of this schedule; and~~
- (b) ~~test certificates in force under this Act immediately before the commencement of this schedule.~~ 15
- (2) ~~The approval of a test certifier continues according to its terms (being for a period that expires 5 years after the date on which it was given or on the date of expiry specified in the approval, whichever occurs earlier).~~
- (3) ~~A reference to a test certifier in any regulations, notice, approval, or group standard in force immediately before the commencement of this schedule must be read as a reference to a corresponding certifier appointed or treated as having been appointed under **Parts 1 to 5 of the Health and Safety Reform Act 2014.**~~ 20
- (4) ~~A complaint received by the Authority about a test certifier under section 86 that is pending but has not been dealt with immediately before the commencement of this schedule must be transferred to and dealt with by WorkSafe New Zealand under **Parts 1 to 5 of the Health and Safety Reform Act 2014.** If an investigation into a complaint has been started but not been completed, the investigation must be taken over and completed by WorkSafe New Zealand under that Act.~~ 25
- (5) ~~Applications received by the Authority to be test certifiers under the Act that are pending immediately before the commencement of this schedule must be transferred to WorkSafe New Zealand and dealt with under **Parts 1 to 5 of the Health and Safety Reform Act 2014.**~~ 30
- (6) ~~Test certificates to which this clause applies, other than test certificates issued under the Hazardous Substances (Fireworks) Regulations 2001, must be treated as corresponding certificates under **Parts 1 to 5 of the Health and Safety Reform Act 2014.**~~ 35

<b>5</b>	<b><del>Controlled substances licences</del></b>	
(1)	<del>A licence in force under section 95B immediately before the commencement of this schedule continues in force despite the repeal of that section and must be treated as a licence required by regulations made under <b>Parts 1 to 5 of the Health and Safety Reform Act 2014</b>. The licence expires on the date on which it would have expired under the Hazardous Substances and New Organisms (Personnel Qualifications) Regulations 2001, whether or not those regulations or the relevant provisions of those regulations are still in force on that expiry date.</del>	5
(2)	<del>Any applications received by the Authority for licences under section 95B that are pending immediately before the commencement of this schedule must be dealt with and completed under this Act, and any licences issued must be treated as corresponding licences issued under <b>Parts 1 to 5 of the Health and Safety Reform Act 2014</b>.</del>	10
(3)	<del>If the Authority commenced an investigation under this Act into the holder of a licence under section 95B but did not complete the investigation before the commencement of this clause, the matter must be transferred to and completed by WorkSafe New Zealand under <b>Parts 1 to 5 of the Health and Safety Reform Act 2014</b>.</del>	15
<b>6</b>	<b><del>Pre-commencement action relating to EPA notices</del></b>	20
	<del><b>Subsections (1) and (2) of section 76B</b> are satisfied in relation to any EPA notice if action of the kind described in those subsections was taken before their commencement for the purpose of facilitating the making of the notice.</del>	
<b>8</b>	<b><del>Section 9(2) process does not apply if order removing references to hazardous substances</del></b>	25
	<del>Section 9(2) does not apply in respect of an Order in Council made under section 9 if its sole purpose is to remove from any existing order under that section any references to hazardous substances.</del>	
<b>9</b>	<b><del>Transitional matters may be provided for by EPA notices or regulations</del></b>	
(1)	<del>The Governor General may, by Order in Council, make regulations providing for transitional and savings matters that are in addition to the provisions of this schedule and that are necessary because of the coming into force of <b>subpart 2 of Part 6 of the Health and Safety Reform Act 2014</b>.</del>	30
(2)	<del>The Authority may, in any EPA notice, include transitional and savings provisions for the purpose of any matter in the notice that are necessary because of the coming into force of <b>subpart 2 of Part 6 of the Health and Safety Reform Act 2014</b>.</del>	35
(3)	<del>Transitional and savings provisions enacted under this clause are revoked at the close of whichever of the following periods ends first:</del>	
(a)	<del>the period during which the provisions are stated to be in force:</del>	40

~~(b) the period of 3 years from the commencement of this schedule.~~

~~10 **Expiry of clause 8**~~

~~**Clause 8** expires at the close of 3 years after the commencement of this schedule and is then revoked.~~

**1 Interpretation**

In this schedule, unless the context otherwise requires,—

**deemed approval** means an approval for a hazardous substance or group of hazardous substances deemed to have been given under section 29 by—

(a) the Hazardous Substances (Fireworks, Safety Ammunition, and Other Explosives Transfer) Regulations 2003; or

(b) a notice issued under section 160A that is in force immediately before the commencement of this schedule

**existing classification system**—

(a) means the hazard classification system that is provided for in the Hazardous Substances (Classification) Regulations 2001 and the Hazardous Substances (Minimum Degrees of Hazard) Regulations 2001, as in force immediately before the establishment of the new classification system; and

(b) if a hazardous substance has been given a hazard classification by the Authority for the purposes of an approval or is deemed to have a hazard classification under a deemed approval, includes the classification of that hazardous substance that it has been given or is deemed to have

**existing prescribed controls**—

(a) means controls prescribed by regulations made under this Act that apply to an individual approval or a deemed approval (as varied in the approval in accordance with section 77, 77A, or 77B) and that are in force immediately before the commencement of this schedule; and

(b) includes any conditions imposed on a hazardous substance by a group standard in force immediately before the commencement of this schedule

**further transitional measures** means transitional arrangements related to the existing classification system or existing prescribed controls, as provided for in—

(a) any approval or group standard that has been reissued in accordance with this schedule; or

(b) any EPA notice or regulations made under **clause 8** or **Parts 1 to 5 of the Health and Safety Reform Act 2014**

	<u><b>new classification system</b> means the hazard classification system provided for in an EPA notice issued under <b>section 74</b> on or after the commencement of this schedule</u>	
	<u><b>new controls</b> means the controls prescribed in an EPA notice issued under this Act on or after the commencement of this schedule.</u>	5
<u>2</u>	<u><b>Existing classification system applies for the purpose of applying existing prescribed controls</b></u> Despite any hazard classification under the new classification system, a hazardous substance may be classified under the existing classification system for the purpose of applying existing prescribed controls in accordance with—	10
	(a) <u>this schedule; or</u>	
	(b) <u>further transitional measures.</u>	
<u>3</u>	<u><b>Limitation on effect of existing prescribed controls</b></u> An existing prescribed control has no legal effect to the extent that it is replaced by any regulations or safe work instruments made under <b>Parts 1 to 5 of the Health and Safety Reform Act 2014.</b>	15
<u>4</u>	<u><b>Existing prescribed controls applying to approvals (including deemed approvals)</b></u>	
(1)	<u>This clause applies to—</u>	
	(a) <u>approvals for a hazardous substance or group of hazardous substances given under Part 5 that are in force immediately before the commencement of this schedule; and</u>	20
	(b) <u>deemed approvals.</u>	
(2)	<u>All existing prescribed controls continue to apply to the approval according to their terms, but subject to <b>clause 3</b>, until the Authority has—</u>	25
	(a) <u>reissued the approval under <b>subclause (3)</b>; or</u>	
	(b) <u>revoked the approval under <b>section 67B</b>.</u>	
(3)	<u>Despite sections 62 and 63, the Authority may review and, by public notice, amend and reissue the approval for the purpose of updating the approval to—</u>	
	(a) <u>take into account the new classification system, the revocation of existing prescribed controls or the replacement of existing prescribed controls with new controls; or</u>	30
	(b) <u>omit any control if it is reasonable to conclude that the purpose of the control is to address the adverse effects on people in the workplace and that any other aspect of the control is only incidental to that purpose.</u>	35
(4)	<u>The amendment and reissue of the approval under this clause is not a reassessment of a hazardous substance to which section 63 applies or a modified reassessment of a hazardous substance to which section 63A or 63C applies.</u>	

- (5) If an approval is reissued in accordance with this clause, it must be treated, without further need for a decision under the relevant provision referred to in **paragraph (a) or (b)**, as if it has been reissued—
- (a) under the provision under which the approval was granted; or
  - (b) in the case of an approval described in **subclause (1)(b)**, under section 29. 5
- (6) If the Authority reviews an approval under **subclause (3)** and considers it appropriate to identify a group of substances with approvals or deemed approvals that should be replaced with a group standard, the Authority may revoke the approvals or deemed approvals under **section 67B** and, by notice in the *Gazette*, issue a new group standard. 10
- (7) If the Authority issues a group standard in accordance with this clause—
- (a) sections 53 and 96C do not apply to the amendment or reissue of the group standard under this clause; and
  - (b) the group standard must be treated as if it has been issued under section 96B in accordance with the requirements of this Act. 15
- 5 Existing group standards**
- (1) This clause applies to group standards issued under section 96B that are in force immediately before the commencement of this schedule.
- (2) The existing prescribed controls in a group standard continue to apply to the hazardous substances concerned according to the terms of the group standard, but subject to **clause 3**, until the Authority has— 20
- (a) reissued the group standard under **subclause (3)**; or
  - (b) revoked the group standard under **section 67B**.
- (3) The Authority may review and, by notice in the *Gazette*, amend and reissue a group standard for the purpose of updating the group standard to— 25
- (a) take into account the new classification system, the revocation of existing prescribed controls, or the replacement of existing prescribed controls with new controls; or
  - (b) omit any condition imposed by the Authority under section 96B if it is reasonable to conclude that the purpose of the condition is to address the adverse effects on people in the workplace and that any other aspect of the condition is only incidental to that purpose. 30
- (4) The Authority may, if it considers appropriate, reissue a group standard under this clause that excludes hazardous substances or products that it formerly covered if those hazardous substances or products are moved to a different group standard that is also reissued under this clause or issued under **clause 4(6)**. 35
- (5) If the Authority reissues a group standard in accordance with this clause,—

- (a) sections 53 and 96C do not apply to the amendment of a group standard under this clause; and
- (b) the group standard must be treated as if it has been issued under section 96B in accordance with the requirements of this Act.
- 6 Existing regulations and codes of practice** 5
- (1) This clause applies to—
- (a) regulations in force under this Act immediately before the commencement of this schedule that include any requirements that apply in relation to hazardous substances in workplaces; and
- (b) codes of practice issued or approved by the Authority for the purpose of implementing any requirement included in those regulations that are in force immediately before the commencement of this schedule. 10
- (2) The regulations, codes of practice, and approvals of codes of practice to which this clause applies—
- (a) continue in force until revoked or replaced; and 15
- (b) even if revoked, continue in force for the purpose of applying any existing prescribed controls in accordance with—
- (i) this schedule; or
- (ii) further transitional measures.
- (3) The Authority may revoke any code or approval of a code to which this clause applies without complying with section 79(2) if satisfied that, as applicable, a corresponding code or guidance has been or is to be issued by— 20
- (a) WorkSafe under **Parts 1 to 5 of the Health and Safety Reform Act 2014**; or
- (b) the Authority, under this Act. 25
- 7 Pre-commencement action relating to EPA notices**
- Subsections (1) and (2) of section 76B** are satisfied in relation to any EPA notice if action of the kind described in those subsections was taken before their commencement for the purpose of facilitating the making of the notice.
- 8 Transitional matters may be provided for in regulations** 30
- (1) The Governor-General may, by Order in Council, make regulations providing for transitional and savings matters that are in addition to, or in place of, the provisions of this schedule and that are necessary because of the coming into force of **subpart 2 of Part 6 of the Health and Safety Reform Act 2014**. 35
- (2) Transitional and savings provisions enacted under this clause are revoked at the close of whichever of the following periods ends first:
- (a) the period during which the provisions are stated to be in force:



(b) the period of 3 years from the commencement of this schedule.

9 **Expiry of clause 8**

**Clause 8** expires at the close of 3 years after the commencement of this schedule and is then repealed.

**Schedule 6**  
**Consequential and other amendments to Hazardous Substances and  
 New Organisms Act 1996**

s 293

<b>Section 19</b>	5
<p>Repeal section 19(2)(f), <del>(ha)</del>, and (i).</p> <p>In section 19(2)(h), delete “or licence” in each place.</p> <p>In section 19(2)(h), replace “Ministry of Agriculture and Forestry” with “department for the time being responsible for the administration of the Biosecurity Act 1993”.</p>	
<b>Section 20</b>	10
<p>In section 20(2)(e), delete “and any associated licences granted under section 95B”.</p>	
<b><u>Section 24</u></b>	
<p><u>In section 24, replace “section 11(e)” with “section 11(1)(e)”.</u></p>	
<b><u>Section 47</u></b>	
<p><u>In section 47(1)(e), after “any regulations”, insert “or any EPA notice”.</u></p>	
<b><u>Section 49D</u></b>	
<p><u>In section 49D(2)(d), after “any regulations”, insert “or any EPA notice”.</u></p>	
<b>Section 63B</b>	
<p>In section 63B(2)(b), replace “section 96C(1)(h)(ii)” with “section <b>53(1A)(c)</b>”.</p> <p>In section 63B(3), replace “sections 96C(1)(h) and (2)” with “sections <b>53(1A)</b>, 96C(2),”.</p>	
<b><u>Part 6</u></b>	
<p><u>In the heading to Part 6, replace “<b>Controls</b>” with “<b>EPA controls</b>”.</u></p>	
<b><u>Section 88</u></b>	
<p><u>In section 88(a)(ii), after “scheme and”, insert “EPA”.</u></p>	
<b>Section 89</b>	
<p>In section 89(1), after “delete any”, insert “EPA”.</p>	
<b>Section 91</b>	
<p>In section 91(d), after “any other”, insert “EPA”.</p>	
<b><u>Section 96</u></b>	
<p><u>In section 96(1), after “by the”, insert “EPA”.</u></p>	

**Section 96—continued**

In section 96(1)(b), after “charge and”, insert “EPA”.

In section 96(3)(e), after “removing any”, insert “EPA”.

In section 96(3)(f), after “combination of”, insert “EPA”.

**Section 102**

In section 102(1), replace “sitework” with “building work” in each place. 5

In section 102(2), replace “sitework” with “building work”.

**Section 104**

~~In section 104(1)(a)(i) and (b), after “any regulations,”, insert “any EPA notice.”~~

In section 104(1)(a)(i), after “any regulations,”, insert “any EPA notice.”

In section 104(1)(b), after “any regulations,”, insert “any EPA notice, or any”. 10

In section 104(1)(b), replace “any regulations or” with “any regulations, any EPA notice, or”.

**Section 106**

In section 106(2)(a), replace “notice” with “compliance order”.

**Section 109**

15

~~In section 109(1)(c)(ii) and (iii), after “regulations”, insert “or EPA notice”.~~

~~In section 109(1)(c)(iii), delete “test”.~~

In section 109(1)(ea), replace “licence or permission granted under section 95A or section 95B” with “permission granted under section 95A”.

**Section 117**

20

In section 117(3), delete “test” in each place.

**Section 124**

In section 124(1)(a) and (2)(a), after “regulations”, insert “or any EPA notice”.

In section 124(1)(b), replace “port of entry or Customs airport” with “port or airport of entry”. 25

**Section 125**

In section 125(1)(da), delete “test”.

Repeal section 125(1)(~~da~~), (e), (f), and (g).

Replace section 125(1A) with:

(1A) A person may appeal to the District Court against a decision of the Authority, under section 95A,— 30

(a) about the terms and conditions of a permission held by the person; or

**Section 125**—*continued*

- (b) declining to grant the person a permission or revoking a permission held by the person.

In section 125(5)(a), replace “controls” with “EPA controls”.

**Section 141**

In section 141(1), replace “section 9(1), section 55(7), section 140(1)(i), (j), (m), or (n), or section 140A” with “section 9(1), 55(7), 140(1)(i), (j), or (m), or 140B”. 5

**Section 141A**

In section 141A(1), after “any regulations,”, insert “EPA notice,”.

In section 141A(1)(b), replace “a group standard, notice of transfer, or code” with “an EPA notice, a group standard, a notice of transfer, or a code”. 10

In section 141A(1)(b), after “of the regulations,”, insert “EPA notice,”.

In section 141A(2), after “in regulations,”, insert “an EPA notice,”.

In section 141A(2), after “in the regulations,”, insert “EPA notice,”.

In section 141A(3), after “the regulations,”, insert “EPA notice,”.

**Section 141B**

15

In section 141B(1), after “the regulations,”, insert “EPA notice,”.

In section 141B(2)(b), after “incorporated in”, insert “an EPA notice or”.

**Section 141C**

In section 141C(2), after “reference in”, insert “an EPA notice or”.

In section 141C(3), after “the regulations,”, insert “EPA notice,”. 20

**Section 141D**

In section 141D(1), after “the regulations,”, insert “EPA notice,”.

In section 141D(2)(b), after “incorporated in”, insert “an EPA notice or”.

**Section 141E**

In section 141E, after “in relation to material incorporated in regulations”, insert “, an EPA notice,”. 25

In section 141E(b), after “incorporated in”, insert “an EPA notice or”.

**Section 141F**

In section 141F(3), after “part of the”, insert “EPA notice or”.

In section 141F(4)(b), after “for approval”, insert “; or”. 30

After section 141F(4)(b), insert:

**Section 141F**—*continued*

- (c) in the case of an EPA notice, in accordance with **section 76B** (with all necessary modifications) as if the proposed amendment or replacement were a proposal to amend an EPA notice.

After section 141F(4), insert:

- (4A) However, there is no need to comply with subsection (2) or (4) in the case of an amendment to material incorporated by reference if the Minister or the chief executive, as the case may be, considers that the amendment is minor in effect or corrects a minor or technical error.

In section 141F(5), after “by reference or”, insert “an EPA notice or”.

**New section 141GA**

After section 141G, insert:

**141GA Access to material incorporated by reference in EPA notices**

- (1) This section applies if material is incorporated by reference in an EPA notice.
- (2) The chief executive of the Authority must—
- (a) make the material referred to in **subsection (5)** (the **incorporated material**) available for inspection during working hours, free of charge, at—
    - (i) the head office of the Authority; and
    - (ii) any other places that the chief executive may, at his or her discretion, determine are appropriate; and
  - (b) ensure that copies of the incorporated material are available for purchase by members of the public at a reasonable price; and
  - (c) make copies of the incorporated material available, free of charge, on an Internet site maintained by or on behalf of the Authority, unless doing so would infringe copyright in that material or be inconsistent with any other enactment or rule of law; and
  - (d) give notice in the *Gazette*—
    - (i) stating that the incorporated material is available for inspection during working hours, free of charge, and specifying the places at which it can be inspected; and
    - (ii) stating that copies of the incorporated material can be purchased and specifying the places at which they can be purchased; and
    - (iii) if applicable, stating that the incorporated material is available on the Internet, free of charge, and specifying the Internet site address.
- (3) The chief executive—

**New section 141GA**—*continued*

- (a) may make copies of the incorporated material available in any other way that he or she considers appropriate in the circumstances; and
- (b) must, if **paragraph (a)** applies, give notice in the *Gazette* stating that the incorporated material is available in other ways and specifying details of where or how it can be accessed or obtained. 5
- (4) The chief executive may comply with **subsection (2)(c)** by providing a hypertext link from an Internet site maintained by or on behalf of the Authority to a copy of the incorporated material that is available, free of charge, on an Internet site that is maintained by or on behalf of someone else.
- (5) The material is— 10
- (a) material incorporated by reference in an EPA notice:
- (b) any amendment to, or replacement of, that material that is incorporated in an EPA notice, or the material referred to in **paragraph (a)** with the amendments or replacement material incorporated:
- (c) if the material referred to in **paragraph (a) or (b)** is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material. 15
- (6) A failure to comply with this section does not invalidate an EPA notice that incorporates material by reference. 20

**Section 141I** 20

In section 141I, after “regulations,”, insert “EPA notices,” in each place.

**Section 142**

In section 142(2), replace “regulations and notices of transfer made” with “regulations, EPA notices, and notices of transfer made or issued”.

In section 142(6), replace “regulations made” with “EPA notices issued” in each place. 25

**Schedule 3**

In Schedule 3, the Part 3 heading, after “addressed by”, insert “EPA”.

In Schedule 3, Part 3, clause 1, replace “the controls” with “the EPA controls”.

In Schedule 3, Part 3, clause 2, replace “the controls” with “the EPA controls”. 30

In Schedule 3, Part 3, clause 3, replace “controls” with “EPA controls”.

In section 104(1)(a)(i) and (b), after “any regulations,”, insert “any EPA notice,”.

**Schedule 7**  
**Amendments to other enactments relating to hazardous substances**

s 294

**Part 1**  
**Amendments to Acts**

5

**Building Act 2004 (2004 No 72)**

Replace section 42A(2)(d) with:

- (d) the building to which the building work relates is not a hazardous substance location that is required to be authorised under **Parts 1 to 5 of the Health and Safety Reform Act 2014** or any regulations made under that Act.

10

**Gas Act 1992 (No 1992 No 124)**

In section 37(4), after “Hazardous Substances and New Organisms Act 1996”, insert “or **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

**Medicines Act 1981 (1981 No 118)**

15

In section 110(2), replace “regulations made under that Act” with “regulations made or EPA notices issued under that Act”.

**Psychoactive Substances Act 2013 (2013 No 53)**

In section 104(3)(b), replace “regulations made under the HSNO Act” with “regulations made or EPA notices issued under the HSNO Act”.

20

**Summary Proceedings Act 1957 (1957 No 87)**

In section 2(1), definition of **infringement notice**, after paragraph (e), insert:

- (ea) section 112 of the Hazardous Substances and New Organisms Act 1996;  
or

**Terrorism Suppression Act 2002 (2002 No 34)**

25

In section 13B(2), replace “the Hazardous Substances and New Organisms Act 1996” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

In section 13B(2), delete “; or” and repeal paragraph (b).

In section 13B(3)(a), after “2011”, insert “or by WorkSafe established by section 5 of the WorkSafe New Zealand Act 2013”.

30

## Part 2

### Amendments to legislative instruments

#### **Auckland International Airport By-laws Approval Order 1989 (SR 1989/369)**

In the Schedule, clause 57(1), replace “the Hazardous Substances and New Organisms Act 1996, or any applicable regulations or bylaws” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**, or any applicable regulations, instruments, or bylaws”. 5

#### **Christchurch International Airport By-laws Approval Order 1989 (SR 1989/405)**

In the Schedule, clause 58(1), replace “the Hazardous Substances and New Organisms Act 1996, or any applicable regulations or bylaws” with “**Parts 1 to 5 of the Health and Safety Reform Act 2014**, or any applicable regulations, instruments, or bylaws”. 10

#### **Dunedin International Airport Bylaws Approval Order 2005 (SR 2005/259)**

In the Schedule, clause 22(1), replace “made under the Hazardous Substances and New Organisms Act 1996” with “and instruments made under ~~the~~ **Parts 1 to 5 of the Health and Safety Reform Act 2014**”. 15

#### **Far North Holdings Limited Bylaws Approval Order 2005 (SR 2005/133)**

In the Schedule, clause 22(1), replace “made under the Hazardous Substances and New Organisms Act 1996” with “and instruments made under ~~the~~ **Parts 1 to 5 of the Health and Safety Reform Act 2014**”. 20

#### **Hawke’s Bay Airport Bylaws Approval Order 2009 (SR 2009/217)**

In the Schedule, clause 45(1), replace “made under the Hazardous Substances and New Organisms Act 1996” with “and instruments made under ~~the~~ **Parts 1 to 5 of the Health and Safety Reform Act 2014**”. 25

#### **Hazardous Substances (Fireworks) Regulations 2001 (SR 2001/121)**

In regulation 6(4), delete “test”.

In the heading to regulation 9, delete “test”.

In regulation 9(1), (2), and (3)(a), delete “test”.

In the heading to regulation 10, delete “test”.

In regulation 10(1), (1A), (4), and (5), delete “test” in each place.

In the heading to regulation 11, replace “Test certificate” with “Certificate”.

In regulation 11(1) and (3), delete “test”.

In regulation 11(4), replace “test certificate” with “certificate”.



**Medicines Regulations 1984 (SR 1984/143)**

~~In Schedule 1, Part 1, item 118, replace “controlled substances licence (issued under section 95B of the Hazardous Substances and New Organisms Act 1996)” with “licence issued or treated as having been issued under **Parts 1 to 5 of the Health and Safety Reform Act 2014** that corresponds to or was originally issued as a controlled substances licence under section 95B of the Hazardous Substances and New Organisms Act 1996”.~~

5

In Schedule 1, Part 1, replace item 118 with:

118 Amyl nitrite, except when sold to a person who is appropriately authorised under **Parts 1 to 5 of the Health and Safety Reform Act 2014**

**Nelson Airport Bylaws Approval Order 2007 (SR 2007/361)**

In the Schedule, clause 43(1), replace “made under the Hazardous Substances and New Organisms Act 1996” with “and instruments made under ~~the~~ **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

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**Palmerston North International Airport Bylaws Approval Order 2003 (SR 2003/144)**

In the Schedule, clause 22(1), replace “made under the Hazardous Substances and New Organisms Act 1996” with “and instruments made under ~~the~~ **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

15

**Queenstown Airport Bylaws Approval Order 2009 (SR 2009/236)**

In the Schedule, clause 49(1)(b), replace “made under the Hazardous Substances and New Organisms Act 1996” with “and instruments made under ~~the~~ **Parts 1 to 5 of the Health and Safety Reform Act 2014**”.

20

**Schedule 8**  
**New Schedule 2 inserted in WorkSafe New Zealand Act 2013**

s 312

**Schedule 2**  
**Transfer of EPA employees, contracts, and information to WorkSafe New Zealand**

s 21A

*Transfer of employees*

- 1 Restriction on compensation for technical redundancy**
- (1) An employee of the EPA is not entitled to receive any payment or other benefit on the ground that the position held by the employee in the EPA has ceased to exist if—
- (a) the position ceases to exist as a result of a transfer of functions from the EPA to WorkSafe New Zealand; and
- (b) in connection with that transfer of functions,—
- (i) the employee is offered equivalent employment in WorkSafe New Zealand (whether or not the employee accepts the offer); or
- (ii) the employee is offered, and accepts, other employment in WorkSafe New Zealand.
- (2) In **subclause (1), equivalent employment** to the employee's employment in the EPA is employment in WorkSafe New Zealand that is—
- (a) in substantially the same position; and
- (b) in the same general locality; and
- (c) on terms and conditions of employment that are no less favourable than those that applied to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and
- (d) on terms that treat the period of service with the EPA (and any other period of service recognised by the EPA as continuous service) as if it were continuous service with WorkSafe New Zealand.
- (3) This section overrides Part 6A of the Employment Relations Act 2000.
- 2 Employment of transferred employee to be treated as continuous employment**
- The employment of a transferred employee by WorkSafe New Zealand is to be treated as continuous employment for the purposes of any enactment.

<b>3</b>	<b>Transferred employees bound by collective agreement</b>	
(1)	This section applies to a transferred employee who was bound by a collective agreement with the EPA immediately before the employee transferred to WorkSafe New Zealand.	
(2)	On and after the commencement of this clause,—	5
(a)	the employee continues to be bound by the collective agreement and may enforce the collective agreement against WorkSafe New Zealand; and	
(b)	WorkSafe New Zealand must be treated as if it were a party to the collective agreement instead of the EPA; and	10
(c)	unless the context otherwise requires, every reference in the collective agreement to the EPA must be read as a reference to WorkSafe New Zealand.	
<b>4</b>	<b>Government Superannuation fund</b>	
(1)	Any person who, immediately before becoming an employee of WorkSafe New Zealand, was a contributor to the Government Superannuation Fund Act under Part 2 or 2A of the Government Superannuation Fund Act 1956 is deemed, for the purposes of that Act, to be employed in the Government service as long as the person continues to be an employee of WorkSafe New Zealand.	15
(2)	The Government Superannuation Fund Act 1956 applies in all respects as if the person's service as an employee of WorkSafe were Government service.	20
(3)	<b>Subclause (1)</b> does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor.	
(4)	For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of WorkSafe New Zealand is the controlling authority.	25
	<i>Transfer of contracts</i>	
<b>5</b>	<b>Transfer of contracts to WorkSafe New Zealand</b>	
(1)	This section applies to a contract (other than an employment agreement) that—	
(a)	was made between EPA and another person; and	
(b)	is identified by the EPA and WorkSafe New Zealand and relates solely to a function or power of the EPA before the commencement of this clause that becomes a function or power of WorkSafe New Zealand on that commencement.	30
(2)	On and after the commencement of this clause,—	
(a)	the contract must be treated as if WorkSafe New Zealand were the party to the contract instead of the EPA; and	35
(b)	unless the context otherwise requires, every reference in the contract to the EPA must be read as a reference to WorkSafe New Zealand.	

*Transfer of information***6 Transfer of information to WorkSafe New Zealand**

- (1) Despite anything in any other Act, the EPA may transfer to WorkSafe New Zealand any information held by the EPA under the Hazardous Substances and New Organisms Act 1996 (including information referred to in section 20, 82A, or 85 of that Act) that is necessary to enable WorkSafe New Zealand to perform functions or duties under **Parts 1 to 5 of the Health and Safety Reform Act 2014** that correspond to functions or duties that were formerly performed by the EPA. 5
- (2) The transfer of information from the EPA to WorkSafe New Zealand under **subclause (1)** does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993. 10

**Legislative history**

10 March 2014  
13 March 2014

Introduction (Bill 192–1)  
First reading and referral to Transport and Industrial Relations  
Committee