Reprint
as at 1 October 2018

Health and Safety at Work Act 2015

Public Act	2015 No 70
Date of assent	4 September 2015
Commencement	see section 2

Contents

		Page
1	Title	10
2	Commencement	10
	Part 1 **Health and safety at work**	
	Subpart 1—Preliminary provisions	
3	Purpose	10
4	Transitional, savings, and related provisions	11
	Subpart 2—Application of Act	
5	Application of Act to the Crown	11
6	Enforcement of Act against the Crown	12
7	Application of Act to Armed Forces	12
8	Application of Act to intelligence and security agencies	14
9	Application of Act to aircraft in operation	16
10	Application of Act to ships	16
11	Application of Act in exclusive economic zone and in or on continental shelf	16
12	Application of Act to prescribed high-risk plant	17

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Business, Innovation, and Employment.

Disapplication of Part 3

13 Certain provisions of Part 3 do not apply to members of Armed Forces 17
14 Part 3 does not apply to volunteer workers 18
15 Part 3 does not apply to prisoners 18

Subpart 3—Interpretation

General

16 Interpretation 18

Key terms

17 Meaning of PCBU 23
18 Meaning of officer 24
19 Meaning of worker 24
20 Meaning of workplace 26
21 Meaning of supply 26
22 Meaning of reasonably practicable 27
23 Meaning of notifiable injury or illness 27
24 Meaning of notifiable incident 28
25 Meaning of notifiable event 29

Examples

26 Status of examples 29

Subpart 4—General provisions

27 PCBU must not levy workers 30
28 No contracting out 30
29 Insurance against fines unlawful 30

Part 2
Health and safety duties

Subpart 1—Key principles relating to duties

30 Management of risks 31
31 Duties not transferable 31
32 Person may have more than 1 duty 31
33 More than 1 person may have same duty 32
34 PCBU must consult other PCBUs with same duty 32
35 Compliance with other enactments 32

Subpart 2—Duties of PCBUs

36 Primary duty of care 32
37 Duty of PCBU who manages or controls workplace 33
38 Duty of PCBU who manages or controls fixtures, fittings, or plant at workplaces 34
39 Duty of PCBU who designs plant, substances, or structures 35
40 Duty of PCBU who manufactures plant, substances, or structures 36

41 Duty of PCBU who imports plant, substances, or structures 37
42 Duty of PCBU who supplies plant, substances, or structures 39
43 Duty of PCBU who installs, constructs, or commissions plant or structures 40

Subpart 3—Duties of officers, workers, and other persons

44 Duty of officers 41
45 Duties of workers 41
46 Duties of other persons at workplace 42

Subpart 4—Offences relating to duties

47 Offence of reckless conduct in respect of duty 42
48 Offence of failing to comply with duty that exposes individual to risk of death or serious injury or serious illness 43
49 Offence of failing to comply with duty 43

Specific provisions relating to liability of certain persons

50 Liability of officers 44
51 Liability of volunteers 44
52 Liability of certain office holders 44

Other matters relating to offences

53 Actions taken to prevent harm 44
54 Proof of intention not required for certain offences 45

Subpart 5—Duties to preserve sites and notify notifiable events

55 Duty to preserve sites 45
56 Duty to notify notifiable event 46
57 Requirement to keep records 46

Part 3
Worker engagement, participation, and representation

Subpart 1—Engagement with workers and worker participation practices

Engagement with workers

58 Duty to engage with workers 47
59 Nature of engagement 47
60 When engagement is required 47

Worker participation practices

61 Duty to have worker participation practices 48

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

Election of health and safety representatives

62 Election of health and safety representatives 49
63 Requirements for conducting elections 50

Determination of work groups

64 Determination of work groups 50
65 Determination of numbers of health and safety representatives for work groups 51

Health and safety committees

66 Health and safety committees 51

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

67 Further provisions relating to health and safety representatives and health and safety committees 52
68 Further provisions relating to mining sector 52

Subpart 3—Provisional improvement notices

69 Provisional improvement notices 52
70 Training requirements relating to issue of provisional improvement notice 53
71 Requirements relating to provisional improvement notices 53
72 Provisional improvement notice may include recommendations to remedy contravention 53
73 Minor changes to provisional improvement notice 54
74 Issue of provisional improvement notice 54
75 Cancellation of provisional improvement notice 54
76 Display of provisional improvement notice 54
77 Irregularities or defects in notice 54
78 Offence relating to breach of provisional improvement notice 55
79 Review of provisional improvement notice 55
80 Regulator must ensure inspector reviews notice 55
81 Decision of inspector on review of provisional improvement notice 56

Subpart 4—Right to cease or direct cessation of unsafe work

82 Meaning of cease work 56
83 Right of worker to cease or refuse to carry out unsafe work 56
84 Health and safety representative may direct unsafe work to cease 57
85 Training requirements relating to giving direction to cease work 57
86 Alternative work 58
87 Regulator may assist to resolve issues relating to cessation of work 58

Subpart 5—Prohibition of adverse, coercive, or misleading conduct

88 Meaning of adverse conduct 58
89 Meaning of prohibited health and safety reason 59
90 Prohibition on adverse conduct 60

91 Prohibition on requesting, instructing, inducing, encouraging, authorising, or assisting adverse conduct 60
92 Prohibition on coercion or inducement 61
93 Misrepresentation 62
94 Proof of adverse conduct 62

Civil proceedings in relation to adverse or coercive conduct

95 Civil proceedings in relation to engaging in or inducing adverse or coercive conduct 62
96 Procedure for civil proceedings for adverse conduct 63

General provisions

97 General provisions 64

Subpart 6—Issue resolution

98 Resolution of work health and safety issues 64
99 Regulator may appoint inspector to assist parties in resolving issue 64

Part 4
Enforcement and other matters

100 Meaning of notice 65

Subpart 1—Enforcement measures

Improvement notices

101 Power to issue improvement notices 65
102 Content of improvement notices 65
103 Compliance with improvement notice 66
104 Extension of time for compliance with improvement notices 66

Prohibition notices

105 Power to issue prohibition notice 66
106 Content of prohibition notice 67
107 Compliance with prohibition notice 68

Non-disturbance notices

108 Power to issue non-disturbance notice 68
109 Content of non-disturbance notice 68
110 Compliance with non-disturbance notice 69
111 Issue of subsequent non-disturbance notices 69

General provisions

112 General provisions relating to notices 69
113 Changes to notice by inspector 69
114 Regulator may vary or cancel notice 70
115 Formal irregularities or defects in notice 70
116 Issue of notice 70
117 Display of notice at workplace by person issued with notice 70
118 Inspector may display notice 71

Subpart 2—Remedial action

119 When regulator may carry out remedial action 71
120 Power of regulator to take other remedial action 71
121 Costs of remedial or other action 72

Subpart 3—Civil proceedings for non-compliance with notices

122 Civil proceedings relating to non-compliance with notice 72

Subpart 4—Enforceable undertakings

123 Regulator may accept enforceable undertakings 72
124 Notice of decision and reasons for decision 73
125 When enforceable undertaking is enforceable 73
126 Compliance with enforceable undertaking 73
127 Contravention of enforceable undertaking 73
128 Withdrawal or variation of enforceable undertaking 74
129 Proceedings for alleged contravention 74

Subpart 5—Reviews and appeals

130 Interpretation 75

Internal review

131 Application for internal review 75
132 Decision of regulator 76
133 Notice of decision on internal review 76
134 Stay of reviewable decision on internal review 76

Appeal to District Court

135 Application for appeal 77

Subpart 6—Infringement offences

136 Interpretation 77
137 Proceedings for infringement offence 77
138 Infringement notices 78
139 Revocation of infringement notice 79
140 Payment of infringement fees 79

Subpart 7—Criminal proceedings

141 Meaning of enforcement action 79
142 Person may notify regulator of interest in knowing of enforcement action taken by regulator 79
143 Prosecutions by regulator 80
144 Private prosecutions 80
145 Continuing or repeated matters 81

Limitation periods for prosecutions

146 Limitation period for prosecutions brought by regulator 81
147 Extension of time if regulator needs longer to decide whether to bring prosecution 82

148 Limitation period for private prosecutions 82
149 Certain proceedings may be brought after end of limitation period if fresh evidence discovered 83

Subpart 8—Sentencing for offences

150 Application of subpart 83
151 Sentencing criteria 83
152 Order for payment of regulator's costs in bringing prosecution 84
153 Adverse publicity orders 84
154 Orders for restoration 85
155 Work health and safety project orders 85
156 Release on giving of court-ordered enforceable undertaking 85
157 Injunctions 86
158 Training orders 86
159 Offence to fail to comply with order 86

Subpart 9—General provisions relating to proceedings

160 State of mind of directors, employees, or agents attributed 87
161 Conduct of directors, employees, or agents attributed 87
162 Proceedings involving classified security information 88

Subpart 10—Inspectors and health and safety medical practitioners

Inspectors

163 Appointment of inspectors 88
164 Identity cards 88
165 Suspension and ending of appointment of inspectors 89
166 Inspectors subject to regulator's directions 89
167 Regulator has powers of inspector 89
168 Powers of entry and inspection 89
169 Power to enter homes 90
170 Power to deal with cause of imminent danger 91
171 Notice of entry 91
172 Power to take samples and other objects and things 92
173 Power of regulator to authorise making of applications for search warrants 93
174 Continuation of powers of entry and inspection without search warrants 94
175 Power to require name and address 94
176 Duty to assist inspectors 95
177 Immunity of inspectors and persons assisting inspectors or regulator 95
178 Offence for failing to provide inspector with correct name and residential address 95
179 Offence to hinder or obstruct inspector 95
180 Offence to impersonate inspector 96

Health and safety medical practitioners

181 Appointment of health and safety medical practitioners 96
182 Suspension and ending of appointment of health and safety medical practitioners 96
183 Powers of entry and inspection of health and safety medical practitioners 96
184 Health and safety medical practitioners may require workers to be medically examined 97
185 Health and safety medical practitioners may suspend workers in certain cases 98
186 Immunity of health and safety medical practitioners and persons assisting health and safety medical practitioners 99
187 Offence to hinder or obstruct health and safety medical practitioner 99
188 Offence to impersonate health and safety medical practitioner 99

Part 5
Miscellaneous provisions

Subpart 1—Administration

189 Role of WorkSafe 99
190 Functions and powers of regulator other than WorkSafe 100

Designated agencies

191 Designated agencies 101
192 Role of designated agencies 101
193 Proceedings not to be questioned for want of form 102

Joint policy directions

194 Designated agency must give effect to joint policy directions 102

Health and Safety at Work Strategy and workplace injury prevention

195 Health and Safety at Work Strategy 102
196 Workplace injury prevention 103

Information sharing

197 Sharing of information between regulator and regulatory agencies 103
198 Requirement of other regulator to notify WorkSafe of notifiable event 104
199 Requirement of medical officer of health to notify regulator of work-related notifiable disease or hazardous substances injury 104
200 Coroner may call for report on fatal accident 105

Funding levy

201 Funding levy 105
202 Consultation requirement relating to funding levy 106

Subpart 2—Authorisations

203 Meaning of authorised 106
204 Requirements for authorisation of workplaces 106
205 Requirements for authorisation of plant or substance 107
206 Requirements for authorisation of work 107
207 Requirements for prescribed qualifications or experience 108
208 Requirement to comply with conditions of authorisation 108

Subpart 3—General provisions

209 Offence to give false or misleading information 108
210 Confidentiality of information 109

Subpart 4—Regulations, exemptions, approved codes of practice, and safe work instruments

Regulations

211 Regulations relating to health and safety 110
212 Regulations relating to hazardous substances 114
213 Regulations relating to exemptions in respect of Armed Forces 116
214 Regulations relating to worker engagement, participation, and representation 116
215 Regulations relating to levies 117
216 Regulations providing for transitional matters 118
217 Consultation requirements for making certain regulations 118
218 Further provisions relating to regulations 119
219 Procedure for making regulations relating to definitions, exclusions, or exemptions 119

Exemptions

220 Regulator may grant exemption from compliance with regulations 120
221 Status and publication of exemptions granted by regulator 121

Codes of practice

222 Approval of codes of practice 121
223 Publication and commencement of approved code of practice 122
224 Access to approved codes of practice 123
225 Proof of codes of practice 123
226 Use of approved codes of practice in proceedings 123

Safe work instruments

227 Minister may approve safe work instruments 123
228 Legal effect of safe work instruments 124

General provisions

229 Minister may delegate approval of codes of practice and safe work instruments to regulator 124

230 Relationship between regulations relating to hazardous substances under this Act and Resource Management Act 1991 125

Subpart 5—Repeals, revocations, and consequential amendments

231 Repeals and revocations 126
232 Consequential amendments 126

Schedule 1 127
Transitional and savings provisions

Schedule 2 136
Health and safety representatives and health and safety committees

Schedule 3 147
Health and safety in mining sector

Schedule 4 160
Provisions relating to classified security information

Schedule 5 167
Consequential amendments

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Health and Safety at Work Act 2015.

2 Commencement

(1) Subpart 4 of Part 5 comes into force on the day after the date on which this Act receives the Royal assent.

(2) The rest of this Act comes into force on 4 April 2016.

Part 1
Health and safety at work

Subpart 1—Preliminary provisions

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

(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

(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

(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.

(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

4 Transitional, savings, and related provisions

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) This Act binds the Crown.

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

(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—

(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 6.

Compare: 1992 No 96 s 3

6 Enforcement of Act against the Crown

(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—

(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.

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

(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—

(a) it is a Crown organisation; and

(b) the order or injunction is made against the Crown organisation in its own name.

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.

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

7 Application of Act to Armed Forces

(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 defence of New Zealand.

(2) Subject to this section, section 13, and any regulations made under section 213, this Act applies to the Armed Forces and any military aircraft or naval ship.

(3) This Act does not apply to—

(a) a worker who—

(i) is a member of the Armed Forces while the worker is carrying out any operational activity; or

(ii) is carrying out work for the Armed Forces at a place outside New Zealand at which the Armed Forces are carrying out any operational activity:

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

(4) In this section, **operational activity**—

(a) means—

(i) any 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 overseas:

(ii) any other service carried out 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 the 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):

(iii) any service or activity or class of service or activity (whether carried out in New Zealand or overseas) that is declared under subsection (5) to be an operational activity for the purposes of this section; and

(b) includes any training carried out (whether in New Zealand or overseas) directly in preparation for any specific operational activity within the meaning of paragraph (a)(i) to (iii).

(5) The Chief of Defence Force may, by notice in writing, declare any service or activity or class of service or activity to be an operational activity for the purposes of this section.

(6) As soon as practicable after making a declaration under subsection (5), the Chief of Defence Force must—

(a) give written notice of the declaration to the Minister of Defence; and

(b) provide a copy of the notice to the regulator.

(7) A declaration made under subsection (5) must be published on an Internet site maintained by or on behalf of the New Zealand Defence Force.

(8) A declaration made under subsection (5) 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.

(9) In commanding the New Zealand Defence Force, the Chief of 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

8 Application of Act to intelligence and security agencies

(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),—

(a) the Director-General 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-General 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.

(3) Without limiting subsection (2), a declaration may apply to—

(a) a specified worker or class of workers:

(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 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.

(6) In administering the Security Intelligence Service or the Bureau and in exercising the power under subsection (2), the Director-General of Security or the Director-General of the Government Communications Security 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.

(7) A worker who is an employee of the Security Intelligence Service or the Government Communications Security Bureau may ask the Inspector-General to

review a declaration made under subsection (2) to determine whether, in making the declaration, the Director-General of Security or the Director-General of the Government Communications Security Bureau (as the case requires) met the criteria in subsection (6).

(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 8 of the Intelligence and Security Act 2017

Inspector-General—

(a) means the Inspector-General of Intelligence and Security holding office under section 157 of the Intelligence and Security Act 2017; and

(b) includes the Deputy Inspector-General of Intelligence and Security holding office under section 157 of the Intelligence and Security Act 2017

Minister,—

(a) in relation to the New Zealand Security Intelligence Service, means the Minister responsible for the New Zealand Security Intelligence Service:

(b) in relation to the Government Communications Security Bureau, means the Minister responsible for the Government Communications Security Bureau

Security Intelligence Service means the New Zealand Security Intelligence Service continued by section 7 of the Intelligence and Security Act 2017.

Compare: Work Health and Safety Act 2011 (Aust) s 12C

Section 8(2)(a): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 8(2)(b): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 8(6): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 8(7): replaced, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 8(9) **Government Communications Security Bureau** or **Bureau**: replaced, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 8(9) **Inspector-General** paragraph (a): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 8(9) **Inspector-General** paragraph (b): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 8(9) **Minister**: replaced, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 8(9) **Security Intelligence Service**: replaced, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

9 Application of Act to aircraft in operation

(1) This Act applies to an aircraft in operation, wherever it may be, while the aircraft—

(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.

(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.

(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), (3), (5)

10 Application of Act to ships

(1) This Act applies to a New Zealand ship wherever it may be.

(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.

(4) This section does not limit or affect—

(a) section 7 (which relates to the application of this Act to the Armed Forces); or

(b) section 11 (which relates to the application of this Act in the exclusive economic zone or in or on the continental shelf).

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

11 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

(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.

(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.

12 Application of Act to prescribed high-risk plant

(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 17.

(2) For the purposes of subsection (1), a reference in this Act—

(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.

(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

13 Certain provisions of Part 3 do not apply to members of Armed Forces

(1) The following provisions of Part 3 do not apply to members of the Armed Forces:

(a) section 62(1) (which relates to requests for the election of health and safety representatives); and

(b) section 66(1)(b) (which relates to requests for the establishment of a health and safety committee).

(2) Sections 83 and 84 (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.

14 Part 3 does not apply to volunteer workers

Nothing in Part 3 applies to a volunteer worker.

15 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.

(2) In this section, **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

16 Interpretation

In this Act, unless the context otherwise requires,—

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

adverse conduct has the meaning given in section 88

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 222

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

authorised has the meaning given in section 203

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

cease work has the meaning given in section 82

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

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

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—

(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 191

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

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 123

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

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

handle includes transport

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)

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 medical practitioner means a person for the time being appointed under section 181

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 5(1) of the Customs and Excise Act 2018, and **import** has a corresponding meaning

improvement notice means a notice issued under section 101

inspector means an inspector appointed under section 163

issuing officer has the same meaning as in section 3(1) of the Search and Surveillance Act 2012

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—

(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

(b) holds a current practising certificate

military aircraft means an aircraft of, or pertaining to, the Armed Forces

Minister 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

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

(b) includes—

(i) all airspace within the territorial limits of New Zealand:

(ii) the Ross Dependency

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 108

notifiable event has the meaning given in section 25

notifiable incident has the meaning given in section 24

notifiable injury or illness has the meaning given in section 23

officer has the meaning given in section 18

person includes the Crown, a corporation sole, and a body of persons, whether corporate or unincorporate

person conducting a business or undertaking or **PCBU** has the meaning given in section 17

personal information has the same meaning as in section 2(1) of the Privacy Act 1993

personal protective equipment—

(a) means anything used or worn by a person (including clothing) to minimise risks to the person's health and safety; and

(b) includes air-supplied respiratory equipment

plant includes—

(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 89

prohibition notice means a notice issued under section 105

reasonably practicable, in relation to a duty of a PCBU set out in subpart 2 of Part 2, has the meaning given in section 22

regulations means regulations made under this Act

regulator means, as the case requires,—

(a) WorkSafe; or

(b) the relevant designated agency

regulatory agency means any of the following:

(a) a regulator under this Act:

(b) the CAA:

(c) the New Zealand Police:

(d) the New Zealand Transport Agency:

(e) Maritime New Zealand:

(f) the EPA:

(g) a local authority:

(h) Fire and Emergency New Zealand:

(i) a medical officer of health:

(j) the Ministry of Health:

(k) ACC:

(l) the Ministry of Business, Innovation, and Employment, including any statutory officer who carries out work for that business or undertaking:

(m) a prescribed agency

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:

(ii) Gas Act 1992:

(iii) Hazardous Substances and New Organisms Act 1996:

(iiia) Outer Space and High-altitude Activities Act 2017:

(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

(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

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

statutory officer means a person—

(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—

(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

(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

(b) includes a hazardous substance

supply has the meaning given in section 21

suspension notice means a notice issued under section 185

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

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

volunteer worker has the meaning given in section 19(3)

work group means a work group determined under section 64

worker has the meaning given in section 19

workplace has the meaning given in section 20

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

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

Section 16 **importation**: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 16 **New Zealand Fire Service**: repealed, on 1 July 2017, by section 197 of the Fire and Emergency New Zealand Act 2017 (2017 No 17).

Section 16 **regulatory agency** paragraph (h): amended, on 1 July 2017, by section 197 of the Fire and Emergency New Zealand Act 2017 (2017 No 17).

Section 16 **relevant health and safety legislation** paragraph (b)(iiia): inserted, on 21 December 2017, by section 92(2) of the Outer Space and High-altitude Activities Act 2017 (2017 No 29).

Key terms

17 Meaning of PCBU

(1) In this Act, unless the context otherwise requires, a **person conducting a business or undertaking** or **PCBU**—

(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

(b) does not include—

(i) a person 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:

(iii) an occupier of a home to the extent that the occupier employs or engages another person solely to do residential work:

(iv) a statutory officer to the extent that the officer is a worker in, or an officer of, the business or undertaking:

(v) 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.

(2) In this section, **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.

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

18 Meaning of officer

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

(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

(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

(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).

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

19 Meaning of worker

(1) In this Act, unless the context otherwise requires, a **worker** means an individual who carries out work in any capacity for a PCBU, including work as—

(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

(e) an outworker (including a homeworker); 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.

(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:

(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.

(3) In this Act, 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

(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:

(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 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.

(2) In this section, **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

21 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

(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

(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.

(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

(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.

(5) In this section,—

financier means a financial services provider registered in accordance with the 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

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.

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

22 Meaning of reasonably practicable

In this Act, unless the context otherwise requires, **reasonably practicable**, in relation to a duty of a PCBU set out in subpart 2 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—

(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

23 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) 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 micro-organisms; 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) any other injury or illness 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 Act.

(3) In this section,—

animal has the same meaning as in section 2(1) of the Animal Welfare Act 1999

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

24 Meaning of notifiable incident

(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

(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

(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

(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 declared by regulations to be a notifiable incident for the purposes of this section.

(2) Despite subsection (1), **notifiable incident** does not include an incident declared by regulations not be a notifiable incident for the purposes of this Act.

Compare: Model Work Health and Safety Act (Aust) s 37

25 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

(c) a notifiable incident.

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

Examples

26 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.

(2) If an example and a provision to which it relates are inconsistent, the provision prevails.

Subpart 4—General provisions

27 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 personal protective equipment—

(a) as a pre-condition of employment; or

(b) as a term or condition in an employment agreement.

(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.

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

28 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 subpart 5 of Part 2 of the Contract and Commercial Law Act 2017.

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

Section 28(b): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

29 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 sections 75 to 82 of the Contract and Commercial Law Act 2017 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,—

(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

Section 29(1)(b): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Part 2
Health and safety duties

Subpart 1—Key principles relating to duties

30 Management of risks

(1) 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; 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.

(2) A person must comply with subsection (1) to the extent to which the person has, or would reasonably be expected to have, the ability to influence and control the matter to which the risks relate.

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

31 Duties not transferable

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

32 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.

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

33 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.

(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

34 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.

(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

35 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.

Subpart 2—Duties of PCBUs

36 Primary duty of care

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

(a) workers 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.

(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,—

(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

(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

(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—

(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.

(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.

Compare: Model Work Health and Safety Act (Aust) s 19

37 Duty of PCBU who manages or controls workplace

(1) A PCBU 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.

(2) 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.

(3) For the purposes of subsection (1), if the PCBU is conducting a farming business or undertaking, 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:

(b) does not apply in relation to—

(i) the main dwelling house on the farm (if any); or

(ii) any other part of the farm, unless work is being carried out in that part at the time.

(4) In this section, a **PCBU 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

(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

(ii) a prescribed person.

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

38 Duty of PCBU who manages or controls fixtures, fittings, or plant at workplaces

(1) A PCBU 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.

(2) 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.

(3) In this section, a **PCBU 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

(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

(ii) a prescribed person.

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

39 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

(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—

(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

(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

(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

(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).

(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).

(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) The designer 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).

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

40 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—

(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.

(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

(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—

(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

(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).

(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).

(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

(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).

(5) 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).

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

41 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—

(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.

(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

(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—

(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

(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).

(3) The importer must—

(a) carry out, or arrange the carrying out of, any calculation, analysis, testing, or examination that may be necessary for the performance of the duty imposed by subsection (2); or

(b) ensure that the calculation, analysis, testing, or examination 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—

(a) each purpose for which the plant, substance, or structure was designed or manufactured; and

(b) the results of any 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

(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).

(5) The importer 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).

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

42 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—

(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

(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

(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—

(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

(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).

(3) The supplier must—

(a) carry out, or arrange the carrying out of, any calculation, analysis, testing, or examination that may be necessary for the performance of the duty imposed by subsection (2); or

(b) ensure that the calculation, analysis, testing, or examination 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

(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).

(5) 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).

(6) This section does not apply to the sale of plant, whether or not in trade, if the plant—

(a) is secondhand; and

(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.

Compare: 1992 No 96 s 18A(4), (5); Model Work Health and Safety Act (Aust) s 25

43 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

(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 3—Duties of officers, workers, and other persons

44 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) For the purposes of subsection (1), an officer of a PCBU must exercise the care, diligence, and skill that a reasonable officer would exercise in the same circumstances, taking into account (without limitation)—

(a) the nature of the business or undertaking; and

(b) the position of the officer and the nature of the responsibilities undertaken by the officer.

(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.

(4) In this section, **due diligence** includes taking reasonable steps—

(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

(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

(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).

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

45 Duties of workers

While at work, a worker must—

(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.

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

46 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 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 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.

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

Subpart 4—Offences relating to duties

47 Offence of reckless conduct in respect of duty

(1) A person commits an offence against this section if the person—

(a) has a duty under subpart 2 or 3; 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.

(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,—

(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:

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

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

48 Offence of failing to comply with duty that exposes individual to risk of death or serious injury or serious illness

(1) A person commits an offence against this section if—

(a) the person has a duty under subpart 2 or 3; and

(b) the person 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,—

(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:

(c) for any other person, to a fine not exceeding $1.5 million.

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

49 Offence of failing to comply with duty

(1) A person commits an offence against this section if the person—

(a) has a duty under subpart 2 or 3; and

(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:

(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 2 or 3, 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.

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

Specific provisions relating to liability of certain persons

50 Liability of officers

An officer of a PCBU may be convicted or found guilty of an offence against section 44 whether or not the PCBU has been convicted or found guilty of an offence under this Act relating to the duty or obligation.

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

51 Liability of volunteers

A volunteer does not commit an offence under section 47, 48, or 49 for a failure to comply with a duty imposed by subpart 2 or 3, except a duty under—

(a) section 45 (duties of workers); or

(b) section 46 (duties of other persons at workplaces).

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

52 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 47, 48, or 49 for a failure to comply with the duty imposed by section 44 (duties of officers).

(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:

(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 this section,—

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** have the same meanings as in section 5(1) of the Local Government Act 2002.

Other matters relating to offences

53 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 under this Act; and

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

Compare: 1992 No 96 s 51

54 Proof of intention not required for certain offences

In a matter involving a prosecution for an offence against section 48 or 49, 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 an action, where the failure to take that action is alleged to constitute the offence.

Compare: 1992 No 96 s 53

Subpart 5—Duties to preserve sites and notify notifiable events

55 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.

(2) Subsection (1) 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 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.

(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,—

(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

(b) does not include any particular site in prescribed circumstances.

Compare: Model Work Health and Safety Act (Aust) s 39

56 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.

(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.

(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.

(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

(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.

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

57 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 56.

(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:

(b) for any other person, to a fine not exceeding $25,000.

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

Part 3
Worker engagement, participation, and representation

Subpart 1—Engagement with workers and worker participation practices

Engagement with workers

58 Duty to engage with workers

(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.

(3) The agreed procedures must not be inconsistent with section 59.

(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:

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

Compare: Model Work Health and Safety Act (Aust) s 47

59 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

(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; 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

60 When engagement is required

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

(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:

(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:

(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:

(g) when developing worker participation practices, including when determining work groups:

(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

Worker participation practices

61 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.

(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:

(b) take into account any relevant approved code of practice.

(3) In this section, **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 workplaces of the business or undertaking, and the distance between them; and

(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

(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.

(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.

Compare: 1992 No 96 s 19B

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

Election of health and safety representatives

62 Election of health and safety representatives

(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.

(2) Subject to subsection (4), 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.

(3) 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.

(4) 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—

(a) is carried out by fewer than 20 workers; and

(b) is not within the scope of any high-risk sector or industry prescribed by regulations for the purposes of this section.

(5) A PCBU who seeks to rely on subsection (4) to refuse a worker's request for the election of 1 or more health and safety representatives under subsection (1) must give written notice to that effect within a reasonable time to that worker.

(6) 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.

(7) A person who contravenes subsection (2) or (5) 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 50

63 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 62) must comply with any prescribed requirements.

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

Determination of work groups

64 Determination of work groups

(1) If a worker makes a request or the PCBU initiates the election of a health and safety representative under section 62, the PCBU must determine 1 or more work groups, in accordance with either subsection (2) or (3).

(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.

(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

(b) have regard to any prescribed requirements.

(5) Two or more PCBUs 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

(b) subject to any prescribed requirements.

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

65 Determination of numbers of health and safety representatives for work groups

(1) If section 64(2) applies, the PCBU 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.

(2) If section 64(3) applies, the PCBU must determine the number of health and safety representatives who may be elected for that work group in accordance with any prescribed requirements.

Health and safety committees

66 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:

(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) Subject to subsection (3), 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.

(3) 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 high-risk sector or industry prescribed by regulations for the purposes of this section.

(4) A PCBU who considers subsection (3) applies in relation to a request under subsection (1) must give written notice to that effect within a reasonable time to the person (or persons) who made the request.

(5) 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 61.

(6) 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

(b) no later than any prescribed time.

(7) If the PCBU decides to refuse a request made under subsection (1), the notice under subsection (6) must include—

(a) the reasons for the decision; and

(b) a statement that workers may raise the refusal as an issue under subpart 6 of this Part.

(8) 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.

(9) A person who contravenes subsection (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 75

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

67 Further provisions relating to health and safety representatives and health and safety committees

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

(2) Part 2 of Schedule 2 contains further provisions that apply to health and safety committees for a business or undertaking.

68 Further provisions relating to mining sector

Schedule 3 contains further provisions that apply to health and safety representatives and other matters in the mining sector.

Subpart 3—Provisional improvement notices

69 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—

(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.

(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.

(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

70 Training requirements relating to issue of provisional improvement notice

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.

Compare: Model Work Health and Safety Act (Aust) s 90(4)

71 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

(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

(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

72 Provisional improvement notice may include recommendations to remedy contravention

(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.

(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).

Compare: Model Work Health and Safety Act (Aust) s 93

73 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

74 Issue of provisional improvement notice

A provisional improvement notice must be issued to a person in accordance with section 116.

Compare: Model Work Health and Safety Act (Aust) s 95

75 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

76 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

77 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

78 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 79 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).

(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.

(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.

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

79 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.

(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.

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

80 Regulator must ensure inspector reviews notice

(1) The regulator must ensure that, as soon as practicable after a request is made under section 79, an inspector—

(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.

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

81 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.

(2) The inspector must give a copy of his or her decision in accordance with section 116 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) 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 4—Right to cease or direct cessation of unsafe work

82 Meaning of cease work

In this subpart, unless the context otherwise requires, **cease work** means—

(a) to cease or refuse to carry out work under section 83; or

(b) to cease work on a direction under section 84.

Compare: Model Work Health and Safety Act (Aust) s 83

83 Right of worker to cease or refuse to carry out unsafe work

(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—

(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 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 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.

(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

84 Health and safety representative may direct unsafe work to cease

(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.

(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.

(4) The health and safety representative must carry out the consultation as soon as practicable after giving a direction under subsection (3).

(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.

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

85 Training requirements relating to giving direction to cease work

A health and safety representative must not give a direction under section 84 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.

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

86 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.

(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:

(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.

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

87 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.

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

Subpart 5—Prohibition of adverse, coercive, or misleading conduct

88 Meaning of adverse conduct

(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

(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

(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

(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.

(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.

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

89 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 88(1)(b) or (c) (as the case requires)—

(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

(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

(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

(h) raises, has raised, or proposes to raise an issue or concern about health and safety with—

(i) the PCBU; or

(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

(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

(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 83 or 84.

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

90 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,—

(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.

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

91 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 90.

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

(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

92 Prohibition on coercion or inducement

(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; 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:

(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,—

(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:

(a) ambulance services, first aid, or medical or paramedical care:

(b) designated services (as defined in section 6 of the Fire and Emergency New Zealand Act 2017)

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

Section 92(4) **emergency services worker** paragraph (b): replaced, on 1 July 2017, by section 197 of the Fire and Emergency New Zealand Act 2017 (2017 No 17).

93 Misrepresentation

(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

(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,—

(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 109

94 Proof of adverse conduct

(1) This section applies if, in proceedings for an offence of contravening section 90 or 91, 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

(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.

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

Civil proceedings in relation to adverse or coercive conduct

95 Civil proceedings in relation to engaging in or inducing adverse or coercive conduct

(1) An eligible person may apply to the District Court for 1 or more orders specified in subsection (2) in relation to a person who has—

(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 92 (which relates to the prohibition on coercion or inducement).

(2) The orders are—

(a) an injunction restraining the person from engaging in conduct described in subsection (1):

(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:

(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.

(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

(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

Section 95(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

96 Procedure for civil proceedings for adverse conduct

(1) A proceeding brought under section 95 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 95 in relation to conduct referred to in section 95(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.

(3) It is a defence to a proceeding under section 95 in relation to conduct referred to in section 95(1)(a) or (b) if the defendant proves that—

(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

97 General provisions

(1) Subject to subsections (2) and (3), the bringing of a prosecution under section 90, 91, or 92 does not prevent, in respect of the same conduct,—

(a) the bringing of a civil proceeding under section 95; or

(b) the raising of a personal grievance under the Employment Relations Act 2000.

(2) If the District Court orders reparation to be paid under the Sentencing Act 2002 following conviction of a person under section 90, 91, or 92,—

(a) the court may not order compensation to be payable in respect of the same losses in a civil proceeding under section 95:

(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.

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

Section 97(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Subpart 6—Issue resolution

98 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.

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

99 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 98 to achieve a resolution of the issue.

(2) A party to the issue may ask the regulator to appoint an inspector to assist the parties in resolving the issue.

(3) 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.

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

Part 4
Enforcement and other matters

100 Meaning of notice

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

(a) means any of the following notices issued under this Act:

(i) an improvement notice:

(ii) a prohibition notice:

(iii) a non-disturbance notice:

(iv) a suspension notice:

(b) includes a subsequent notice.

Subpart 1—Enforcement measures

Improvement notices

101 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

(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 cause a contravention.

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

102 Content of improvement notices

(1) An improvement notice must state—

(a) that the inspector believes the person—

(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

(d) 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:

(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

103 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.

(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.

(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

104 Extension of time for compliance with improvement notices

(1) This section applies if a person has been issued with an improvement notice.

(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**—

(a) means the period stated in the improvement notice under section 103(1); and

(b) includes any extension of that period under this section.

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

Prohibition notices

105 Power to issue prohibition notice

(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 2 of Part 5 or a mining operation (as defined in clause 2 of Schedule 3), 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

106 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

(c) in respect of a notice to which section 105(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).

(3) Without limiting section 105, 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:

(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

107 Compliance with prohibition notice

(1) A person to whom a direction is given under section 105(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,—

(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

Non-disturbance notices

108 Power to issue non-disturbance notice

An inspector may issue a non-disturbance notice to a 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.

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

109 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.

(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

(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 this section, a reference to a **site** includes any plant, substance, structure, or thing associated with the site.

(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

(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

110 Compliance with non-disturbance notice

(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:

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

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

111 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.

(2) A subsequent non-disturbance notice issued under subsection (1) must comply with section 109 (which deals with the content of non-disturbance notices).

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

General provisions

112 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

113 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.

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

114 Regulator may vary or cancel notice

Except as provided in section 113, a notice issued by an inspector or a health and safety medical practitioner may be varied or cancelled only by the regulator.

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

115 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 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 to the person in accordance with section 116.

Compare: Model Work Health and Safety Act (Aust) s 208

116 Issue of notice

(1) A notice may be issued to a person—

(a) by delivering it personally to the person; or

(b) by sending it to the person—

(i) by post to the person's usual or last known place of residence or business; or

(ii) by electronic transmission; or

(c) 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

(d) by leaving it for the person at the workplace to which the notice relates with a person who is or appears to be in charge of the workplace; or

(e) 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.

(3) A notice posted under subsection (1)(b)(i) is to be treated as having been received on the seventh day after the date on which it was posted.

Compare: 1992 No 96 ss 40, 42; Model Work Health and Safety Act (Aust) s 209

117 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 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) 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:

(b) for any other person, to a fine not exceeding $25,000.

Compare: Model Work Health and Safety Act (Aust) s 210

118 Inspector may display notice

(1) An inspector who issues a notice under section 116 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 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) while the notice is in force.

(3) A person who contravenes subsection (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: 1992 No 96 s 42(1)

Subpart 2—Remedial action

119 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

120 Power of regulator to take other remedial action

(1) This section applies if the regulator reasonably believes that—

(a) circumstances exist in which a prohibition notice can be issued; and

(b) a prohibition notice cannot be issued at a workplace because, after taking reasonable steps, the person to whom the notice could be issued 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

121 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 119 from the person to whom a prohibition notice is issued; or

(b) section 120 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—Civil proceedings for non-compliance with notices

122 Civil proceedings relating to non-compliance with notice

(1) On an application by the regulator, the 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

(b) whether or not the compliance period for the notice has expired.

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

Section 122(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Subpart 4—Enforceable undertakings

123 Regulator may accept enforceable undertakings

(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 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 47.

(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

124 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.

(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

125 When enforceable undertaking is enforceable

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

126 Compliance with enforceable undertaking

(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

127 Contravention of enforceable undertaking

(1) The regulator may apply to the 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 may make either 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 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) 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

Section 127(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

128 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.

(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.

Compare: Model Work Health and Safety Act (Aust) s 221

129 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.

(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.

(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 practicable.

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

Subpart 5—Reviews and appeals

130 Interpretation

In this subpart, unless the context otherwise requires,—

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):

(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:

(e) a decision made by the regulator to stay the operation of a decision to issue a notice:

(f) 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—

(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) in respect of a provisional improvement notice under section 81; or

(d) of a type prescribed by regulations for the purposes of this section.

Internal review

131 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—

(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.

(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; and

(b) in any other case, 14 days.

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

132 Decision of regulator

(1) The regulator must review the reviewable decision and make a decision—

(a) as soon as practicable; and

(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

(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,—

(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.

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

133 Notice of decision on internal review

As soon as practicable after making a decision in accordance with section 132, the regulator must give the applicant in writing—

(a) the decision on the internal review; and

(b) the reasons for the decision.

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

134 Stay of reviewable decision on internal review

(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.

(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.

(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

135 Application for appeal

(1) An eligible person may appeal to the 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—

(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

Section 135(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Subpart 6—Infringement offences

136 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

infringement offence means an offence against this Act (except an offence against section 47, 48, or 49) or regulations that is declared by regulations to be an infringement offence for the purposes of this Act.

137 Proceedings for infringement offence

(1) A person who is alleged to have committed an infringement offence may 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 138.

(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.

138 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, 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.

(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:

(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

(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.

(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.

Compare: 1992 No 96 ss 56B(1)(a), 56E(2)–(5)

139 Revocation of infringement notice

(1) The regulator may revoke an infringement notice issued under section 138 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.

(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)

140 Payment of infringement fees

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

Compare: 1992 No 96 s 56G

Subpart 7—Criminal proceedings

141 Meaning of enforcement action

In this subpart, unless the context otherwise requires, **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.

142 Person may notify regulator of interest in knowing of enforcement action taken by regulator

(1) A person may notify the regulator in the manner determined by the regulator that the person has an interest in knowing whether a particular incident, situation, or set of circumstances has been, is, or is to be subject to the taking of enforcement action by the regulator.

(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 incident, situation, or set of circumstances; or

(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.

Compare: 1992 No 96 s 54

143 Prosecutions by regulator

Subject to section 144, a prosecution for an offence under this Act may be brought only by the regulator.

Compare: 1992 No 96 s 54A

144 Private prosecutions

(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, 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

(c) any person has received notification from the regulator under section 142(2)(b) that neither the regulator nor a regulatory agency—

(i) has taken enforcement action or prosecution action against any person in respect of the same incident, situation, or set of circumstances; and

(ii) intends to take any enforcement action or prosecution action.

(2) 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.

(3) 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—

(a) the person has leave of the court; and

(b) the person has received notification from the regulator under section 142(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.

(4) If a person applies for leave under subsection (3)(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.

(5) Section 26(2) to (5) of the Criminal Procedure Act 2011 applies to an application for leave under subsection (3)(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:

(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

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

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

145 Continuing or repeated matters

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

Compare: 1992 No 96 s 54E

Limitation periods for prosecutions

146 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—

(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 128 to the withdrawal of the enforceable undertaking.

(2) Subsection (1)(a) is subject to section 147.

Compare: 1992 No 96 s 54B; Model Work Health and Safety Act (Aust) s 232

147 Extension of time if regulator needs longer to decide whether to bring prosecution

(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 146(1)(a).

(2) The District Court may, on application by the regulator made before the end of the 12-month period specified in section 146(1)(a), extend the time available for filing a charging document for a further period not exceeding 12 months from the date of expiry of the 12-month period specified in section 146(1)(a).

(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

(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

(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:

(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 142(1).

Compare: 1992 No 96 s 54D

148 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:

(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) within 3 months after the date of expiry of any extension granted to the regulator under section 147(2):

(d) 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 128 to the withdrawal of the enforceable undertaking.

149 Certain proceedings may be brought after end of limitation period if fresh evidence discovered

Despite anything in section 146, 147, or 148, 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:

(a) proceedings for an offence against section 47:

(b) proceedings for an offence against section 48 that relates to the death of a person.

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

Subpart 8—Sentencing for offences

150 Application of subpart

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

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

151 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 47, 48, or 49.

(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) whether death, serious injury, or serious illness occurred or could reasonably have been expected to have occurred; and

(e) 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

(f) the degree of departure from prevailing standards in the person's sector or industry as an aggravating factor; and

(g) 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

152 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).

(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.

(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)

153 Adverse publicity orders

(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:

(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.

(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—

(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.

(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).

Compare: Model Work Health and Safety Act (Aust) s 236

154 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.

(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.

Compare: Model Work Health and Safety Act (Aust) s 237

155 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.

(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

156 Release on giving of court-ordered enforceable undertaking

(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:

(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.

(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.

(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.

Compare: Model Work Health and Safety Act (Aust) s 239

157 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

158 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

159 Offence to fail to comply with order

(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 156; or

(b) an injunction granted under section 157.

(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

Subpart 9—General provisions relating to proceedings

160 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.

(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.

(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)

161 Conduct of directors, employees, or agents attributed

(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:

(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:

(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.

Compare: Model Work Health and Safety Act (Aust) s 244(1)

162 Proceedings involving classified security information

Schedule 4 contains provisions that apply in civil and criminal proceedings that involve classified security information.

Subpart 10—Inspectors and health and safety medical practitioners

Inspectors

163 Appointment of inspectors

(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):

(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.

(2) An inspector's compliance powers are subject to any conditions or limitations specified in the notice of the inspector's appointment.

(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.

Compare: Model Work Health and Safety Act (Aust) ss 156, 161

164 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.

(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

165 Suspension and ending of appointment of inspectors

(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

166 Inspectors subject to regulator's directions

(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.

(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

167 Regulator has powers of inspector

The regulator has all the powers that an inspector has under this Act.

168 Powers of entry and inspection

(1) Subject to section 169, 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 in charge of the workplace to conduct examinations, tests, inquiries, or inspections:

(b) be accompanied and assisted by any other person and bring into the workplace any equipment necessary to carry out the inspector's functions:

(c) take photographs and measurements and make sketches and recordings:

(d) require the PCBU or a person who is or appears to be 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:

(e) require the PCBU or a person who is or appears to be 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

(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 in charge of the workplace to make or provide statements, in any form and manner that the inspector specifies.

(2) An inspector may do any of the things referred to in subsection (1), whether or not—

(a) the inspector or the person whom the inspector is dealing with is in the workplace; or

(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.

(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,—

(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.

(6) In this section, **information** includes any document.

Compare: 1992 No 96 s 31; Model Work Health and Safety Act (Aust) s 163

169 Power to enter homes

(1) Despite section 168(1) and (2), an inspector must not, except with the consent of an occupier or pursuant to a warrant issued under subsection (2),—

(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—

(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.

(3) A warrant issued under subsection (2) authorises an inspector to exercise only the powers specified in section 168.

Compare: 1992 No 96 s 31; Model Work Health and Safety Act (Aust) s 170

170 Power to deal with cause of imminent danger

(1) This section applies if an inspector who enters a workplace under section 168 or 169 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 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,—

(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.

Compare: Model Work Health and Safety Act (Aust) s 176; Health and Safety at Work etc. Act 1974 (UK) s 25

171 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—

(a) the inspector's identity; and

(b) the inspector's contact information; and

(c) the date and time of entry; and

(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:

(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

172 Power to take samples and other objects and things

(1) An inspector who enters a workplace or a former workplace under section 168 or 169 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—

(a) monitoring conditions in the workplace; or

(b) determining the nature of any material or substance in the workplace; or

(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,—

(a) 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—

(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.

(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

(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

(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.

(7) The provisions of the Search and Surveillance Act 2012 referred to in subsection (6) apply as if—

(a) the reference in section 159(1) of that Act to a person described in section 156(2) were to—

(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

(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.

Compare: 1992 No 96 s 33; Model Work Health and Safety Act (Aust) ss 165, 178, 180

173 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—

(a) to suspect that person has engaged in or is engaging in conduct that constitutes or may constitute such a contravention; and

(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—

(a) the occupier of the place, or the person in charge of the vehicle or thing, (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—

(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

(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) 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.

Compare: Model Work Health and Safety Act (Aust) s 167

174 Continuation of powers of entry and inspection without search warrants

An inspector who, in the course of exercising a power under section 168 or 169, finds evidence of contravention of relevant health and safety legislation is not required to obtain a search warrant under section 173 to continue exercising powers under section 168 or 169.

175 Power to require name and address

(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.

(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

(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.

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

176 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.

(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.

Compare: 1992 No 96 s 47

177 Immunity of inspectors and persons assisting inspectors or regulator

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 an inspector's functions or powers under relevant health and safety legislation:

(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)

178 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 175(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.

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

179 Offence to hinder or obstruct inspector

(1) A person must not, 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.

(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.

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

180 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.

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

Health and safety medical practitioners

181 Appointment of health and safety medical practitioners

(1) The regulator may appoint any medical practitioner to be a health and safety medical practitioner.

(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.

Compare: 1992 No 96 s 34(1)–(3)

182 Suspension and ending of appointment of health and safety medical practitioners

(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)

183 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:

(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.

(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 (4),—

(a) enter a workplace that is, or is within, a home; or

(b) enter a workplace through a home.

(3) 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.

(4) 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.

Compare: 1992 No 96 s 35

184 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—

(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.

(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 health practitioner; and

(ii) to provide to the health and safety medical practitioner a certificate from the health practitioner as to the worker's fitness for work:

(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

(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 185, **significant hazard** means a hazard that is an actual or a potential cause or source of—

(a) death; or

(b) notifiable injury or illness the severity of whose effects on any person depends (entirely or among other things) on the extent or frequency of the person's exposure to the hazard; or

(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

185 Health and safety medical practitioners may suspend workers in certain cases

(1) Subject to 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

(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—

(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 184; or

(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

186 Immunity of health and safety medical practitioners and persons assisting health and safety medical practitioners

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.

187 Offence to hinder or obstruct health and safety medical practitioner

(1) A person must not, 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,—

(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

188 Offence to impersonate health and safety medical practitioner

(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.

Compare: 1992 No 96 s 38

Part 5
Miscellaneous provisions

Subpart 1—Administration

189 Role of WorkSafe

Except to the extent that a designation under section 191 is in force, WorkSafe is the regulator for the purposes of this Act.

190 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:

(d) to publish information about—

(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:

(e) 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

(ii) the public:

(f) to promote and support research, education, and training in work health and safety:

(g) to collect, analyse, and publish statistics and other information relating to work health and safety:

(h) to engage in, promote, and co-ordinate the sharing of information with other regulatory agencies:

(i) 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:

(j) 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:

(k) 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)

Designated agencies

191 Designated agencies

(1) The Prime Minister may designate an agency listed in subsection (3) as a designated agency, having regard to the specialist knowledge of that agency.

(2) A designation under subsection (1) must be made by notice in the *Gazette* and 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 any other enactment, that the designated agency may perform or exercise in respect of the particular industry, sector, or type of work or circumstance.

(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):

(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.

(4) A designation under subsection (1) 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.

Compare: 1992 No 96 s 28B

192 Role of designated agencies

(1) If a designated agency has been given a scope of designation under section 191, WorkSafe or another agency may perform functions or exercise powers under this Act 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.

(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.

(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).

193 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, irregularity, 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

194 Designated agency must give effect to joint policy directions

(1) Subject to any enactment or rule of law, a designated agency must, in performing functions and exercising powers under this Act 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.

(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

(b) any other necessary modifications.

Compare: 1992 No 96 s 28B(2)

Health and Safety at Work Strategy and workplace injury prevention

195 Health and Safety at Work Strategy

(1) The Minister must publish a strategy, called the Health and Safety at Work Strategy, that sets out the Government's overall direction in improving the health and safety of workers.

(2) The strategy must be developed jointly with WorkSafe.

(3) The Minister must make reasonable efforts to publish the first strategy within 24 months after the commencement of this section.

(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

(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.

(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.

196 Workplace injury prevention

(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—

(a) jointly undertaken by ACC and WorkSafe; or

(b) undertaken by WorkSafe and partly or wholly funded by ACC.

Information sharing

197 Sharing of information between regulator and regulatory agencies

(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

(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—

(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.

(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:

(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) This section applies despite anything to the contrary in any contract, deed, or document.

198 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 56.

(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.

199 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 arises from work:

(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 arises from work.

(2) The medical officer of health must, as soon as practicable after receiving the notification,—

(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

(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.

200 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

Funding levy

201 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.

(2) The funding 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:

(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 3B or RD 3C of the Income Tax Act 2007 applies, on the amount of earnings derived or deemed to have been derived by the shareholder-employee.

(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

(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.

(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.

(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:

(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

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.

Compare: 1992 No 96 s 59

Section 201(2)(c): amended (with effect on 30 March 2017), on 29 March 2018, by section 418 of the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 (2018 No 5).

202 Consultation requirement relating to funding levy

The Minister must not recommend the making of regulations for the purposes of section 201 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.

Compare: 1992 No 96 s 59(7)

Subpart 2—Authorisations

203 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.

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

204 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—

(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,—

(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

205 Requirements for authorisation of plant or substance

(1) A person must not use plant or a substance at a workplace if—

(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—

(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,—

(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

206 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.

(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.

(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 43

207 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

(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—

(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.

(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

208 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,—

(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 3—General provisions

209 Offence to give false or misleading information

(1) A person must not give information in complying or purportedly complying with this Act or regulations that the person knows—

(a) 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 is false or misleading in a material particular without—

(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 that—

(i) states that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and

(ii) sets out, or refers 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

210 Confidentiality of information

(1) This section applies if the regulator obtains information or gains access to a document in performing or exercising any function, 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, 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 197; 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 4—Regulations, exemptions, approved codes of practice, and safe work instruments

Regulations

211 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:

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:

(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:

(d) imposing specific duties on persons in relation to any matter provided for under regulations:

Notifiable events

(e) 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:

(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

(f) 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, installation, operation, alteration, 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):

Protection and welfare of workers and other persons

(g) prescribing matters (including requirements) relating to the protection and welfare of workers and other persons at a workplace, including—

(i) regulating the provision, maintenance, administration, or use in specified circumstances of—

(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:

(ii) regulating the provision of 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 facilities for the welfare of workers using accommodation:

(iv) setting, or providing for the setting of, mechanisms for measuring and controlling exposure to substances (or their components) in the workplace:

Hazards and risks

(h) 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):

(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

(i) prescribing requirements relating to—

(i) the keeping and availability of records of health and safety representatives:

(ii) the keeping of records in relation to notifiable events:

(iii) the keeping and availability of records of specified activities, matters, or things to be kept by specified persons:

(iv) the making available of, or the giving of, any notice, report, or other document about specified activities, matters, or things to the regulator, an inspector, or other specified person:

(j) prescribing the information that must be included in any notice, report, or other document made available or given in accordance with paragraph (i):

Authorisations

(k) prescribing matters relating to authorisations (including licences, certifications, registrations, and permits), qualifications, and experience for the purposes of subpart 2 of Part 5 or regulations, including providing for—

(i) the grant, issue, renewal, variation, suspension, cancellation, expiry, and replacement of authorisations:

(ii) the evidence and information to be provided in relation to applications (for example, statutory declarations or compliance certificates):

(iii) exemptions from a requirement to be authorised:

(iv) variations of authorisations by the regulator, whether on application or otherwise:

(v) the authorisation of persons who are to be involved in the authorisation of other persons (for example, as trainers, assessors, auditors, or 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:

(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:

(xii) conditions of authorisations:

(xiii) fees for applications for the grant, issue, renewal, variation, or audit of authorisations:

(xiv) the keeping of 1 or more registers of authorisations, and for access to those registers:

(l) the recognition of authorisations granted under other enactments or by other jurisdictions and any exceptions to such recognition:

Identity cards

(m) prescribing matters relating to identity cards:

Review and appeal of decisions

(n) prescribing matters relating to the review and appeal of decisions made under this Act:

Mining sector

(o) prescribing matters relating to industry health and safety representatives, including the eligibility criteria for appointment as an industry health and safety representative:

(p) 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

(q) prescribing exemptions from compliance with regulations on the terms and conditions (if any) prescribed:

(r) prescribing criteria or other requirements that relate to exemptions granted by the regulator under section 220, including specifying that an exemption must not be granted in respect of any particular provision or provisions:

Offences and penalties

(s) creating offences in respect of the contravention of regulations and providing for the imposition of fines not exceeding $50,000:

Infringement offences

(t) prescribing infringement offences for the purposes of this Act and regulations:

(u) setting the infringement fee payable for an infringement offence, which may not exceed $12,000, and setting different infringement fees for different infringement offences or in respect of different persons or individuals:

(v) prescribing the form of infringement notices and infringement offence reminder notices:

Fees and charges

(w) prescribing fees or charges for doing any act or providing any service for the purposes of this Act or regulations, including—

(i) prescribing the circumstances and way in which fees or charges can be refunded, waived, or reduced:

(ii) specifying the method or methods by which fees and charges may be recovered:

Forms

(x) prescribing the information that must be contained in forms for the purposes of this Act:

General

(y) 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)(q), the reasons for it must be set out in the explanatory note of the regulations.

Compare: 1992 No 96 ss 21, 23; Model Work Health and Safety Act (Aust) Schedule 3

212 Regulations relating to hazardous substances

(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:

(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,—

(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:

(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:

(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,—

(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 gases under pressure, whether intrinsically hazardous or not:

(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:

(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:

(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:

(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) in relation to any hazardous substances under the control of the Minister of Defence or the Chief of Defence Force, applying (with or without modifications) for the purposes of the regulations any provisions of a Defence Force Order issued under section 27 of the Defence Act 1990 that may be in addition to, or in place of, the provisions of the regulations:

(i) 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:

(j) providing for any matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(2) Subsection (3) applies if, before, on, or after the commencement of this section, the EPA issues an EPA notice under section 74 of the Hazardous Substances and New Organisms Act 1996 establishing a hazard classification system that replaces the hazard classification system provided for in the Hazardous Substances (Classification) Regulations 2001 and the Hazardous Substances (Minimum Degrees of Hazard) Regulations 2001 (the **existing classification system**).

(3) Regulations made under this section may be made based on the existing classification system for a period not exceeding 5 years after the date on which the EPA notice is issued.

Compare: 1996 No 30 ss 75, 140

213 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—

(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.

(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.

(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.

214 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:

(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:

(b) prescribing matters relating to health and safety representatives, including—

(i) the eligibility criteria for election as a health and safety representative:

(ii) the procedure for electing or removing a health and safety representative:

(iii) the eligibility criteria to vote for a health and safety representative:

(iv) the term of office for health and safety representatives:

(v) specifying high-risk sectors or industries for the purposes of sections 62(4)(b) and 66(3)(b):

(vi) 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 2, based on the number of workers who work for the PCBU as at specified dates in the year:

(vii) 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 2:

(viii) maintaining a list of health and safety representatives 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:

(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 cls 8, 9

215 Regulations relating to levies

(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—

(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:

(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:

(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:

(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.

(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 217.

216 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:

(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:

(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.

(2) No regulations made under this section may be made, or continue in force, later than 2 years after the date of commencement of this section.

217 Consultation requirements for making certain regulations

(1) The Minister must not recommend the making of any regulations under section 211, 212, 214, or 215 without first consulting persons and organisations that

the Minister considers appropriate, having regard to the subject matter of the proposed regulations.

(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.

Compare: 1992 No 96 s 21(2), (3)

218 Further provisions relating to regulations

(1) Regulations made under this Act may—

(a) impose similar or additional duties on a person in relation to the same circumstances or matters as this Act does:

(b) be of general or limited application:

(c) differ according to differences in time, place, or circumstance, or any other basis:

(d) impose prohibitions:

(e) apply differently to people of a differing age or health status, and may apply only to people of a particular age or health status:

(f) apply differently to different classes of person, workplace, plant, structure, substance, or kind of risk:

(g) 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.

(2) Regulations made under this Act are not invalid merely because they confer any discretion on, or allow any matter to be determined or approved by, any person.

Compare: 1992 No 96 s 22

219 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

(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 12 (which relates to the application of this Act to prescribed high-risk plant):

(b) section 17 (which defines person conducting a business or undertaking):

(c) section 19 (which defines worker):

(d) section 21 (which defines supply):

(e) section 23 (which defines notifiable injury or illness):

(f) section 24 (which defines notifiable incident):

(g) section 37 (which relates to the duty of a PCBU who manages or controls a workplace):

(h) section 38 (which relates to the duty of a PCBU who manages or controls fixtures, fittings, or plant at a workplace):

(i) section 55 (which relates to the duty to preserve sites):

(j) section 211(1)(q) (which authorises regulations prescribing exemptions from compliance with regulations):

(k) section 213 (which authorises regulations relating to exemptions in respect of the Armed Forces).

Exemptions

220 Regulator may grant exemption from compliance with regulations

(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

(b) the exemption is not inconsistent with the purpose of this Act.

(3) The regulator may—

(a) grant the exemption on any terms and conditions that the regulator thinks fit; and

(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 221 (which may not be earlier than the date of the notice); and

(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).

221 Status and publication of exemptions granted by regulator

(1) An exemption granted under section 220 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 220 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.

(3) As soon as practicable after an exemption granted under section 220 is made, it must be—

(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.

(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 220 that is of general application and that applies to classes of persons.

Codes of practice

222 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.

(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

(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,—

(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,—

(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.

(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, to a code of practice made under section 20 of the Health and Safety in Employment Act 1992:

(b) any minor or technical amendments to an approved code of practice (including 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.

(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.

Compare: 1992 No 96 s 20; Model Work Health and Safety Act (Aust) s 274(1)–(3)

223 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*.

(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 222(5) comes into force on the date specified by notice in the *Gazette*.

Compare: 1992 No 96 s 20A

224 Access to approved codes of practice

(1) The *Gazette* notice published by the regulator under section 223(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.

(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

(b) for purchase in hard copy at a reasonable charge.

Compare: 1992 No 96 s 20C(1)

225 Proof of codes of practice

The publication by the regulator of a notice under section 223(1) is conclusive proof that the code has been validly made under section 222.

Compare: 1992 No 96 s 20A(5)

226 Use of approved codes of practice in proceedings

(1) No code of practice issued or amended under this Part confers rights or obligations capable of enforcement in any civil or criminal proceedings.

(2) However, an approved code of practice is admissible in any civil or criminal proceedings as evidence of whether or not a duty or obligation under this Act has been complied with.

(3) The court may—

(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.

Compare: 1992 No 96 s 20B; Model Work Health and Safety Act (Aust) s 275

Safe work instruments

227 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) listing standards, control of substances, and competency requirements.

(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.

(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.

(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 228(1).

(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—

(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.

228 Legal effect of safe work instruments

(1) A safe work instrument made under section 227 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—

(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 has not been made at the time the regulations are made).

General provisions

229 Minister may delegate approval of codes of practice and safe work instruments to regulator

(1) The Minister may, either generally or particularly, delegate to the regulator his or her power—

(a) under section 222 to approve, amend, or revoke a code of practice:

(b) under section 227 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.

(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

(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).

(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.

230 Relationship between regulations relating to hazardous substances under this Act and Resource Management Act 1991

(1) *[Repealed]*

(2) *[Repealed]*

(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

(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.

(5) In this section, **resource consent** has the same meaning as in section 2(1) of the Resource Management Act 1991.

Section 230(1): repealed, on 19 April 2017, by section 123 of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 230(2): repealed, on 19 April 2017, by section 123 of the Resource Legislation Amendment Act 2017 (2017 No 15).

Subpart 5—Repeals, revocations, and consequential amendments

231 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:

(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):

(c) Noxious Substances Regulations 1954 (SR 1954/128).

232 Consequential amendments

Amend the enactments specified in Schedule 5 as set out in that schedule.

Schedule 1
Transitional and savings provisions

s 4

1 Interpretation

In this schedule, **former Acts** means—

(a) the Health and Safety in Employment Act 1992; and

(b) the Machinery Act 1950.

Legislative instruments

2 Transitional provision relating to regulations made under former Acts and Factories Act 1946

(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:

(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:

(e) Lead Process Regulations 1950:

(f) Spray Coating Regulations 1962.

(2) 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 231 of this Act).

(3) Despite the repeal of the Machinery Act 1950 by section 231 of this Act, section 21A of that Act is to be treated as continuing in force until the Amusement Devices Regulations 1978 are revoked.

(4) 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 $50,000.

Compare: 1992 No 96 s 50(1)(b)

3 Transitional provision relating to Geothermal Energy Regulations 1961

(1) The Geothermal Energy Regulations 1961 (SR 1961/124) made under the Geothermal Energy Act 1953 are to be treated as regulations made under this Act and may be amended or revoked accordingly.

(2) A person who contravenes a provision of the regulations specified in subclause (1) commits an offence and is liable on conviction to a fine not exceeding $50,000.

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 necessary modifications.

Exemptions

5 Transitional provision relating to exemptions granted from regulations under Health and Safety in Employment Act 1992

(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 220 of this Act.

6 Transitional provision relating to exemptions granted from regulations and instruments under Hazardous Substances and New Organisms Act 1996

(1) This clause applies if—

(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

(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—

(a) it expires; or

(b) it is sooner revoked or replaced under section 220 or under any other enactment or instrument.

Pre-commencement consultation

7 Pre-commencement consultation relating to regulations, codes of practice, and safe work instruments

(1) Sections 202, 215(4), and 217(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.

(2) Section 222(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 227(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.

Re-incorporation of existing material incorporated by reference

8 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:

(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:

(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:

(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

(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 227 of this Act that incorporate existing material by reference in reliance on section 49 of that Act.

(3) Existing material that is incorporated by reference in accordance with this clause may—

(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):

(c) exclude material that is no longer required.

Inspectors, enforcement officers, and health and safety medical practitioners

9 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 section 163 of this Act.

(2) The provisions are—

(a) section 29 of the Health and Safety in Employment Act 1992:

(b) section 5 of the Machinery Act 1950:

(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 subclause (1) remains subject to any direction or condition that applied to the person's appointment before the commencement of this clause.

10 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 181 of this Act.

(2) A person who continues to hold office under subclause (1) remains subject to any direction or condition that applied to the person's appointment before the commencement of this clause.

Funding levy

11 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,—

(a) the person must pay the levy as if the levy were payable under section 201 of this Act; and

(b) this Act applies to the levy in all respects.

Employee participation systems, health and safety representatives, and health and safety committees

12 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 61 of this Act and all references in the system to—

(a) an employer were references to a PCBU as defined in section 17; and

(b) an employee were references to a worker as defined in section 19; and

(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 66.

13 Transitional provision relating to health and safety representatives

(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.

(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 of this Act.

(3) Part 3 of this Act 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.

(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.

(6) The provisions are—

(a) section 69 (which relates to the power to issue a provisional improvement notice):

(b) section 84 (which relates to the power to direct unsafe work to cease).

14 Transitional provision relating to training of health and safety representatives

(1) This clause applies if clause 12 of Schedule 2 commences during a year, being a period starting on 1 April in a year and ending on 31 March in the following year.

(2) The training requirements for health and safety representatives under clause 12 of Schedule 2 do not take effect until the start of the following year.

15 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 66 of this Act.

Health and safety in mining sector

16 Transitional provision relating to worker participation systems

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 under section 61 of this Act and all references in the system to—

(a) a site health and safety representative were references to a health and safety representative elected in accordance with subpart 2 of Part 3; and

(b) a site health and safety committee were references to a health and safety committee established in accordance with section 66.

17 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.

(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 of this Act.

(3) Part 3 of this Act 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 84) were references to a mine operator; and

(b) references to a PCBU in section 84 were references to a site senior executive; and

(c) 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

(d) references to a business or 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 8 and 9 of Schedule 3.

(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.

(7) The provisions are—

(a) section 69 (which relates to the power to issue a provisional improvement notice):

(b) section 84 (which relates to the power to direct unsafe work to cease):

(c) clauses 8 and 9 of Schedule 3 (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).

18 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 66 of this Act.

(2) Part 3 of this Act 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

(b) references to a business or undertaking were references to a mining operation.

(3) Subclause (2) is to avoid doubt.

19 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 17 of Schedule 3 of this Act.

(2) Schedule 3 applies to a person who continues in his or her role as an industry health and safety representative.

20 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.

(2) On and after the commencement of this clause, the identity card must be treated as if it were issued under clause 22 of Schedule 3 of this Act until it expires or is sooner revoked.

21 Transitional provision relating to register of industry health and safety representatives

(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 24 of Schedule 3 of this Act.

New Zealand Mining Board of Examiners

22 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 1992is 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 29 of Schedule 3 of this Act.

23 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 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 31 of Schedule 3 of this Act; and

(b) this Act applies to the levy in all respects.

Register of accidents and serious harm

24 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.

Notices, offences, and contraventions under former Acts

25 Transitional provision relating to notices issued under Health and Safety in Employment Act 1992

(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 231 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.

26 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 231 of this Act; and

(b) regulations made under the former Acts and in force immediately before the commencement of section 231 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.

Schedule 2
Health and safety representatives and health and safety committees

s 67

Part 1
Health and safety representatives

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:

(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:

(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:

(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.

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—

(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—

(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):

(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

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).

(3) In exercising the power under this clause, the health and safety representative must comply with any reasonable procedures and requirements that relate to work health and safety.

(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.

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—

(a) hazards (including associated risks) at the workplace affecting workers in the work group; and

(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).

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):

(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

(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

(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.

(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

(b) work group A and work group B are within the same multiple PCBU work group arrangement (as defined in section 64(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

(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.

(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 168.

(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):

(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

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.

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.

(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

(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:

(b) for a multiple PCBU work group arrangement (as defined in section 64(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

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

(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—

(i) hazards (including associated risks) at the workplace affecting workers in a work group; and

(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

(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 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

(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.

(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.

(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,—

(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)

(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

(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.

(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

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—

(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 214(b)(vii); and

(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 214(b)(vi).

(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,—

(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):

(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.

(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:

(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

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

(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:

(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:

(ii) only if the disclosure is authorised or required by law.

(3) In subclause (2), **disclose** includes to give any person access to information.

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

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.

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—

(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.

(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

18 Appeal against removal from office

(1) A health and safety representative may appeal to the 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).

Compare: 1992 No 96 s 19ZT

Schedule 2 clause 18(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

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

(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.

(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 the District Court against a decision of the regulator not to exercise its discretion to remove the health and safety representative.

(5) An appeal must be brought within 28 days of the date of the notice given under subclause (3).

Schedule 2 clause 19(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Part 2
Health and safety committees

20 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

(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.

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:

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

Compare: 1992 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 clause 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.

(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:

(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:

(ii) only if the disclosure is authorised or required by law.

(3) In subclause (2), **disclose** includes to give any person access to information.

Compare: 1992 No 96 s 19ZN

Schedule 3
Health and safety in mining sector

s 68

Part 1
General provisions

1 Interpretation

In this schedule,—

alluvial mining operation means a mining operation carried out above ground and associated with—

(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 27

coal means anthracite, bituminous coal, sub-bituminous coal, and lignite, and—

(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 17

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,—

(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:

(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

(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

(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—

(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

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

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

(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

(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:

(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:

(vii) preparatory, maintenance, and repair activities associated with the activities described in subparagraphs (i) to (iv); and

(c) includes—

(i) a tourist mining operation:

(ii) a tunnelling operation; but

(d) does not include—

(i) exploring for minerals:

(ii) an alluvial mining operation:

(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

(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

(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.

(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

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.

Compare: 1992 No 96 s 19O

5 Regulations excluding tunnelling operations from clause 4

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations declaring that certain operations or classes of operation are not tunnelling operations for the purposes of clause 4.

Compare: 1992 No 96 s 19P

Worker engagement, participation, and representation in mining sector

6 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—

(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

(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 84 must be read as references to the site senior executive.

Specific provision relating to competency of inspectors who inspect mining operations

7 Competency of inspectors appointed under this Act who inspect mining operations

A person appointed as an inspector under section 163 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.

Compare: SR 2013/483 r 51(2)

Specific powers of health and safety representatives in mining sector

8 Power of health and safety representative to give notice requiring suspension of mining operation

(1) This clause 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 is likely to cause a serious risk to the health and safety of a person; and

(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.

(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.

(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.

(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.

Compare: 1992 No 96 s 19ZG

9 Power of health and safety representative to require mining operation to stop in case of serious risk to health and safety

(1) This clause 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.

(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

(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) 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,—

(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:

(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

10 Inspector may cancel order to suspend mining operation

An inspector may cancel the whole or part of a notice given under clause 8 (whether or not mining operations have stopped pursuant to the notice) or an action taken by a health and safety representative under clause 9 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.

Compare: 1992 No 96 s 19ZI

11 Competency and experience requirements for exercise of powers under clauses 8 and 9

A health and safety representative must not exercise any power under clause 8 or 9 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

12 Mine workers must do other work

(1) This clause applies if the whole or a part or an aspect of a mining operation is stopped under clause 8 or 9.

(2) Section 86 applies with any necessary modifications to a mine worker who has stopped work under clause 8 or 9.

Compare: 1992 No 96 s 19ZJ

13 Work not to restart until no likelihood of serious risk to health and safety

(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 8, or stopped or required to be stopped under clause 9, 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.

(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

14 Health and safety representative not to unnecessarily impede production

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

15 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 2.

(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.

Compare: 1992 No 96 s 19ZC

16 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.

(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.

Compare: 1992 No 96 s 19ZL(a)

Industry health and safety representatives

17 Appointment of industry health and safety representatives

(1) This clause and clauses 18 to 23 apply only to—

(a) a mining operation associated with the extraction of coal and where any person works below ground (**underground coal mining operation**):

(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.

(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.

Compare: 1992 No 96 s 19ZU

18 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

(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.

Compare: 1992 No 96 s 19ZV

19 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:

(a) to give notice requiring suspension of a mining operation under clause 8:

(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 9:

(c) 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 15:

(d) 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:

(e) to assist with industry-wide initiatives to improve health and safety in mining operations.

(2) Clauses 10, 12 to 14, and 16 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

20 Further provision concerning scope of functions and powers of industry health and safety representatives

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

(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.

Compare: 1992 No 96 s 19ZX

21 Application of certain provisions to industry health and safety representatives

Clause 10(1)(b), (d) to (f), and (h) to (i) and (2) of Schedule 2 and clauses 11, and 13 to 18 of Schedule 2 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.

22 Identity cards

(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 practicable, but within 14 days, after the date on which the person ceases to be a representative.

(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

23 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—

(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 clause 3 of Schedule 2 must—

(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—

(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.

Compare: 1992 No 96 s 19ZZ

24 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.

(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

25 Alterations to register

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 24.

Compare: 1992 No 96 s 19ZZC

26 Search of register

(1) A person may search the register for a purpose set out in clause 24(2).

(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

Part 2
New Zealand Mining Board of Examiners

27 New Zealand Mining Board of Examiners

WorkSafe must establish a board to be known as the New Zealand Mining Board of Examiners.

Compare: 1992 No 96 s 20D

28 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:

(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.

Compare: 1992 No 96 s 20E

29 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.

(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:

(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.

(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

30 Proceedings of Board

The Board may determine its own procedure.

Compare: 1992 No 96 s 20G

31 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.

(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:

(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:

(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:

(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,—

(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:

(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 4
Provisions relating to classified security information

s 162

1 Application of this schedule

(1) This schedule applies to any criminal or civil proceedings (including public law and judicial review proceedings) that relate to the administration or enforcement of this Act, if—

(a) all parties to the proceedings have access to classified security information that is to be produced or referred to in the proceedings; or

(b) the defendant in proceedings intends to produce or refer to classified security information.

(2) Nothing in this schedule limits the duties of a prosecutor to disclose information under the Criminal Disclosure Act 2008.

2 Interpretation

In this schedule,—

classified security information has the meaning given in clause 3

non-Crown defendant means a person, other than the Crown or a Crown organisation, who is a defendant in any proceedings that relate to the administration or enforcement of this Act

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

(e) *[Repealed]*

special advocate means a person appointed under clause 6

specified agency means—

(a) the New Zealand Defence Force:

(b) the New Zealand Police:

(c) *[Repealed]*

(d) a government department named in Schedule 1 of the State Sector Act 1988.

Schedule 4 clause 2 **security, intelligence, or law enforcement agency** paragraph (d): amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Schedule 4 clause 2 **security, intelligence, or law enforcement agency** paragraph (e): repealed, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Schedule 4 clause 2 **specified agency** paragraph (c): repealed, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

3 Meaning of classified security information

(1) In this schedule, **classified security information** means information—

(a) that is relevant to proceedings that relate to the administration or enforcement of this Act; and

(b) that is held by a specified agency; and

(c) 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,—

(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).

(2) Information falls within subclause (1)(c)(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; or

(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.

(3) Disclosure of information falls within subclause (1)(c)(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

(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

(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

(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) 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.

(3) Subclause (2) 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(2), 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:

(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:

(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.

(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.

Compare: 2013 No 91 s 104

6 Appointment of special advocate

(1) This clause applies if a non-Crown defendant cannot properly defend proceedings without being able to consider classified security information and the non-Crown defendant does not hold an appropriate security clearance to see that information.

(2) The court may, on the application of the non-Crown defendant, appoint a barrister or solicitor as a special advocate to represent the non-Crown defendant'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 facilitate either or both of the following:

(a) the non-Crown defendant's proper defence of the proceedings:

(b) a fair hearing.

(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

(b) is suitably qualified and experienced to fulfil the role of a special advocate.

(4) The court may make directions as to the terms of the appointment, and on the matters referred to in clauses 9 and 10(3).

(5) The specified agency that holds the classified security information 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

(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:

(a) the specified agency:

(b) the non-Crown defendant.

(2) The court may appoint a person nominated under subclause (1) or another person.

Compare: 2013 No 91 s 106

8 Role of special advocates

(1) The role of a special advocate is to represent a non-Crown defendant.

(2) In particular, a special advocate may—

(a) prepare the non-Crown defendant's defence:

(b) examine and cross-examine witnesses:

(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.

Compare: 2013 No 91 s 107

9 Court may provide access to classified security information to special advocate

(1) A special advocate may apply to the court for access to the classified security information.

(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

(1) A special advocate may communicate with a non-Crown defendant or the non-Crown defendant's representative on an unlimited basis until the special advocate has been provided with access to the classified security information.

(2) After a 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.

(3) A special advocate who, after having been given access to the classified security information, wishes to communicate with the non-Crown defendant or the non-Crown defendant's representative, or any other person not referred to in subclause (4), may do so on the terms that the court may direct.

(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 that holds the classified security information, or the specified agency's security-cleared representative.

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—

(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 schedule applies despite the requirements of any practice rules made and approved under the Lawyers and Conveyancers Act 2006.

(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

(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 includes classified security information,—

(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

(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

(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 3(3); and

(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

13 Nothing in this schedule limits other rules of law that authorise or require withholding of document, etc

Nothing in this schedule 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.

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.

(2) General practices and procedures may be agreed under subclause (1) on the following matters:

(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.

(3) Subclause (2) does not limit subclause (1).

Compare: 2013 No 91 s 113

Schedule 5
Consequential amendments

s 232

Part 1
Amendments to Acts

Building Act 2004 (2004 No 72)

In section 9(b), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

Replace section 9(g) and (h) with:

> (g) containers as defined in regulations made under the Health and Safety at Work Act 2015; or
>
> (h) magazines as defined in regulations made under the Health and Safety at Work Act 2015; or

Civil Defence Emergency Management Act 2002 (2002 No 33)

Replace section 17(3)(g) with:

> (g) Health and Safety at Work Act 2015:

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 16 of the Health and Safety at Work Act 2015 or an inspector appointed under section 163 of that Act:

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 200 (coroner may call for report on fatal accident) of the Health and Safety at Work Act 2015".

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 200 (coroner may call for report on fatal accident) of the Health and Safety at Work Act 2015".

Costs in Criminal Cases Act 1967 (1967 No 129)

In section 4(5), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

In section 7(3), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

In section 10(2), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

Crown Minerals Act 1991 (1991 No 70)

In section 2(1), after the definition of **good industry practice**, insert:

Crown Minerals Act 1991 (1991 No 70)—*continued*

health and safety regulator has the same meaning as regulator in section 16 of the Health and Safety at Work Act 2015

In section 2(1), definition of **specified Act**, paragraph (a), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

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 "the Health and Safety at Work Act 2015".

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 Health and Safety at Work Act 2015 an activity must be authorised (as defined in section 203 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 2 of Part 5 of the Health and Safety at Work Act 2015 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 105 of the Health and Safety at Work Act 2015; or

(b) an enforcement action (as defined in section 141 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 the Health and Safety at Work Act 2015.

Replace section 41C(3)(b) with:

Crown Minerals Act 1991 (1991 No 70)—*continued*

(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 the Health and Safety at Work Act 2015, 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.

Replace section 90E(1) with:

(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 the regulator's functions, duties, or powers under any relevant health and safety legislation (as defined in section 16 of the Health and Safety at Work Act 2015).

In Schedule 1, heading to clause 15, replace "**Health and Safety in Employment Act 1992**" with "**Health and Safety at Work Act 2015**".

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,—

(a) the health and safety regulator or an inspector may exercise or perform the functions, powers, and duties—

(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 the Health and Safety at Work Act 2015 or the WorkSafe New Zealand Act 2013; and

(b) the Acts referred to in paragraph (a)(ii) apply accordingly with any necessary modifications.

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 the Health and Safety at Work Act 2015 or the WorkSafe New Zealand Act 2013".

Crown Organisations (Criminal Liability) Act 2002 (2002 No 37)

In section 3(b), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

Replace section 6(1)(b) with:

(b) an offence under the Health and Safety at Work Act 2015:

In section 7(a), replace "the Health and Safety in Employment Act 1992" with "the Health and Safety at Work Act 2015".

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.

In section 10(1)(b)(i), replace "section 31 of the Health and Safety in Employment Act 1992" with "section 168 of the Health and Safety at Work Act 2015".

In section 12(1), replace "or costs" with "fine, or costs".

Electricity Act 1992 (1992 No 122)

In section 2(1), repeal the definition of **all practicable steps**.

In section 2(1), replace the definition of **Minister** with:

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

Electricity Act 1992 (1992 No 122)—*continued*

In section 2(1), definition of **serious harm**, replace paragraph (c) with:

(c) a notifiable injury or illness as defined in section 23 of the Health and Safety at Work Act 2015

Replace section 16(6)(b) with:

(b) section 56 of the Health and Safety at Work Act 2015.

In section 17(3), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

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

(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.

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.

In section 169(2)(b)(ii), replace "section 20A of the Health and Safety in Employment Act 1992" with "section 222 of the Health and Safety at Work Act 2015".

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:

Electricity Act 1992 (1992 No 122)—*continued*

(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:

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 227 of the Health and Safety at Work Act 2015 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).

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 "Health and Safety at Work Act 2015".

In section 63(4), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

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

Gas Act 1992 (1992 No 124)—*continued*

(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 23 of the Health and Safety at Work Act 2015

Replace section 17(6)(b) with:

(b) section 56 of the Health and Safety at Work Act 2015.

In section 18(3), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

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,".

In section 54(2)(b)(ii), replace "section 20A of the Health and Safety in Employment Act 1992" with "section 222 of the Health and Safety at Work Act 2015".

Replace section 54A(1)(b) with:

(b) the elimination, isolation, or minimisation of those hazards, so far as is reasonably practicable; and

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.

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 227 of the Health and Safety at Work Act 2015 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—

Gas Act 1992 (1992 No 124)—*continued*

(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).

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.

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.

Income Tax Act 2007 (2007 No 97)

Replace section CX 24(b) with:

(b) is aimed at managing risks to health and safety in the workplace as provided under the Health and Safety at Work Act 2015; 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 8(7) of the Health and Safety at Work Act 2015:

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 23 of the Health and Safety at Work Act 2015

Replace section 57(6)(b)(iv) with:

(iv) the regulator, an inspector, or any other person under the Health and Safety at Work Act 2015,—

Mines Rescue Act 2013 (2013 No 96)

In section 4(1), definition of **coal**, replace "section 19L of the Health and Safety in Employment Act 1992" with "clause 1 of Schedule 3 of the Health and Safety at Work Act 2015".

In section 4(1), definition of **mineral**, replace "section 19L of the Health and Safety in Employment Act 1992" with "clause 1 of Schedule 3 of the Health and Safety at Work Act 2015".

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 3 of the Health and Safety at Work Act 2015".

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 3 of the Health and Safety at Work Act 2015".

In section 4(2), definition of **mining operation**, replace "section 19O" with "clause 4 of Schedule 3".

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 3 of the Health and Safety at Work Act 2015".

In section 4(3), definition of **mining operation**, paragraph (b), replace "section 19O" with "clause 4 of Schedule 3".

Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74)

In section 4, definition of **serious harm**, replace paragraph (d) with:

> (d) a notifiable injury or illness as defined in section 23 of the Health and Safety at Work Act 2015

Prostitution Reform Act 2003 (2003 No 28)

In the heading to section 10, replace "**Health and Safety in Employment Act 1992**" with "**Health and Safety at Work Act 2015**".

In section 10(1), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

Railways Act 2005 (2005 No 37)

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—

Railways Act 2005 (2005 No 37)—*continued*

(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

health and safety regulator has the same meaning as regulator in section 16 of the Health and Safety at Work Act 2015

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:

Railways Act 2005 (2005 No 37)—*continued*

(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 "**Health and Safety at Work Act 2015**".

In section 8, replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015" in each place.

In section 8(2), replace "WorkSafe" with "the health and safety regulator".

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.

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

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, so far as was reasonably practicable, to prevent or stop that act or remedy that omission.

Search and Surveillance Act 2012 (2012 No 24)

In the Schedule, insert in its appropriate alphabetical order:

Health and Safety at Work Act 2015	169(2)	Inspector may obtain and execute search warrant to enter a home (or part of a home) and exercise section 168 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 may enter the workplace	Subpart 3
	172(1)	Inspector who has entered a workplace or a former workplace under section 168 or 169 may take or remove sample of any	Sections 154, 155, and 159

Search and Surveillance Act 2012 (2012 No 24)—*continued*

	material, substance, or thing for analysis, or seize and retain any material, substance, or thing for specified purposes	
173(1) and (3)	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	All (except sections 118 and 119)
183(1) and (4)	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	Subpart 3

Sentencing Act 2002 (2002 No 9)

In section 4(4), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

Sharemilking Agreements Act 1937 (1937 No 37)

In the Schedule, clause 124, replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

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 163 of the Health and Safety at Work Act 2015".

Replace section 20A with:

20A Health and Safety at Work Act 2015 not affected

Nothing in this Part, and no steps taken in compliance or purported compliance with this Part, limits or affects—

(a) the Health and Safety at Work Act 2015; or

Smoke-free Environments Act 1990 (1990 No 108)—*continued*

(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 "**Health and Safety at Work Act 2015**".

In section 123C(2), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

Summary Proceedings Act 1957 (1957 No 87)

In section 2(1), definition of **infringement notice**, after paragraph (ja), insert:

(jb) section 138 of the Health and Safety at Work Act 2015; or

Terrorism Suppression Act 2002 (2002 No 34)

In section 13B(2), replace "Hazardous Substances and New Organisms Act 1996" with "Health and Safety at Work Act 2015".

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
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—

(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)

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)

Electricity (Safety) Regulations 2010 (SR 2010/36)—*continued*

Regulations 2013" with "regulations made under the Health and Safety at Work Act 2015".

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 3 of the Health and Safety at Work Act 2015".

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 the Health and Safety at Work Act 2015".

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 the Health and Safety at Work Act 2015".

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 3 of the Health and Safety at Work Act 2015".

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 3 of the Health and Safety at Work Act 2015".

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 3 of the Health and Safety at Work Act 2015".

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 the Health and Safety at Work Act 2015".

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 the Health and Safety at Work Act 2015".

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 3 of the Health and Safety at Work Act 2015".

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

Electricity (Safety) Regulations 2010 (SR 2010/36)—*continued*

(b) significant damage to property owned by a person other than the safety management system operator

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 3 of the Health and Safety at Work Act 2015".

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 3 of the Health and Safety at Work Act 2015".

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 the Health and Safety at Work Act 2015".

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 the Health and Safety at Work Act 2015".

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".

Electricity (Safety) Regulations 2010 (SR 2010/36)—*continued*

In regulation 100(1)(d), replace "to comply" with "comply".

In regulation 100(2), replace "the Health and Safety in Employment Act 1992" with "the Health and Safety at Work Act 2015".

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.

In regulation 101(2), replace "The employer must take all practicable steps to—" with "The employer must, so far as is reasonably practicable,—".

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 "the Health and Safety at Work Act 2015".

Replace regulation 104(6) with:

(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,".

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 the Health and Safety at Work Act 2015".

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 the Health and Safety at Work Act 2015".

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 the Health and Safety at Work Act 2015".

In Schedule 8, clause 37(3), replace "the Health and Safety in Employment (Mining Operations and Quarrying Operations) Regulations 2013" with "regulations made under the Health and Safety at Work Act 2015".

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)

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 19 of the Health and Safety at Work Act 2015.

Health and Safety in Employment (Pipelines) Regulations 1999 (SR 1999/350)

In regulation 2, replace definition of **the Act** with:

> **Act** means the Health and Safety at Work Act 2015

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".

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".

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".

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".

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.

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".

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)

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".

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".

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".

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".

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".

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".

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".

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:

> **Act** means the Health and Safety at Work Act 2015

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.

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 at Work Act 2015

In regulation 2, definition of **plant**, replace "place of work" with "workplace".

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".

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".

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".

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".

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".

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.

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".

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".

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".

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".

In regulation 53(1), replace "shall take all practicable steps to ensure" with "must, so far as is reasonably practicable, ensure".

Revoke Part 8.

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 3 of the Health and Safety at Work Act 2015".

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 3 of the Health and Safety at Work Act 2015".

In regulation 4, definition of **tunnelling operation**, replace "section 19O of the Health and Safety in Employment Act 1992" with "clause 4 of Schedule 3 of the Health and Safety at Work Act 2015".

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 3 of the Health and Safety at Work Act 2015".

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 3 of the Health and Safety at Work Act 2015".

Railways Regulations 2008 (SR 2008/108)

In regulation 9(b)(ii), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

In regulation 10(d), replace "Health and Safety in Employment Act 1992" with "Health and Safety at Work Act 2015".

Reprints notes

1 General

This is a reprint of the Health and Safety at Work Act 2015 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 (2018 No 5): section 418

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Outer Space and High-altitude Activities Act 2017 (2017 No 29): section 92

Fire and Emergency New Zealand Act 2017 (2017 No 17): section 197

Resource Legislation Amendment Act 2017 (2017 No 15): section 123

Intelligence and Security Act 2017 (2017 No 10): section 335

Contract and Commercial Law Act 2017 (2017 No 5): section 347

District Court Act 2016 (2016 No 49): section 261

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2018