



New South Wales

Occupational Health and Safety Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to revise occupational health and safety legislation.

The changes made to the existing legislation include the following:

- (a) the legislation is rewritten in modern form, including revision of the objects of the proposed Act, the clarification of the duties imposed by the proposed Act and an improved arrangement of provisions,
- (b) a duty is imposed on employers to consult their employees on occupational health and safety matters and provision is made for more flexible arrangements for consultation,
- (c) the court is authorised to impose additional sanctions on offenders (including requiring the offender to publicise the offence or to undertake projects to improve occupational health and safety generally),

- (d) victims injured (or the families of persons killed) as a result of occupational health and safety offences are given the opportunity to present victim impact statements to the court when the offender is being sentenced,
- (e) explicit provision is made with respect to proceedings against government agencies (including provision to ensure that government agencies are liable for breaches committed by their predecessors).

The Bill repeals the existing legislation, including the *Occupational Health and Safety Act 1983*, the *Construction Safety Act 1912* and relevant provisions of the *Factories, Shops and Industries Act 1962*.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the following objects of the proposed Act:

- (a) to secure and promote the health, safety and welfare of people at work,
- (b) to protect people at a place of work against risks to health or safety arising out of the activities of persons at work,
- (c) to promote a safe and healthy work environment for people at work that protects them from injury and illness and that is adapted to their physiological and psychological needs,
- (d) to provide for consultation and co-operation between employers and employees in achieving the objects of the proposed Act,
- (e) to ensure that risks to health and safety at a place of work are identified, assessed and eliminated or controlled,
- (f) to develop and promote community awareness of occupational health and safety issues,
- (g) to provide a legislative framework that allows for progressively higher standards of occupational health and safety to take account of changes in technology and work practices,

- (h) to protect people (whether or not at a place of work) against risks to health and safety arising from the use of plant that affects public safety (eg amusement devices).

Clause 4 defines certain words and expressions used in the proposed Act. In particular, the clause defines the following expressions:

- (a) *associated occupational health and safety legislation* refers to the *Coal Mines Regulation Act 1982*, *Mines Inspection Act 1901*, *Rural Workers Accommodation Act 1969* and *Dangerous Goods Act 1975* and the regulations and rules under those Acts,
- (b) *place of work* refers to any premises where persons work,
- (c) *premises* refers to any place (including land, buildings and vehicles),
- (d) *work* refers to work as an employee or self-employed person.

Clause 5 provides that (with certain exceptions) the proposed Act applies to all places of work.

Clause 6 defines when persons are at work.

Clause 7 defines in wide terms the extent of risks arising from the activities of persons at work.

Part 2 Duties relating to health, safety and welfare at work

Division 1 (clauses 8–12) contains the general duties of employers and others. The duties are as follows:

- (a) the duty of an employer to ensure the health, safety and welfare at work of all the employees of the employer and the duty of the employer to ensure that other people at the place of work are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking,
- (b) the duty of a self-employed person to ensure that other people at the place of work are not exposed to risks to their health or safety arising from the conduct of the self-employed person's undertaking,
- (c) the duty of the controller of non-residential premises used by people as a place of work, or the controller of any plant or substances in non-residential premises used by people at work, to ensure that the premises, plant or substances are safe and without risks to health (where they are provided by the controller in the course of a trade, business or other undertaking),

- (d) the duty of the designer, manufacturer (including installer) or supplier of any plant or substance for use by people at work (in the course of a trade, business or other undertaking) to ensure that it is safe and without risks to health when properly used and to provide adequate information to ensure its safe use.

The maximum penalty for a breach of any such duty (according to the present value of a penalty unit) is as follows:

- (a) in the case of a corporation (being a previous offender)—\$825,000, or
- (b) in the case of a corporation (not being a previous offender)—\$550,000, or
- (c) in the case of an individual (being a previous offender)—\$82,500 or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—\$55,000.

Division 2 (clauses 13–19) contains the employer's duty to consult employees. The Division:

- (a) defines the nature of consultation (that is, the sharing of relevant information, the opportunity for employees to express their views and the taking into account of those views by the employer), and
- (b) requires consultation when relevant decisions are made that may affect occupational health, safety and welfare, and
- (c) enables consultation to be undertaken with an OHS committee, with an OHS representative or in accordance with other agreed arrangements (or any combination of those means), and
- (d) sets out the functions of OHS committees and representatives, and
- (e) enables more detailed provisions to be prescribed by regulation, and
- (f) sets out the maximum penalty for a breach of the duty to consult.

Division 3 (clauses 20–25) contains related duties, including:

- (a) the duty of an employee to take reasonable care for the health and safety of people at the place of work and to co-operate with the employer and others to enable them to comply with their duties under the proposed Act,
- (b) the duty not to interfere with or misuse things provided for health, safety and welfare,
- (c) the duty of an employer not to charge employees for things done or provided pursuant to the proposed Act,

- (d) the duty of a employer not to dismiss an employee or otherwise victimise an employee because of a complaint about occupational health or safety or participation in consultative arrangements,
- (e) the duty of a person not to hinder aid to an injured worker or other acts related to occupational health and safety,
- (f) the duty of a person not to disrupt a place of work by creating health and safety fears.

The Division provides a range of maximum penalties for breaches of those duties.

Division 4 (clauses 26–32) makes ancillary provision with respect to offences for the breach of duties and other matters under the proposed Act, including:

- (a) imposing liability on directors and managers of corporations for breaches by the corporation,
- (b) making it an offence to aid and abet the commission of an offence,
- (c) providing a defence for breaches that compliance was not reasonably practicable or that the cause of the breach was beyond the control of the person,
- (d) enabling a contravention of the regulations to be used as evidence of a breach of the general duties under the Part,
- (e) making it clear that the general duties under the Part do not give rise to or affect civil proceedings.

Part 3 Regulations

This Part (**clauses 33–39**) deals with the making of regulations. The wide powers to make regulations for the purposes of occupational health, safety and welfare at work under the former Act are continued. The regulations may confer a right of review by the Administrative Decisions Tribunal in connection with licensing and other decisions made under the regulations.

Part 4 Industry codes of practice

This Part (**clauses 40–46**) deals with the preparation, approval and effect of industry codes of practice for the purpose of providing practical guidance to employers, self-employed persons and others who have duties under Part 2 of the proposed Act. Industry codes of practice are prepared by WorkCover and, after consultation, may be approved by the Minister. A code takes effect on its publication in the Gazette or on a later specified day. A failure to comply with a code is admissible in evidence in proceedings for an offence under the proposed Act or regulations for the purpose of establishing any relevant matter that the prosecution is required to prove in the proceedings.

Part 5 Investigations

Division 1 (clauses 47 and 48) provides for the appointment of inspectors by WorkCover. Inspectors are to be issued with identification cards.

Division 2 (clauses 49–75) sets out the powers of inspectors. The Division continues the existing powers of inspectors, including the following:

- (a) the power to enter any place of work (with provision for a search warrant in the case of premises used for residential purposes),
- (b) the power to carry out inspections at places of work,
- (c) the power to carry out tests and analyses,
- (d) the power to dismantle and take plant and other things used in the commission of an offence,
- (e) the power to require persons at a place of work to answer questions, provide information and produce documents.

Division 3 (clauses 76–85) deals with the entry and inspection powers of authorised employees' representatives. The Division continues the existing powers of officials authorised under the *Industrial Relations Act 1996* to enter and inspect places of work for the purpose of investigating breaches of occupational health and safety legislation.

Division 4 (clauses 86–88) deals with accidents and other occurrences at places of work. The Division requires occupiers of places of work to give WorkCover notice of accidents and other matters and not to disturb the site of a fatal or other accident. The Minister is given authority to publish special reports about accidents and other dangerous occurrences at places of work without incurring liability for doing so.

Part 6 Investigation, improvement and prohibition notices

Division 1 (clauses 89 and 90) authorises an inspector who enters premises to issue an investigation notice to permit an inspection under Part 5. An investigation notice may require the occupier of the premises to stop the use of plant or other things or to prevent the disturbance of plant or other things.

Division 2 (clauses 91 and 92) authorises an inspector to issue an improvement notice if of the opinion that a person is contravening the proposed Act. An improvement notice requires the person to remedy the contravention.

Division 3 (clauses 93 and 94) authorises an inspector to issue a prohibition notice if of the opinion that there is an immediate risk to the health or safety of a person. A prohibition notice requires the person in control of the activity giving rise to the risk to stop carrying out the activity until the matters giving rise to the risk are remedied.

Division 4 (clauses 95–104) makes ancillary provision with respect to notices, including the review of notices by WorkCover, an appeal to a Local Court if the person concerned is dissatisfied with the result of the review and the service and exhibition of notices.

Part 7 Criminal and other proceedings

Division 1 (clauses 105–110) deals generally with proceedings for offences against the proposed Act. The Division provides for the summary disposal of proceedings by the Industrial Relations Commission in Court Session or a Local Court constituted by an Industrial or other Magistrate. The Division deals with the persons who may bring or approve of the bringing of proceedings and the time within which they may be brought. The Division also enables the issue of penalty notices for alleged offences.

Division 2 (clauses 111–117) authorises the making of court orders in connection with proceedings for offences. The orders that the Industrial Relations Commission or a Local Court may make when it finds a person guilty of an offence against the proposed Act or the regulations are:

- (a) an order that the offender remedy any matter caused by the commission of the offence, and
- (b) an order that the offender pay WorkCover the costs and expenses it has incurred during the investigation of the offence, and

- (c) an order that the offender publicise the offence, its consequences and the penalty imposed and other matters, and
- (d) an order that the offender carry out a specified project for the general improvement of occupational health and safety.

Division 3 (clauses 118–123) deals with proceedings against the Crown and government agencies. The Division declares that the Crown is bound by the proposed Act and makes it clear that criminal proceedings may be taken against the Crown for contraventions of the proposed Act. Where proceedings are taken against the Crown (not being proceedings taken against an agent of the Crown that is a corporation) the Division:

- (a) provides for the agency of the Crown responsible for the contravention (or its successor) to be identified and to defend the proceedings, and
- (b) provides that the penalty applicable is the same as that for a contravention by a corporation, and
- (c) makes other ancillary provisions.

This Division enables proceedings in respect of contraventions by former government corporations (including State owned corporations, public health organisations and local councils) to be continued or instituted against their successors if their successors are government corporations.

Division 4 (clauses 124–131) enables the Industrial Commission to issue guidelines for the sentencing of offenders under the proposed Act. Such guidelines are intended to be indicative only and are not intended to be applied in every case as if they were rules binding on judges but help to ensure consistency in sentencing decisions. Similar powers are conferred on the Court of Criminal Appeal in the case of other offences (see Division 4 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*). Under the proposed Division, the Attorney General may apply to the Full Bench of the Industrial Relations Commission in Court Session at any time for a guideline judgment in respect of a specified offence or category of offences relating to occupational health and safety.

Part 8 Miscellaneous

The Part (**clauses 132–142**) contains miscellaneous provisions, including the following:

- (a) provisions relating to the associated occupational health and safety legislation that require compliance with that legislation in addition to the proposed Act and that ensure the proposed Act and regulations under it prevail over that legislation in the event of an inconsistency,
- (b) provision to ensure that police officers are regarded as employees of the Crown,
- (c) the extension of the proposed Act by regulation to certain high risk plant that affects public safety even if it is not used by persons at work (eg amusement devices; lifts in residential premises),
- (d) the creation of an offence of obstructing or intimidating inspectors, occupational health and safety representatives and others in connection with the exercise of their functions under the proposed Act,
- (e) the creation of an offence if an inspector, member of an OHS committee and others make unauthorised disclosures of commercial secrets and other confidential information obtained in the exercise of their functions under the proposed Act.

Schedule 1 Repeals

The Schedule repeals the *Construction Safety Act 1912*, *Occupational Health and Safety Act 1983*, *Occupational Health and Safety Amendment Act 1997* and the *Occupational Health and Safety Amendment (Sentencing Guidelines) Act 2000*.

Schedule 2 Amendments of other Acts

The amendments include the following:

- (a) amendments to the *Crimes (Sentencing Procedure) Act 1999* to enable victims injured (or the families of persons killed) as a result of occupational health and safety breaches to present victim impact statements to the Industrial Relations Commission when the offender is being sentenced in criminal proceedings under the proposed Act (the amendments extend to the Commission the

existing rights of victims to present victim impact statements in proceedings before the Supreme Court, the District Court and the Local Court),

- (b) amendments to the *Dangerous Goods Act 1975* to transfer provisions relating to that Act from the repealed legislation,
- (c) amendments to the *Factories, Shops and Industries Act 1962* to omit occupational health and safety provisions as a result of the consolidated provisions of the proposed Act and the regulations under it,
- (d) amendments to the *Industrial Relations Act 1996* to prevent the victimisation of an employee or other person who complains about an occupational health and safety issue and to enable the Industrial Relations Commission to order the reinstatement of a dismissed employee, the payment of compensation or other relief.

Schedule 3 Savings, transitional and other provisions

The Schedule enacts savings, transitional and other provisions, including the following:

- (a) authority for the making of regulations consequent on the enactment of the proposed Act,
- (b) the repeal of regulations under the repealed legislation,
- (c) the continuation in force of industry codes of practice under the repealed legislation,
- (d) the saving of the appointment of inspectors under the repealed legislation,
- (e) the enforcement under the proposed Act of improvement notices, prohibition notices and other notices and requirements made under the repealed legislation,
- (f) the extension of provisions of the proposed Act relating to the investigation and prosecution of offences to offences committed under the repealed legislation.



New South Wales

Occupational Health and Safety Bill 2000

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Objects 2
4	Definitions 3
5	Application of Act 5
6	When employees and self-employed persons at work 5
7	Risks arising from activities at work 5
Part 2	Duties relating to health, safety and welfare at work
	Division 1
	General duties
8	Duties of employers 6
9	Duties of self-employed persons 7
10	Duties of controllers of work premises, plant or substances 7

Contents

	Page
11 Duties of designers, manufacturers and suppliers of plant and substances for use at work	8
12 Penalty for offence against this Division	8
Division 2 Duty to consult	
13 Duty of employer to consult	9
14 Nature of consultation	9
15 When consultation is required	10
16 How consultation to be undertaken	10
17 Establishment of OHS committees, election of OHS representatives or other agreed arrangements	11
18 Functions of OHS committees and OHS representatives	11
19 Regulations with respect to consultation	12
Division 3 Related duties	
20 Duties of employees	12
21 Person not to interfere with or misuse things provided for health, safety and welfare	13
22 Employer not to charge employees for things done or provided pursuant to statutory requirement	13
23 Unlawful dismissal or other victimisation of employee	13
24 Person not to hinder aid to injured worker etc	14
25 Person not to disrupt workplace by creating health or safety fears	15
Division 4 Ancillary provisions	
26 Offences by corporations—liability of directors and managers	15
27 Aiding and abetting etc	16
28 Defence	16
29 Relationship between duties under this Part and regulations	16
30 Alternative verdicts	17
31 Multiple contraventions of general duties under Division 1	17
32 Civil liability not affected by this Part	17
Part 3 Regulations	
33 Regulations: general power	18
34 Regulations: specific miscellaneous powers	18

Contents

	Page
35 Regulations: specific powers with respect to licences, certificates of competency, registration and other authorities	19
36 Regulations may prescribe decisions that are to be reviewable by Administrative Decisions Tribunal	20
37 Regulations: adapting duties under Part 2	20
38 Regulations may adopt other publications	20
39 Regulations may create criminal offences	20
Part 4 Industry codes of practice	
40 Purpose of industry codes of practice	21
41 WorkCover may prepare draft codes	21
42 Consultation on draft codes	21
43 Approval of codes by Minister	21
44 Publication, commencement and availability of codes	21
45 Amendment or revocation of codes	22
46 Use of codes	22
Part 5 Investigations	
Division 1 Appointment of inspectors	
47 Appointment of inspectors	23
48 Identification	23
Division 2 Powers of inspectors	
49 Division does not apply to mines	23
50 Powers of entry for places of work	24
51 Notice of entry	24
52 Production of authority to enter premises	24
53 Time for entry into premises	24
54 Use of force on entry	25
55 Notification of use of force on entry	25
56 Compensation	25
57 Entry to premises used for residential purposes	25
58 Search warrant	26
59 General powers available on entry	26
60 Powers available on entry to dismantle, take and keep things	27
61 Care to be taken	27
62 Power of inspectors to obtain information, documents and evidence	27

Occupational Health and Safety Bill 2000

Contents

	Page
63 Power of inspector to demand name and address	28
64 Attendance of inspector at coronial inquest	29
65 Protection from incrimination	29
66 Offence: compliance	30
67 Offence of impersonating an inspector	30
68 Inspector may request assistance	31
69 Power of employees' representative to accompany inspector	31
70 Notice of taking or dismantling plant, substances or other things	31
71 Powers supporting taking of things	32
72 Receipt for things taken	33
73 Forfeiture of things taken	33
74 Return of things taken	34
75 Access to things taken	34
 Division 3 Entry and inspection powers of authorised employees' representatives	
76 Definition	35
77 Powers of entry of places of work	35
78 Notice of entry	35
79 Authority to enter premises	36
80 Entry to premises used for residential purposes	36
81 Powers available on entry	36
82 Care to be taken	36
83 Authorised representative may request assistance from inspector	37
84 Offence of failing to comply with requirement of authorised representative	37
85 Offence of impersonating an authorised representative	37
 Division 4 Accidents and other occurrences at places of work	
86 Notification of accidents and other matters	37
87 Non-disturbance of plant involved in fatal accidents or other occurrences (and of surrounding area)	38
88 Minister may require and publish special reports into accidents and other dangerous occurrences	40

	Page
Part 6	Investigation, improvement and prohibition notices
Division 1	Investigation notices
89	Investigation notice to stop plant or prevent disturbance of premises to allow investigation 41
90	Offence: failure to comply with investigation notice 41
Division 2	Improvement notices
91	Issue of improvement notices 42
92	Offence: failure to comply with improvement notice 42
Division 3	Prohibition notices
93	Issue of prohibition notices 43
94	Offence: failure to comply with prohibition notice 44
Division 4	General provisions relating to notices
95	Notices may include directions 44
96	Review of notices by WorkCover 45
97	Appeal to Industrial Magistrate following review 45
98	Application to Industrial Magistrate for stay of investigation or prohibition notice 46
99	Withdrawal of notices 46
100	Revocation or withdrawal of notice does not prevent issue of another notice 46
101	Service of notices 46
102	Exhibition of notices 47
103	Proceedings for offences not affected by notices 47
104	Part does not apply to mines 47
Part 7	Criminal and other proceedings
Division 1	Proceedings for offences generally
105	Summary procedure for offences 48
106	Authority to prosecute 48
107	Time for instituting proceedings for offences 49
108	Penalty notices for certain offences 49
109	Evidentiary statements 50
110	Onus of proof concerning reasonable excuse 51

	Page
Division 2 Court orders in connection with offences	
111 Operation of Division	51
112 Orders generally	52
113 Orders for restoration	52
114 Orders regarding costs and expenses of investigation	52
115 Orders to publicise or notify offence	53
116 Orders to undertake OHS projects	53
117 Offence: failure to comply with order	54
Division 3 Proceedings against the Crown and government agencies	
118 Act to bind Crown	54
119 Criminal proceedings against the Crown and agents of the Crown	54
120 Responsible agency for the purposes of proceedings against the Crown	55
121 Penalties in respect of proceedings against the Crown	55
122 Investigation, improvement or prohibition notices in connection with the Crown	56
123 Proceedings against successors of government corporations	56
Division 4 Sentencing guidelines	
124 Definitions	57
125 Guideline judgments on application of Attorney General	58
126 Peak councils may intervene	58
127 Full Bench may give persons or organisations leave to appear	58
128 Alteration of guideline judgments	59
129 Discretion of Full Bench preserved	59
130 Rules of Industrial Relations Commission	59
131 Use of evidence in giving guideline judgments	59
Part 8 Miscellaneous	
132 Application of associated occupational health and safety legislation	60
133 Application of Act to mines: references to WorkCover	60
134 Application of Act to police officers	60
135 Plant affecting public safety—extension of Act	61

Occupational Health and Safety Bill 2000

Contents

	Page
136 Offence of obstructing or intimidating inspectors and others exercising functions under Act	61
137 Disclosure of information by inspectors and others	62
138 Notes	63
139 Repeals	63
140 Amendment of other Acts	63
141 Savings, transitional and other provisions	63
142 Review of Act	63
Schedules	
1 Repeals	64
2 Amendment of other Acts	65
3 Savings, transitional and other provisions	74



New South Wales

Occupational Health and Safety Bill 2000

No. , 2000

A Bill for

An Act to secure the health, safety and welfare of persons at work; to repeal the *Occupational Health and Safety Act 1983*; and for other purposes.

Clause 1 Occupational Health and Safety Bill 2000

Part 1 Preliminary

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Occupational Health and Safety Act 2000*. 4

2 Commencement 5

This Act commences on a day or days to be appointed by proclamation. 6
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3 Objects 8

The objects of this Act are as follows: 9

- (a) to secure and promote the health, safety and welfare of people at work, 10
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- (b) to protect people at a place of work against risks to health or safety arising out of the activities of persons at work, 12
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- (c) to promote a safe and healthy work environment for people at work that protects them from injury and illness and that is adapted to their physiological and psychological needs, 14
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- (d) to provide for consultation and co-operation between employers and employees in achieving the objects of this Act, 17
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- (e) to ensure that risks to health and safety at a place of work are identified, assessed and eliminated or controlled, 19
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- (f) to develop and promote community awareness of occupational health and safety issues, 21
22
- (g) to provide a legislative framework that allows for progressively higher standards of occupational health and safety to take account of changes in technology and work practices, 23
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25
- (h) to protect people (whether or not at a place of work) against risks to health and safety arising from the use of plant that affects public safety. 26
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4 Definitions

In this Act:

associated occupational health and safety legislation means the following Acts and the regulations and rules made under them:

- (a) *Coal Mines Regulation Act 1982*,
- (b) *Dangerous Goods Act 1975*,
- (c) *Mines Inspection Act 1901*,
- (d) *Rural Workers Accommodation Act 1969*.

Note. See section 132 for provisions with respect to the application of the above associated legislation.

employee means an individual who works under a contract of employment or apprenticeship.

employer means a person who employs persons under contracts of employment or apprenticeship.

exercise a function includes perform a duty.

function includes a power, authority or duty.

improvement notice means an improvement notice issued under Part 6.

industrial organisation of employees means an industrial organisation of employees registered, or taken to be registered, under Chapter 5 of the *Industrial Relations Act 1996*.

industry code of practice—see Part 4.

inspector means an inspector appointed under Division 1 of Part 5.

investigation notice means an investigation notice issued under Part 6.

mine means a mine within the meaning of the *Mines Inspection Act 1901* or the *Coal Mines Regulation Act 1982*.

occupational health and safety legislation includes:

- (a) the provisions of this Act and the regulations, and
- (b) the associated occupational health and safety legislation.

occupier of premises includes:

- (a) a person who, for the time being, has (or appears to have) the charge, management or control of the premises, or
- (b) a person who, for the time being, is in charge (or appears to be in charge) of any operation being conducted on the premises.

<i>OHS committee</i> and <i>OHS representative</i> —see section 16.	1
<i>place of work</i> means premises where persons work.	2
<i>plant</i> includes any machinery, equipment or appliance.	3
<i>plant affecting public safety</i> —see section 135.	4
<i>premises</i> includes any place, and in particular includes:	5
(a) any land, building or part of any building, or	6
(b) any vehicle, vessel or aircraft, or	7
(c) any installation on land, on the bed of any waters or floating on any waters, or	8 9
(d) any tent or movable structure.	10
<i>previous offender</i> , in relation to the maximum penalty for an offence, means a person who has, at any time before being sentenced for that offence, been convicted of any other offence of any kind against this Act or the <i>Occupational Health and Safety Act 1983</i> .	11 12 13 14
<i>prohibition notice</i> means a prohibition notice issued under Part 6.	15
<i>self-employed person</i> means a person who works for gain or reward otherwise than under a contract of employment or apprenticeship, whether or not employing others.	16 17 18
<i>substance</i> means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.	19 20
<i>work</i> means work as an employee or as a self-employed person.	21
<i>WorkCover</i> means the WorkCover Authority constituted by the <i>Workplace Injury Management and Workers Compensation Act 1998</i> .	22 23
Note. Words and expressions used in this Act that are defined in the <i>Interpretation Act 1987</i> have the meanings set out in that Act.	24 25

5	Application of Act	1
	This Act applies to all places of work, except as otherwise provided by this Act.	2 3
	Notes.	4
1	The following provisions do not apply to mines:	5
	(a) Division 2 of Part 5 (Powers of inspectors),	6
	(b) section 86 (Notification of accidents and other matters) and section 87 (Non-disturbance of plant etc),	7 8
	(c) Part 6 (Investigation, improvement and prohibition notices).	9
	Provisions with respect to those matters are contained in the associated occupational health and safety legislation relating to mines.	10 11
2	This Act applies to the Crown—see section 118.	12
3	This Act applies to prescribed plant affecting public safety even if it is not at a place of work or for use at work—see section 135.	13 14
6	When employees and self-employed persons at work	15
	For the purposes of this Act:	16
	(a) an employee is at work throughout the time when the employee is at his or her place of work, but not otherwise, and	17 18
	(b) a self-employed person is at work throughout such time as the person devotes to work as a self-employed person.	19 20
7	Risks arising from activities at work	21
	For the purposes of this Act, <i>risks</i> arising out of the activities of persons at work include risks attributable to:	22 23
	(a) the manner of conducting an undertaking, or	24
	(b) the plant or substances used for the purposes of an undertaking, or	25 26
	(c) the condition of premises (or any part of premises) used for the purposes of an undertaking.	27 28

Clause 8 Occupational Health and Safety Bill 2000

Part 2 Duties relating to health, safety and welfare at work

Division 1 General duties

Part 2 Duties relating to health, safety and welfare at work 1
2

Division 1 General duties 3

8 Duties of employers 4

(1) **Employees** 5

An employer must ensure the health, safety and welfare at work of all the employees of the employer. 6
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That duty extends (without limitation) to the following: 8

(a) ensuring that any premises controlled by the employer where the employees work (and the means of access to or exit from the premises) are safe and without risks to health, 9
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(b) ensuring that any plant or substance provided for use by the employees at work is safe and without risks to health when properly used, 12
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(c) ensuring that systems of work and the working environment of the employees are safe and without risks to health, 15
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(d) providing such information, instruction, training and supervision as may be necessary to ensure the employees' health and safety at work, 17
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(e) providing adequate facilities for the welfare of the employees at work. 20
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(2) **Others at workplace** 22

An employer must ensure that people (other than the employees of the employer) are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking while they are at the employer's place of work. 23
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Note. See section 12 for the penalty for an offence against this section and other provisions of this Division. Division 4 makes ancillary provision with respect to those offences, including: 27
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(a) section 26—liability of directors and managers of corporations, 30

(b) section 28—defence that compliance not reasonably practicable etc. 31

See also Division 2 for duty of employer to consult employees. 32

9 Duties of self-employed persons

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A self-employed person must ensure that people (other than the employees of the person) are not exposed to risks to their health or safety arising from the conduct of the person's undertaking while they are at the person's place of work.

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10 Duties of controllers of work premises, plant or substances

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(1) A person who has control of premises used by people as a place of work must ensure that the premises are safe and without risks to health.

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(2) A person who has control of any plant or substance used by people at work must ensure that the plant or substance is safe and without risks to health when properly used.

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(3) The duties of a person under this section:

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(a) do not apply to premises, plant or substances used only by employees of the person, and

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(b) do not apply to premises occupied only as a private dwelling or to plant or substances used in any such premises, and

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(c) extend to the means of access to or exit from a place of work, and

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(d) apply only if the premises, plant or substances are controlled in the course of a trade, business or other undertaking (whether for profit or not) of the person.

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(4) In this section, a person who has control of premises, plant or substances includes:

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(a) a person who has only limited control of the premises, plant or substances (in which case any duty under this section applies only to the matters over which the person has control), and

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(b) a person who has, under any contract or lease, an obligation to maintain or repair the premises, plant or substances (in which case any duty under this section applies only to the matters covered by the contract or lease).

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11 Duties of designers, manufacturers and suppliers of plant and substances for use at work	1 2
(1) A person who designs, manufactures or supplies any plant or substance for use by people at work must:	3 4
(a) ensure that the plant or substance is safe and without risks to health when properly used, and	5 6
(b) provide, or arrange for the provision of, adequate information about the plant or substance to the persons to whom it is supplied to ensure its safe use.	7 8 9
(2) The duties under this section:	10
(a) apply only if the plant or substance is designed, manufactured or supplied in the course of a trade, business or other undertaking (whether for profit or not), and	11 12 13
(b) apply whether or not the plant or substance is exclusively designed, manufactured or supplied for use by people at work, and	14 15 16
(c) extend to the design, manufacture or supply of components for, or accessories to, any plant for use by people at work, and	17 18
(d) extend to the supply of the plant or substance by way of sale, transfer, lease or hire and whether as principal or agent, and	19 20
(e) extend to the supply of the plant or substance to a person for the purpose of supply to others, and	21 22
(f) do not apply to a person merely because the person supplies the plant or substance in the course of a business of financing the acquisition of the plant or substance by a customer from another person.	23 24 25 26
(3) In this section, <i>manufacture</i> plant includes assemble, install or erect plant.	27 28
12 Penalty for offence against this Division	29
A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision and is liable to the following maximum penalty:	30 31 32
(a) in the case of a corporation (being a previous offender)—7,500 penalty units, or	33 34
(b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or	35 36

- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or 1
2
- (d) in the case of an individual (not being a previous offender)—500 penalty units. 3
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- Note.** Section 17 of the Crimes (Sentencing Procedure) Act 1999 provides, at the 5
enactment of this Act, that the value of a penalty unit is \$110. Accordingly, the 6
above maximum penalties are as follows: 7
- (a) in the case of a corporation (being a previous offender)—\$825,000, or 8
- (b) in the case of a corporation (not being a previous offender)—\$550,000, or 9
- (c) in the case of an individual (being a previous offender)—\$82,500 or 10
imprisonment for 2 years, or both, or 11
- (d) in the case of an individual (not being a previous offender)—\$55,000. 12

Division 2 Duty to consult 13

13 Duty of employer to consult 14

An employer must consult, in accordance with this Division, with the 15
employees of the employer to enable the employees to contribute to 16
the making of decisions affecting their health, safety and welfare at 17
work. 18

Maximum penalty: 19

- (a) in the case of a corporation (being a previous offender)—750 20
penalty units, or 21
- (b) in the case of a corporation (not being a previous 22
offender)—500 penalty units, or 23
- (c) in the case of an individual (being a previous offender)—375 24
penalty units, or 25
- (d) in the case of an individual (not being a previous 26
offender)—250 penalty units. 27

14 Nature of consultation 28

Consultation under this Division requires: 29

- (a) the sharing of relevant information about occupational health, 30
safety and welfare with employees, and 31

Clause 14 Occupational Health and Safety Bill 2000

Part 2 Duties relating to health, safety and welfare at work

Division 2 Duty to consult

- (b) that employees be given the opportunity to express their views and to contribute in a timely fashion to the resolution of occupational health, safety and welfare issues at their place of work, and 1
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3
4
- (c) that the views of employees are valued and taken into account by the employer. 5
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15 When consultation is required 7

Consultation under this Division is required: 8

- (a) when risks to health and safety arising from work are assessed or when the assessment of those risks is reviewed, and 9
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- (b) when decisions are made about the measures to be taken to eliminate or control those risks, and 11
12
- (c) when introducing or altering the procedures for monitoring those risks (including health surveillance procedures), and 13
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- (d) when decisions are made about the adequacy of facilities for the welfare of employees, and 15
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- (e) when changes that may affect health, safety or welfare are proposed to the premises where persons work, to the systems or methods of work or to the plant or substances used for work, and 17
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- (f) when decisions are made about the procedures for consultation under this Division, and 21
22
- (g) in any other case prescribed by the regulations. 23

16 How consultation to be undertaken 24

Consultation under this Division may be undertaken by any one or more of the following means: 25
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- (a) consultation may be undertaken with an occupational health and safety committee or committees established by the employer and employees for the place of work or the employer's undertaking (an *OHS committee*), 27
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- (b) consultation may be undertaken with an occupational health and safety representative or representatives elected by the employees to represent them (an *OHS representative*), 31
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33
- (c) consultation may be undertaken in accordance with other arrangements agreed by the employer and the employees. 34
35

17	Establishment of OHS committees, election of OHS representatives or other agreed arrangements	1
		2
(1)	OHS committees	3
	An OHS committee is to be established for the purposes of consultation under this Division if the employer employs 20 or more persons in the employer's undertaking and a majority of those employees request the establishment of the committee or if WorkCover so directs. More than one committee is to be established if a majority of those employees request their establishment and the employer agrees or if WorkCover so directs.	4 5 6 7 8 9 10
(2)	OHS representatives	11
	An OHS representative is to be elected for the purposes of consultation under this Division if at least one of the persons employed by the employer requests the election of the representative or if WorkCover so directs. The employees may elect more than one OHS representative if the employer agrees or if WorkCover so directs.	12 13 14 15 16
(3)	Other agreed arrangements	17
	Other agreed arrangements for consultation with employees are to be made in accordance with any requirements of the regulations. A Federal or State industrial organisation of employees may represent, for the purposes of consultation under the agreed arrangements, any of those employees who request the organisation to represent them.	18 19 20 21 22
(4)	General	23
	The employer may make arrangements for the establishment of an OHS committee or the election of an OHS representative whether or not it has been requested by any of the employees of the employer.	24 25 26
(5)	An OHS representative may also be appointed to an OHS committee.	27
18	Functions of OHS committees and OHS representatives	28
	An OHS committee or an OHS representative has the following functions:	29 30
(a)	to keep under review the measures taken to ensure the health, safety and welfare of persons at the place of work,	31 32
(b)	to investigate any matter that may be a risk to health and safety at the place of work,	33 34
(c)	to attempt to resolve the matter but, if unable to do so, to request an investigation by an inspector for that purpose,	35 36

Clause 18 Occupational Health and Safety Bill 2000

Part 2 Duties relating to health, safety and welfare at work

Division 2 Duty to consult

(d) such other functions as are prescribed by the regulations. 1

Note. See section 69 for power of employees' representative to accompany an 2
inspector on an inspection of a place of work. See section 137 for offence of 3
unauthorised disclosure of confidential information by any member of a committee 4
or representative. 5

19 Regulations with respect to consultation 6

The regulations may make further provisions with respect to 7
consultation under this Division and, in particular, for or with respect 8
to: 9

(a) negotiations between employers and employees (or persons 10
acting on their behalf) with respect to consultation 11
arrangements, and 12

(b) the establishment, composition, procedure and functions of 13
OHS committees, and 14

(c) the election and functions of OHS representatives, and 15

(d) the powers of members of OHS committees and of OHS 16
representatives with respect to inspections of the place of work 17
and the obtaining of information relating to the place of work 18
and other things in relation to the place of work, and 19

(e) the training of members of OHS committees and of OHS 20
representatives. 21

Division 3 Related duties 22

20 Duties of employees 23

(1) An employee must, while at work, take reasonable care for the health 24
and safety of people who are at the employee's place of work and who 25
may be affected by the employee's acts or omissions at work. 26

(2) An employee must, while at work, co-operate with his or her employer 27
or other person so far as is necessary to enable compliance with any 28
requirement under this Act or the regulations that is imposed in the 29
interests of health, safety and welfare on the employer or any other 30
person. 31

Maximum penalty: 32

(a) in the case of a previous offender—45 penalty units, or 33

(b) in any other case—30 penalty units. 34

21	Person not to interfere with or misuse things provided for health, safety and welfare	1
		2
	A person must not, intentionally or recklessly, interfere with or misuse anything provided in the interests of health, safety and welfare under occupational health and safety legislation.	3
		4
		5
	Maximum penalty:	6
	(a) in the case of a previous offender—45 penalty units, or	7
	(b) in any other case—30 penalty units.	8
22	Employer not to charge employees for things done or provided pursuant to statutory requirement	9
		10
	An employer must not impose a charge on an employee, or permit a charge to be imposed on an employee, for anything done or provided in pursuance of a specific requirement of this Act or the regulations.	11
		12
		13
	Maximum penalty:	14
	(a) in the case of a corporation (being a previous offender)—3,750 penalty units, or	15
		16
	(b) in the case of a corporation (not being a previous offender)—2,500 penalty units, or	17
		18
	(c) in the case of an individual (being a previous offender)—375 penalty units, or	19
		20
	(d) in the case of an individual (not being a previous offender)—250 penalty units.	21
		22
23	Unlawful dismissal or other victimisation of employee	23
	(1) An employer must not dismiss an employee, injure an employee in his or her employment or alter an employee's position to his or her detriment because the employee:	24
		25
		26
	(a) makes a complaint about a workplace matter that the employee considers is not safe or is a risk to health, or	27
		28
	(b) is a member of an OHS committee or an OHS representative, or	29
		30

Clause 23 Occupational Health and Safety Bill 2000

Part 2 Duties relating to health, safety and welfare at work

Division 3 Related duties

(c)	exercises any functions conferred on the employee under Division 2 (whether as such a member or representative or otherwise).	1 2 3
	Maximum penalty:	4
(a)	in the case of a corporation (being a previous offender)—375 penalty units, or	5 6
(b)	in the case of a corporation (not being a previous offender)—250 penalty units, or	7 8
(c)	in the case of an individual (being a previous offender)—225 penalty units, or	9 10
(d)	in the case of an individual (not being a previous offender)—150 penalty units.	11 12
(2)	In proceedings for an offence against this section, if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the dismissal, injury or alteration was not actuated by the reason alleged in the charge lies on the defendant.	13 14 15 16 17
	Note. See sections 210 (j) and 213 of the <i>Industrial Relations Act 1996</i> for remedies (such as reinstatement or reimbursement) arising from a breach of this section.	18 19 20
24	Person not to hinder aid to injured worker etc	21
(1)	A person must not, by intimidation or by any other act or omission, intentionally hinder or obstruct or attempt to hinder or obstruct, without reasonable excuse:	22 23 24
(a)	the giving or receiving of aid in respect of the illness or injury of a person at work, or	25 26
(b)	the doing of any act or thing to avoid or prevent a serious risk to the health or safety of a person at work.	27 28
(2)	A person at a place of work must not, without reasonable excuse, refuse any reasonable request:	29 30
(a)	for assistance in the giving or receiving of aid in respect of the illness or injury of a person at work at that place of work, or	31 32

(b)	for the doing of any act or thing to assist in the avoidance or prevention of a serious risk to the health or safety of a person at work at that place of work.	1 2 3
	Maximum penalty:	4
(a)	in the case of a corporation (being a previous offender)—7,500 penalty units, or	5 6
(b)	in the case of a corporation (not being a previous offender)—5,000 penalty units, or	7 8
(c)	in the case of an individual (being a previous offender)—750 penalty units, or	9 10
(d)	in the case of an individual (not being a previous offender)—500 penalty units.	11 12
25	Person not to disrupt workplace by creating health or safety fears	13
	A person must not, without reasonable excuse, deliberately create a risk (or the appearance of a risk) to the health or safety of people at a place of work with the intention of causing a disruption of work at that place.	14 15 16 17
	Maximum penalty:	18
(a)	in the case of a previous offender—75 penalty units, or	19
(b)	in any other case—50 penalty units.	20
Division 4	Ancillary provisions	21
26	Offences by corporations—liability of directors and managers	22
(1)	If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each person concerned in the management of the corporation, is taken to have contravened the same provision unless the director or person satisfies the court that:	23 24 25 26 27
(a)	he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or	28 29
(b)	he or she, being in such a position, used all due diligence to prevent the contravention by the corporation.	30 31

(2)	A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.	1 2 3
(3)	Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.	4 5 6
(4)	In the case of a corporation that is a local council, a member of the council (in his or her capacity as such a member) is not to be regarded as a director or person concerned in the management of the council for the purposes of this section.	7 8 9 10
27	Aiding and abetting etc	11
(1)	A person:	12
(a)	who aids, abets, counsels or procures, or	13
(b)	who, by act or omission, is in any way directly or indirectly knowingly concerned in or a party to,	14 15
	the commission of an offence against this Act or the regulations is taken to have committed that offence and is punishable accordingly.	16 17
(2)	Subsection (1) does not apply to a person who is acting in the ordinary course of his or her duties as an officer of a Federal or State industrial organisation of employees or employers.	18 19 20
28	Defence	21
	It is a defence to any proceedings against a person for an offence against a provision of this Act or the regulations if the person proves that:	22 23 24
(a)	it was not reasonably practicable for the person to comply with the provision, or	25 26
(b)	the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.	27 28 29
29	Relationship between duties under this Part and regulations	30
(1)	Compliance with the regulations is not in itself a defence in any proceedings for an offence against this Part.	31 32
(2)	However, a relevant contravention of the regulations is admissible in evidence in any proceedings for an offence against this Part.	33 34

(3) This section is subject to any regulations under section 37.	1
Note. See Part 4 for provisions relating to the use of approved industry codes of practice in proceedings for offences against this Part.	2 3
30 Alternative verdicts	4
If in proceedings against a person for an offence against a provision of section 8 or 9 the court is not satisfied that the person contravened that provision but is satisfied that the act or omission concerned constituted a contravention of another provision of section 8 or 9, the court may convict the person of an offence against that other provision.	5 6 7 8 9 10
31 Multiple contraventions of general duties under Division 1	11
(1) More than one contravention of a provision of Division 1 by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.	12 13 14
(2) This section does not authorise contraventions of 2 or more of those provisions to be charged as a single offence.	15 16
(3) A single penalty only may be imposed in respect of more than one contravention of any such provision that is charged as a single offence.	17 18
32 Civil liability not affected by this Part	19
(1) Nothing in this Part is to be construed:	20
(a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provision of this Part, or	21 22 23
(b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.	24 25
(2) Subsection (1) does not affect the extent (if any) to which a breach of duty imposed by the regulations is actionable (including any regulation that adapts a provision of this Part).	26 27 28

Part 3 Regulations	1
33 Regulations: general power	2
(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the objects of this Act.	3 4 5 6
(2) Any specific power to make regulations under this Act does not limit the generality of subsection (1).	7 8
34 Regulations: specific miscellaneous powers	9
Regulations may be made for or with respect to the following:	10
(a) regulating or prohibiting:	11
(i) the design, manufacture, supply or use of any plant, and	12
(ii) the design, manufacture, supply, storage, transport or use of any substance, and	13 14
(iii) the carrying on of any process or the carrying out of any activity,	15 16
(b) requiring persons to identify, assess and deal with the risks to the health and safety of persons arising from work (including risks arising from the place of work or from any plant or substance for use at work),	17 18 19 20
(c) designating the persons (whether employers, self-employed persons, principal contractors or other persons) who are to be responsible for compliance with the obligations imposed by the regulations,	21 22 23 24
(d) requiring a person, before commencing to carry out work of a particular kind at a place of work, to give WorkCover or other persons notice of the proposed work in accordance with the regulations,	25 26 27 28
(e) requiring persons, in any circumstances involving a risk to their health, to undergo a biological, hearing or other test,	29 30
(f) requiring persons to not eat, drink or smoke in any circumstances involving a risk to their health,	31 32

(g)	measures for detecting and investigating cases in which the health of persons has been affected, including medical examinations, the making of biological, hearing or other tests and the notification of absences from work,	1 2 3 4
(h)	the making, keeping and inspection of records of matters relating to risks to health and the furnishing of returns and information relating to those matters, including returns and information relating to medical examinations and to biological, hearing or other tests,	5 6 7 8 9
(i)	the analysis of any substance,	10
(j)	the fees chargeable or payable for doing any act or providing any service in connection with this Act or the regulations,	11 12
(k)	forms for the purposes of this Act or the regulations,	13
(l)	the manner of serving notices under this Act or the regulations,	14
(m)	the review of actions and determinations of an inspector or other person,	15 16
(n)	any information to be provided to any person by an inspector or other person exercising functions under this Act,	17 18
(o)	any matter relating to occupational health and safety with respect to which regulations may be made under the associated occupational health and safety legislation.	19 20 21
35	Regulations: specific powers with respect to licences, certificates of competency, registration and other authorities	22 23
(1)	Regulations may be made for or with respect to the following:	24
(a)	requiring any person to hold a permit, or any business, plant, substance or place of work to be licensed or registered, in any circumstances or as a condition of the carrying on of any activity or the doing of any thing,	25 26 27 28
(b)	the granting, renewal, cancellation or suspension of a permit, licence or certificate of registration,	29 30
(c)	the conditions on which permits, licences or certificates of registration may be granted,	31 32
(d)	the establishment, membership, functions and procedure of a body that grants, renews, cancels or suspends permits, licences or certificates of registration,	33 34 35

(e)	reviews of a decision of a body not to grant or renew or to cancel or suspend a permit, licence or certificate of registration.	1 2
(2)	A reference in subsection (1) to a permit includes a reference to a certificate of competency.	3 4
36	Regulations may prescribe decisions that are to be reviewable by Administrative Decisions Tribunal	5 6
(1)	The regulations may authorise a person to apply to the Administrative Decisions Tribunal for a review of a decision, of a class prescribed by the regulations, that is made under this Act or the regulations.	7 8 9
(2)	Any such regulation cannot be made without the concurrence of the Minister administering the <i>Administrative Decisions Tribunal Act 1997</i> .	10 11 12
37	Regulations: adapting duties under Part 2	13
	The regulations may adapt the provisions of Part 2 to meet the circumstances of any specified class of case.	14 15
38	Regulations may adopt other publications	16
	The regulations may apply, adopt or incorporate any publication as in force at a particular time or from time to time.	17 18
39	Regulations may create criminal offences	19
	The regulations may create offences punishable by a penalty not exceeding 250 penalty units.	20 21

Part 4 Industry codes of practice	1
40 Purpose of industry codes of practice	2
The purpose of an industry code of practice is to provide practical guidance to employers and others who have duties under Part 2 with respect to occupational health, safety and welfare.	3 4 5
41 WorkCover may prepare draft codes	6
(1) WorkCover may prepare draft industry codes of practice.	7
(2) An industry code of practice may refer to or incorporate, with or without modification, a document prepared or published by a body specified in the code, as in force at a particular time or from time to time.	8 9 10 11
42 Consultation on draft codes	12
(1) WorkCover is to consult with such organisations or persons as the Minister may direct about a draft code and may consult with such others as WorkCover thinks appropriate.	13 14 15
(2) WorkCover is to take into consideration any submissions it receives that relate to a draft code before it makes any recommendation to the Minister for its approval.	16 17 18
43 Approval of codes by Minister	19
The Minister may, having regard to any recommendation of WorkCover, approve an industry code of practice.	20 21
44 Publication, commencement and availability of codes	22
(1) An approved industry code of practice:	23
(a) is to be published in the Gazette, and	24
(b) takes effect on the day on which it is so published or, if a later day is specified in the code for that purpose, on the later day so specified.	25 26 27
(2) The following are to be made available for public inspection without charge at the principal office of WorkCover during normal office hours:	28
(a) a copy of each approved industry code of practice,	29 30 31

(b)	if an approved industry code of practice has been amended, a copy of the code as so amended,	1 2
(c)	if an approved industry code of practice refers to or incorporates any other document prepared or published by a specified body, a copy of each such document.	3 4 5
45	Amendment or revocation of codes	6
	An approved industry code of practice may be amended or revoked by an instrument prepared, approved and published in accordance with the relevant procedures of this Part with respect to industry codes of practice.	7 8 9 10
46	Use of codes	11
(1)	In any proceedings for an offence against this Act or the regulations:	12
(a)	an approved industry code of practice that is relevant to any matter which it is necessary for the prosecution to prove to establish the commission of the offence by a person is admissible in evidence in those proceedings, and	13 14 15 16
(b)	the person's failure at any material time to observe the code is evidence of the matter to be established in those proceedings.	17 18
(2)	A person is not liable to any civil or criminal proceedings by reason only that the person has failed to observe an approved industry code of practice.	19 20 21

Part 5 Investigations	1
Division 1 Appointment of inspectors	2
47 Appointment of inspectors	3
WorkCover may appoint as inspectors for the purposes of this Act and the regulations any of the following persons:	4
(a) a statutory officer,	5
(b) a public servant,	6
(c) a person employed by a public or local authority,	7
(d) a person belonging to a class of persons prescribed by the regulations.	8
Note. The powers and other functions of inspectors appointed under this section do not extend to mines (see sections 49 and 104).	9
	10
48 Identification	11
(1) Every inspector is to be issued with an identification card as an inspector by WorkCover.	12
(2) The identification card must:	13
(a) state that it is issued under this Act, and	14
(b) give the name of the person to whom it is issued, and	15
(c) state the date (if any) on which it expires, and	16
(d) describe the kind of premises to which the powers of the inspector extend, and	17
(e) bear the signature of the General Manager of WorkCover or an officer approved by the General Manager for the purposes of this paragraph.	18
	19
	20
	21
	22
	23
	24
Division 2 Powers of inspectors	25
	26
Note. See Part 6 for powers of inspectors to issue investigation, improvement or prohibition notices.	27
	28
49 Division does not apply to mines	29
This Division does not apply to a mine.	30

50 Powers of entry for places of work	1
For the purposes of this Act or the regulations, an inspector may enter any premises the inspector has reason to believe is a place of work.	2 3
Note. See section 57 with respect to entry into any part of premises used only for residential purposes.	4 5
51 Notice of entry	6
(1) An inspector authorised to enter premises under this Division may enter the premises without notice.	7 8
(2) The inspector must notify the occupier of the premises of the inspector's presence on the premises as soon as reasonably practicable after entering the premises, unless:	9 10 11
(a) to do so would defeat the purpose for which the premises were entered or would unreasonably delay the inspector in a case of urgency, or	12 13 14
(b) the occupier is already aware that the inspector has entered the premises or was notified in advance of when the inspector would enter the premises.	15 16 17
52 Production of authority to enter premises	18
(1) A power conferred on an inspector by this Division to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the inspector proposing to exercise the power is in possession of the identification card issued to the inspector and produces the identification card if required to do so by the occupier of the premises.	19 20 21 22 23 24
(2) This section does not apply to a power conferred by a search warrant.	25
53 Time for entry into premises	26
(1) Entry under a power conferred by this Division may only be made at a reasonable time in the daytime or at any hour when work is carried on or is usually carried on at the premises.	27 28 29
(2) This section does not apply to a power conferred by a search warrant.	30

54	Use of force on entry	1
	(1) Reasonable force may be used for the purpose of gaining entry to premises under a power conferred by this Division, but only if authorised by WorkCover in accordance with this section or in cases of emergency.	2 3 4 5
	(2) The authority of WorkCover:	6
	(a) must be in writing, and	7
	(b) must be given in respect of the particular entry concerned, and	8
	(c) must specify the circumstances that are required to exist before force may be used.	9 10
	(3) This section does not apply to a power conferred by a search warrant and does not affect section 17 of the <i>Search Warrants Act 1985</i> .	11 12
55	Notification of use of force on entry	13
	(1) An inspector authorised to enter premises under this Division who uses force for the purpose of gaining entry to the premises must promptly advise WorkCover of the use of force.	14 15 16
	(2) WorkCover must give written notice of the entry to such persons or authorities as appear to WorkCover to be appropriate in the circumstances.	17 18 19
56	Compensation	20
	WorkCover must pay compensation for any loss or damage caused by any inspector in the exercise of any power to enter premises under this Division, but not if that loss or damage is caused because the occupier obstructed, hindered or restricted the inspector in the exercise of the power of entry.	21 22 23 24 25
57	Entry to premises used for residential purposes	26
	The powers of entry conferred by this Division are not exercisable in relation to any part of premises used only for residential purposes except:	27 28 29
	(a) with the permission of the occupier of the premises, or	30
	(b) under the authority conferred by a search warrant.	31

58 Search warrant	1
(1) An inspector may apply to an authorised justice for a search warrant if the inspector has reasonable grounds for believing that a provision of this Act or the regulations has been or is being or is about to be contravened in or about any premises.	2 3 4 5
(2) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector named in the warrant to enter the premises and to search the premises for evidence of a contravention of this Act or the regulations.	6 7 8 9 10
(3) Part 3 of the <i>Search Warrants Act 1985</i> applies to a search warrant issued under this section.	11 12
(4) In this section, <i>authorised justice</i> has the same meaning as it has in the <i>Search Warrants Act 1985</i> .	13 14
59 General powers available on entry	15
For the purposes of this Act or the regulations, an inspector who enters premises under this Division may do any of the following:	16 17
(a) make searches, inspections, examinations and tests (and take photographs and make video and audio recordings),	18 19
(b) take for analysis a sample of any substance or thing which in the inspector's opinion may be, or may contain or be contaminated by, a substance (or a degradation product of a substance) that is a risk to health,	20 21 22 23
(c) in the case of an inspector who is a medical practitioner, carry out medical examinations with the consent of the person proposed to be examined,	24 25 26
(d) carry out biological tests in such manner and in such circumstances as may be prescribed by the regulations,	27 28
(e) require any person in or about those premises to answer questions or otherwise furnish information,	29 30
(f) require the occupier of those premises to provide the inspector with such assistance and facilities as is or are reasonably necessary to enable the inspector to exercise the inspector's functions,	31 32 33 34
(g) require the production of and inspect any documents in or about those premises,	35 36

(h)	take copies of or extracts from any such documents,	1
(i)	exercise all other functions that are conferred by, or are reasonably necessary for the purposes of, this Act or the regulations.	2 3 4
60	Powers available on entry to dismantle, take and keep things	5
	For the purposes of this Act or the regulations, an inspector who enters premises under this Division may do any of the following:	6 7
(a)	dismantle any plant or other thing on the premises for the purpose of examination, if the inspector believes on reasonable grounds that the plant or other thing has been used in the commission of an offence against this Act or the regulations,	8 9 10 11
(b)	take any plant, substance or other thing (or any sample of a substance) from the premises, if the inspector believes on reasonable grounds that the plant, substance or other thing has been used in the commission of an offence against this Act or the regulations,	12 13 14 15 16
(c)	keep any plant, substance, sample or other thing taken under this section that:	17 18
(i)	may reasonably be required as evidence in proceedings for an offence against this Act or the regulations, or	19 20
(ii)	might, if not so kept, be used to continue or repeat the offence.	21 22
	Note. See sections 70–75 for provisions relating to the exercise of the above powers.	23 24
61	Care to be taken	25
	In the exercise of a function under this Division, an inspector must do as little damage as possible.	26 27
62	Power of inspectors to obtain information, documents and evidence	28
(1)	An inspector may, by notice in writing served on a person, require the person to do any one or more of the following things if the inspector has reasonable grounds to believe that the person is capable of giving information, producing documents or giving evidence in relation to a possible contravention of this Act or the regulations:	29 30 31 32 33

(a)	to give an inspector, in writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any such information of which the person has knowledge,	1 2 3 4 5
(b)	to produce to an inspector, in accordance with the notice, any such documents,	6 7
(c)	to appear before an inspector at a time and place specified in the notice and give either orally or in writing any such evidence and produce any such documents.	8 9 10
(2)	A notice under this section must contain a warning that a failure to comply with the notice is an offence.	11 12
(3)	An inspector may inspect a document produced in response to a notice under this section and may make copies of, or take extracts from, the document.	13 14 15
(4)	An inspector may take possession and retain possession for as long as is necessary for the purposes of this Act, of a document produced in response to a notice under this section if the person otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by an inspector to be a true copy.	16 17 18 19 20
(5)	A certified copy provided under subsection (4) is receivable in all courts as if it were the original.	21 22
(6)	Until a certified copy of a document is provided under subsection (4), the inspector who has possession of the document must, at such times and places as the inspector thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect the document and make copies of, or take extracts from, the document.	23 24 25 26 27 28
63	Power of inspector to demand name and address	29
(1)	An inspector may require a person whom the inspector reasonably suspects has committed an offence against this Act or the regulations to state the person's full name and residential address.	30 31 32
(2)	The inspector may request the person to provide reasonable proof of the person's identity.	33 34

(3) A person who, without reasonable excuse, fails to comply with a requirement of an inspector under this section is guilty of an offence.	1
	2
Maximum penalty: 15 penalty units.	3
(4) A person does not commit an offence against this section if:	4
(a) the inspector does not, at the time when the inspector makes the requirement, show the person the inspector's identification card,	5
or	6
	7
(b) the inspector does not, at the time when the inspector makes the requirement, warn the person that it would be an offence not to comply with the requirement.	8
	9
	10
64 Attendance of inspector at coronial inquest	11
An inspector may attend and has authority to examine witnesses at any inquest into the cause of death of any employee while employed at a place of work.	12
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65 Protection from incrimination	15
(1) Self-incrimination not an excuse	16
A person is not excused from a requirement under this Division to make a statement, to give or furnish information, to answer a question or to produce a document on the ground that the statement, information, answer or document might incriminate the person or make the person liable to a penalty.	17
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(2) Statement, information or answer not admissible if objection made	22
However, any statement made or any information or answer given or furnished by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Division) if:	23
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	27
(a) the person objected at the time to doing so on the ground that it might incriminate the person, or	28
	29
(b) the person was not warned on that occasion that the person may object to making the statement or giving or furnishing the information or answer on the ground that it might incriminate the person.	30
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(3) Documents admissible	1
Any document produced by a person in compliance with a requirement under this Division is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.	2 3 4 5
(4) Further information	6
Further information obtained as a result of a document produced, a statement made or information or an answer given or furnished in compliance with a requirement under this Division is not inadmissible on the ground:	7 8 9 10
(a) that the document, statement, information or answer had to be produced, made, given or furnished, or	11 12
(b) that the document, statement, information or answer might incriminate the person.	13 14
66 Offence: compliance	15
A person must not:	16
(a) without reasonable excuse, refuse or fail to comply with a requirement made or to answer a question of an inspector asked in accordance with this Division, or	17 18 19
(b) in purported compliance with a requirement under this Division, or in answer to a question of an inspector asked in accordance with this Division, give or furnish information or evidence or produce a document knowing it to be false or misleading in a material particular.	20 21 22 23 24
Maximum penalty:	25
(a) in the case of a previous offender—150 penalty units, or	26
(b) in any other case—100 penalty units.	27
67 Offence of impersonating an inspector	28
A person must not impersonate, or falsely represent that the person is, an inspector.	29 30
Maximum penalty: 100 penalty units.	31

68	Inspector may request assistance	1
(1)	A police officer may accompany and take all reasonable steps to assist an inspector in the exercise of the inspector's functions under this Division:	2
		3
		4
(a)	in executing a search warrant issued under section 58, or	5
(b)	if the inspector reasonably believes that he or she may be obstructed in the exercise of those functions.	6
		7
(2)	Any person whom an inspector believes to be capable of providing assistance in the exercise of the inspector's functions under this Division may accompany the inspector and take all reasonable steps to assist the inspector in the exercise of the inspector's functions.	8
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		10
		11
(3)	Nothing in subsection (1) is to be taken to limit the generality of section 18 of the <i>Search Warrants Act 1985</i> .	12
		13
69	Power of employees' representative to accompany inspector	14
	An inspector who is proposing to undertake an inspection of a place of work with respect to a matter that may affect the health, safety or welfare of employees at the place of work:	15
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		17
(a)	must, to the extent that it is practicable, consult a representative of the employees or an industrial organisation of employees whose members are employed at the place of work, and	18
		19
		20
(b)	must, if requested to do so by the representative, take the representative on any such inspection.	21
		22
70	Notice of taking or dismantling plant, substances or other things	23
(1)	Before exercising any of the powers under section 60 (Powers available on entry to dismantle, take and keep things), an inspector must give notice to the occupier of a place of work where the thing is situated of the inspector's intention to exercise that power.	24
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		26
		27
(2)	The notice must specify the date and time when the inspector proposes to exercise the powers as well as the thing in relation to which the powers are to be exercised.	28
		29
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71 Powers supporting taking of things	1
(1) Having taken a thing under section 60, an inspector may:	2
(a) move the thing from the place where it was taken, or	3
(b) leave the thing at the place but take reasonable action to restrict access to it, or	4 5
(c) if the thing is plant—dismantle it.	6
(2) The following are examples of restricting access to a thing:	7
(a) sealing a thing and marking it to show access to it is restricted,	8
(b) sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted.	9 10
(3) If an inspector restricts access to a thing taken, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector’s approval.	11 12 13
Maximum penalty: 40 penalty units.	14
(4) To enable a thing to be taken under section 60, an inspector may require the person in control of it:	15 16
(a) to take it to a stated reasonable place by a stated reasonable time, and	17 18
(b) if necessary, to remain in control of it at the stated place for a reasonable time.	19 20
(5) The requirement:	21
(a) must be made by notice in the form approved by WorkCover, or	22 23
(b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in that approved form as soon as practicable.	24 25 26
(6) The person must comply with the requirement unless the person has a reasonable excuse for not complying.	27 28
Maximum penalty: 40 penalty units.	29
(7) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.	30 31 32

72	Receipt for things taken	1
(1)	As soon as reasonably practicable after an inspector takes a thing under section 60, the inspector must give a receipt for it to the person from whom it was taken.	2 3 4
(2)	However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place where the thing was taken.	5 6 7 8
(3)	The receipt must describe generally each thing taken and its condition.	9
(4)	This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by this section (given the thing's nature, condition and value).	10 11 12
73	Forfeiture of things taken	13
(1)	A thing taken under section 60 is forfeited to the State if the inspector who took the thing:	14 15
(a)	cannot find its owner after making reasonable inquiries, or	16
(b)	cannot return it to its owner, after making reasonable efforts, or	17
(c)	reasonably believes it is necessary to retain the thing to prevent it being used to commit an offence against this Act or the regulations.	18 19 20
(2)	Subsection (1) (a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner, and subsection (1) (b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.	21 22 23 24
(3)	If the inspector decides to forfeit a thing under subsection (1) (c), the inspector must tell the owner of the decision by written notice.	25 26
(4)	Subsection (3) does not apply if:	27
(a)	the inspector cannot find its owner, after making reasonable inquiries, or	28 29
(b)	it is impracticable or would be unreasonable to give the notice.	30
(5)	The notice must state:	31
(a)	the reasons for the decision, and	32
(b)	that the owner may apply within 28 days for the decision to be reviewed by WorkCover, and	33 34

(c)	how the owner may apply for the review, and	1
(d)	that the owner may apply for a stay of the decision if the owner applies for a review.	2 3
	Division 4 of Part 6 applies to the notice in the same way as it applies to a prohibition notice.	4 5
(6)	In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.	6 7 8
74	Return of things taken	9
(1)	If a thing taken under section 60 has not been forfeited, the inspector must return it to its owner at the end of:	10 11
(a)	6 months, or	12
(b)	if a proceeding for an offence involving it is started within 6 months—the proceeding and any appeal from the proceeding.	13 14
(2)	Despite subsection (1), unless the thing has been forfeited, the inspector must immediately return a thing taken as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.	15 16 17 18
75	Access to things taken	19
(1)	Until a thing taken under section 60 is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.	20 21 22
(2)	Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.	23 24

Division 3	Entry and inspection powers of authorised employees' representatives	1
		2
76	Definition	3
	In this Division:	4
	<i>authorised representative</i> of an industrial organisation of employees, means an officer of that organisation (including any person who is concerned in, or takes part in, the management of that organisation) who is authorised under Part 7 of Chapter 5 of the <i>Industrial Relations Act 1996</i> .	5 6 7 8 9
77	Powers of entry of places of work	10
	An authorised representative of an industrial organisation of employees may, for the purpose of investigating any suspected breach of the occupational health and safety legislation, enter any premises the representative has reason to believe is a place of work where members of that organisation (or persons who are eligible to be members of that organisation) work.	11 12 13 14 15 16
78	Notice of entry	17
	(1) An authorised representative authorised to enter premises under this Division may enter the premises without notice.	18 19
	(2) The authorised representative must notify the occupier of the premises of the authorised representative's presence on the premises as soon as reasonably practicable after entering the premises, unless:	20 21 22
	(a) to do so would defeat the purpose for which the premises were entered or would unreasonably delay the authorised representative in a case of urgency, or	23 24 25
	(b) the occupier is already aware that the authorised representative has entered the premises or was notified in advance of when the authorised officer would enter the premises.	26 27 28

79 Authority to enter premises	1
(1) A power conferred by this Division to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority issued by the Industrial Registrar under Part 7 of Chapter 5 of the <i>Industrial Relations Act 1996</i> and produces the authority if required to do so by the occupier of the premises.	2 3 4 5 6 7
(2) Entry may only be made at a reasonable time in the daytime or at any hour when work is carried on or is usually carried on at the premises.	8 9
80 Entry to premises used for residential purposes	10
The powers of entry conferred by this Division are not exercisable in relation to any part of premises used only for residential purposes except with the permission of the occupier of the premises.	11 12 13
81 Powers available on entry	14
For the purpose of investigating any suspected breach of the occupational health and safety legislation, an authorised representative who enters premises under this Division may do any of the following:	15 16 17
(a) make searches and inspections (and take photographs and make video and audio recordings),	18 19
(b) require the occupier of those premises to provide the authorised representative with such assistance and facilities as is or are reasonably necessary to enable the representative to exercise his or her functions under this Division,	20 21 22 23
(c) require the production of and inspect any documents in or about those premises that directly affect or directly deal with the occupational health and safety of employees working at those premises,	24 25 26 27
(d) take copies of or extracts from any such documents.	28
82 Care to be taken	29
In the exercise of a function under this Division, an authorised representative must do as little damage as possible.	30 31

83	Authorised representative may request assistance from inspector	1
	An inspector may accompany and take all reasonable steps to assist an authorised representative in the exercise of the representative's functions under this Division if the representative reasonably believes that he or she may be obstructed in the exercise of those functions.	2 3 4 5
84	Offence of failing to comply with requirement of authorised representative	6 7
	A person must not, without reasonable excuse, refuse or fail to comply with a requirement made by an authorised representative in accordance with this Division.	8 9 10
	Maximum penalty: 20 penalty units.	11
85	Offence of impersonating an authorised representative	12
	A person must not impersonate, or falsely represent that the person is, an authorised representative.	13 14
	Maximum penalty: 100 penalty units.	15
Division 4	Accidents and other occurrences at places of work	16 17
86	Notification of accidents and other matters	18
	(1) The occupier of any place of work must give WorkCover notice in accordance with this section of any of the following occurrences:	19 20
	(a) any non-disturbance occurrence at the place of work (as referred to in section 87),	21 22
	(b) any accident or other matter occurring at or in relation to the place of work that the regulations declare to be an occurrence that is required to be notified to WorkCover.	23 24 25
	Maximum penalty:	26
	(a) in the case of a corporation (being a previous offender)—750 penalty units, or	27 28
	(b) in the case of a corporation (not being a previous offender)—500 penalty units, or	29 30
	(c) in the case of an individual (being a previous offender)—375 penalty units, or	31 32

(d)	in the case of an individual (not being a previous offender)—250 penalty units.	1 2
(2)	Any such notice must be given:	3
(a)	as soon as practicable (but not later than 7 days) after the occupier becomes aware of the occurrence, and	4 5
(b)	in writing in the form approved by Work Cover, and	6
(c)	by leaving it at, or by sending it by post or facsimile transmission to, an office of WorkCover.	7 8
(3)	Any such notice must, in the case of a non-disturbance occurrence, also be given:	9 10
(a)	immediately the occupier becomes aware of the occurrence, and	11
(b)	by the quickest available means (for example, by telephone or facsimile).	12 13
	This subsection does not apply if the occupier is aware that another person has given WorkCover notice of the occurrence.	14 15
(4)	The regulations may vary the obligations under this section with respect to the person required to give notice and the time and manner in which the notice is to be given.	16 17 18
(5)	This section does not apply to a mine.	19
87	Non-disturbance of plant involved in fatal accidents or other occurrences (and of surrounding area)	20 21
(1)	In this section:	22
	<i>non-disturbance occurrence</i> means:	23
(a)	an occurrence that has resulted in a person being killed, or	24
(b)	any other occurrence prescribed by the regulations for the purposes of this definition.	25 26
(2)	The occupier of a place of work must take measures to ensure that:	27
(a)	plant at that place is not used, moved or interfered with after it has been involved in a non-disturbance occurrence, and	28 29

- (b) the area at that place that is within 4 metres (or, if the regulations prescribe some other distance, that other distance) of the location of a non-disturbance occurrence is not disturbed. 1
2
3
4
- Maximum penalty: 5
- (a) in the case of a corporation (being a previous offender)—750 penalty units, or 6
7
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or 8
9
- (c) in the case of an individual (being a previous offender)—375 penalty units, or 10
11
- (d) in the case of an individual (not being a previous offender)—250 penalty units. 12
13
- (3) If the regulations prescribe measures that satisfy the requirements of this section, the occupier is taken to have satisfied those requirements if the occupier has taken the measures so prescribed. 14
15
16
- (4) This section does not prevent any action: 17
- (a) to help or remove a trapped or injured person or to remove a body, or 18
19
- (b) to avoid injury to a person or damage to property, or 20
- (c) for the purposes of any police investigation, or 21
- (d) in accordance with a direction or permission of an inspector, or 22
- (e) in such other circumstances as may be prescribed by the regulations. 23
24
- (5) The requirements of this section in relation to any particular occurrence apply only for the period ending 36 hours after notification of the occurrence in accordance with section 86. After the end of that period, non-disturbance requirements may apply by virtue of an investigation notice under Part 6. 25
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27
28
29
- (6) This section does not apply to a mine. 30

88 Minister may require and publish special reports into accidents and other dangerous occurrences	1
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(1) The Minister may direct WorkCover, or any department of the Government responsible to the Minister, to prepare a special report for the Minister with respect to:	3
	4
	5
(a) any accident that occurred at a place of work and that caused the death of or bodily injury to any person, or	6
	7
(b) any occurrence at a place of work that constituted a danger to any person.	8
	9
(2) The Minister may, if the Minister thinks fit, cause such a report or any part of such a report to be made public, whether by causing the report or part of the report to be published or otherwise. The Minister may table a copy of the report in Parliament.	10
	11
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	13
(3) No liability is incurred by the State and no personal liability is incurred by, or by any person acting at the direction of, the Minister, WorkCover or a department of the Government in respect of anything done in good faith in connection with the preparation or making public of a report under this section.	14
	15
	16
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	18
(4) No liability is incurred by a person for publishing in good faith:	19
(a) a report made public under this section, or	20
(b) a fair report or summary of such a report.	21
(5) This section applies to a mine.	22
(6) In this section:	23
<i>liability</i> includes liability in defamation.	24
<i>the State</i> includes the Crown in right of the State and the Government of the State.	25
	26

Part 6 Investigation, improvement and prohibition notices	1 2
Division 1 Investigation notices	3
89 Investigation notice to stop plant or prevent disturbance of premises to allow investigation	4 5
(1) An inspector who has entered premises under Part 5 may issue an investigation notice to the occupier of the premises if the inspector believes on reasonable grounds that it is necessary to issue the notice in order to facilitate the exercise of the inspector's powers under Division 2 of that Part in respect of the premises.	6 7 8 9 10
(2) An investigation notice must set out the grounds on which it is issued.	11
(3) An investigation notice remains in force for the period, not exceeding 7 days, specified in the notice. A notice may be renewed more than once by an inspector by issuing a further investigation notice in accordance with this section.	12 13 14 15
90 Offence: failure to comply with investigation notice	16
While an investigation notice is in force, the occupier of the premises must:	17 18
(a) stop the use or movement of, or interference with, any plant, substance or thing that is specified in the notice, and	19 20
(b) take measures to prevent the disturbance of any plant, substance or thing that is specified in the notice, or any specified area in which it is located.	21 22 23
Maximum penalty:	24
(a) in the case of a corporation (being a previous offender)—750 penalty units, or	25 26
(b) in the case of a corporation (not being a previous offender)—500 penalty units, or	27 28
(c) in the case of an individual (being a previous offender)—375 penalty units, or	29 30
(d) in the case of an individual (not being a previous offender)—250 penalty units.	31 32

Division 2	Improvement notices	1
91	Issue of improvement notices	2
(1)	If an inspector is of the opinion that any person:	3
(a)	is contravening any provision of this Act or the regulations, or	4
(b)	has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated,	5
	the inspector may issue to the person a notice requiring the person to remedy the contravention or the matters occasioning it within the period specified in the notice.	6
(2)	The period within which a person is required by an improvement notice to remedy a contravention or the matters occasioning the contravention must be at least 7 days after the issue of the notice.	7
(3)	However, an inspector may specify a period that is less than 7 days after the issue of the improvement notice if satisfied that it is reasonably practicable for the person to comply with the requirements imposed by the notice by the end of that period.	8
(4)	An improvement notice must:	9
(a)	state that the inspector is of the opinion referred to in subsection (1), and	10
(b)	state the reasons for that opinion, and	11
(c)	specify the provision of this Act or the regulations in respect of which that opinion is held, and	12
(d)	include information about obtaining a review of the notice under this Part.	13
92	Offence: failure to comply with improvement notice	14
	A person who, without reasonable excuse, fails to comply with a requirement imposed by an improvement notice is guilty of an offence.	15
	Maximum penalty:	16
(a)	in the case of a corporation (being a previous offender)—750 penalty units, or	17
(b)	in the case of a corporation (not being a previous offender)—500 penalty units, or	18

(c)	in the case of an individual not acting in the capacity of an employee (being a previous offender)—375 penalty units, or	1 2
(d)	in the case of an individual not acting in the capacity of an employee (not being a previous offender)—250 penalty units, or	3 4 5
(e)	in the case of an individual acting in the capacity of an employee (being a previous offender)—22.5 penalty units, or	6 7
(f)	in the case of an individual acting in the capacity of an employee (not being a previous offender)—15 penalty units.	8 9
Division 3	Prohibition notices	10
93	Issue of prohibition notices	11
(1)	If an inspector is of the opinion that at any place of work there is occurring or about to occur any activity which involves or will involve an immediate risk to the health or safety of any person, the inspector may issue to the person who has or may be reasonably presumed to have control over the activity a notice prohibiting the carrying on of the activity until the matters which give or will give rise to the risk are remedied.	12 13 14 15 16 17 18
(2)	A prohibition notice must:	19
(a)	state that the inspector is of the opinion referred to in subsection (1), and	20 21
(b)	state the reasons for that opinion, and	22
(c)	specify the activity in respect of which that opinion is held, and	23
(d)	if in the inspector's opinion the activity involves a contravention or likely contravention of any provision of this Act or the regulations—specify that provision and state the reasons for that opinion, and	24 25 26 27
(e)	include information about obtaining a review of the notice under this Part.	28 29

Clause 94	Occupational Health and Safety Bill 2000
Part 6	Investigation, improvement and prohibition notices
Division 3	Prohibition notices

94	Offence: failure to comply with prohibition notice	1
	A person who, without reasonable excuse, fails to comply with a requirement imposed by a prohibition notice is guilty of an offence.	2 3
	Maximum penalty:	4
	(a) in the case of a corporation (being a previous offender)—1,500 penalty units, or	5 6
	(b) in the case of a corporation (not being a previous offender)—1,000 penalty units, or	7 8
	(c) in the case of an individual not acting in the capacity of an employee (being a previous offender)—750 penalty units, or	9 10
	(d) in the case of an individual not acting in the capacity of an employee (not being a previous offender)—500 penalty units, or	11 12 13
	(e) in the case of an individual acting in the capacity of an employee (being a previous offender)—45 penalty units, or	14 15
	(f) in the case of an individual acting in the capacity of an employee (not being a previous offender)—30 penalty units.	16 17
Division 4	General provisions relating to notices	18
95	Notices may include directions	19
	(1) An inspector may include in a notice under this Part directions as to the measures to be taken to remedy any contravention or matter to which the notice relates or to otherwise comply with the notice.	20 21 22
	(2) Any such direction may:	23
	(a) adopt, by reference, the requirements of any industry or other code of practice or standard, and	24 25
	(b) offer the person to whom it is issued a choice of ways in which to remedy the contravention or matter or to comply with the notice.	26 27 28

96	Review of notices by WorkCover	1
(1)	A person who is issued with a notice under this Part may apply in writing to WorkCover for a review of the notice.	2 3
(2)	The application for review must be made within 7 days after the notice is issued or, if the regulations prescribe a different period, within the period so prescribed.	4 5 6
(3)	An application for review may be made only once in respect of any particular notice.	7 8
(4)	WorkCover is to review a notice that is the subject of a duly made application for review.	9 10
(5)	The notice is stayed (unless it is an investigation notice or a prohibition notice) from when the application for review is received by WorkCover until WorkCover gives notice to the applicant of the result of the review.	11 12 13 14
	Note. See section 98 for stay of investigation notice or prohibition notice.	15
(6)	WorkCover may, as a result of the review, confirm the notice, vary it or revoke it. The confirmation, variation or revocation has effect when notice of the result of the review is given to the applicant.	16 17 18
(7)	Regulations may be made with respect to reviews under this section.	19
97	Appeal to Industrial Magistrate following review	20
(1)	An applicant who is not satisfied with the result of a review by WorkCover of a notice under this Part may appeal against the notice to a Local Court constituted by an Industrial Magistrate sitting alone.	21 22 23
(2)	An appeal to a Local Court under this section does not operate to stay the notice the subject of the appeal except as otherwise ordered by the Court.	24 25 26
(3)	The Local Court may, on the appeal, confirm the notice, vary it or revoke it.	27 28
(4)	Regulations may be made with respect to appeals under this section, including the time and manner in which such an appeal is to be made.	29 30

98 Application to Industrial Magistrate for stay of investigation or prohibition notice	1 2
(1) If a person duly applies under this Part for review of an investigation notice or a prohibition notice, the person may apply to a Local Court constituted by an Industrial Magistrate sitting alone for a stay of the notice.	3 4 5 6
(2) A stay may be granted for such period as the Local Court considers appropriate, but not so as to extend past the time when notice of the result of the review is given to the applicant by WorkCover.	7 8 9
(3) A stay may be granted on such conditions as the Local Court considers appropriate and may be revoked or amended by the Local Court.	10 11
99 Withdrawal of notices	12
(1) A notice under this Part may be withdrawn at any time by the inspector who issued the notice or by WorkCover if the inspector or WorkCover is satisfied that the notice was issued in error or is incorrect in some respect.	13 14 15 16
(2) The withdrawal has effect when notice of the withdrawal is given to the person to whom the notice was issued.	17 18
100 Revocation or withdrawal of notice does not prevent issue of another notice	19 20
The revocation or withdrawal of a notice under this Part does not prevent the issue of any other notice.	21 22
101 Service of notices	23
(1) A notice under this Part (including a notice confirming, revoking or withdrawing such a notice) may be issued or given to a person:	24 25
(a) by delivering it personally to the person, or	26
(b) by leaving it with some other person at, or sending it by post or facsimile transmission to, the person's place of residence or business or the place of work to which the notice relates.	27 28 29
(2) This section does not affect the operation of any provision of a law or the rules of a court authorising a notice or other document to be served in a manner not authorised by this section.	30 31 32

102	Exhibition of notices	1
	(1) An inspector may cause a notice containing a copy of or extract from a notice under this Part, or of the matter contained in the notice, to be exhibited at the place of work concerned in a manner approved by WorkCover.	2 3 4 5
	(2) A person must not destroy, damage or remove a notice so exhibited except with the approval of WorkCover or an inspector.	6 7
	Maximum penalty:	8
	(a) in the case of a corporation—100 penalty units, or	9
	(b) in the case of an individual—50 penalty units.	10
103	Proceedings for offences not affected by notices	11
	The issue, variation, revocation or withdrawal of a notice under this Part does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the notice was issued.	12 13 14 15
104	Part does not apply to mines	16
	This Part does not apply to a mine.	17

Clause 105 Occupational Health and Safety Bill 2000

Part 7 Criminal and other proceedings

Division 1 Proceedings for offences generally

Part 7 Criminal and other proceedings 1

Division 1 Proceedings for offences generally 2

105 Summary procedure for offences 3

(1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily: 4
5

(a) before a Local Court constituted by a Magistrate sitting alone, 6
or 7

(b) before the Industrial Relations Commission in Court Session. 8

(2) The maximum monetary penalty that may be imposed in those proceedings by a Local Court is 500 penalty units, despite any higher maximum monetary penalty provided in respect of the offence. 9
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(3) The provisions of the *Industrial Relations Act 1996*, and of the regulations under that Act, relating to appeals from a Local Court to the Industrial Relations Commission in Court Session in connection with offences against that Act apply to proceedings before a Local Court for offences against this Act or the regulations. 12
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Note. Section 197 of the *Industrial Relations Act 1996* deals with appeals against convictions or penalties in connection with offences against that Act. Section 197A of the *Industrial Relations Act 1996* provides a right of appeal to the Full Bench of the Industrial Relations Commission in Court Session against a decision of a member of the Commission or a Local Court to acquit a person of an offence against this Act or the regulations. 17
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106 Authority to prosecute 23

(1) Proceedings for an offence against this Act or the regulations may be instituted only: 24
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(a) with the written consent of the Minister, or 26

(b) with the written consent of an officer prescribed by the regulations, or 27
28

(c) by an inspector, or 29

(d) by the secretary of an industrial organisation of employees any member or members of which are concerned in the matter to which the proceedings relate. 30
31
32

(2)	In proceedings for an offence against this Act or the regulations, a consent to institute the proceedings, purporting to have been signed by the Minister or a prescribed officer, is evidence of that consent without proof of the signature of the Minister or prescribed officer.	1 2 3 4
107	Time for instituting proceedings for offences	5
(1)	Proceedings for an offence against this Act or the regulations may be instituted within the period of 2 years after the act or omission alleged to constitute the offence, except as otherwise provided by this section.	6 7 8
(2)	This subsection applies to an offence against section 11 (Duties of designers, manufacturers and suppliers of plant and substances for use at work) or section 86 (Notification of accidents and other matters). Proceedings for any such offence may be instituted:	9 10 11 12
(a)	within 6 months after WorkCover first becomes aware of the act or omission alleged to constitute the offence, or	13 14
(b)	within 2 years after the act or omission alleged to constitute the offence,	15 16
	whichever provides the longer period to institute proceedings.	17
(3)	If a coronial inquest or inquiry is held and it appears from the coroner's report or proceedings at the inquest or inquiry that an offence has been committed against this Act or the regulations (whether or not the offender is identified), proceedings in respect of that offence may be instituted within 2 years after the date the report was made or the inquest or inquiry was concluded.	18 19 20 21 22 23
(4)	This section applies despite anything in any other Act.	24
108	Penalty notices for certain offences	25
(1)	An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations.	26 27 28 29
(2)	A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.	30 31 32 33 34
(3)	A penalty notice may be served personally or by post.	35

(4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.	1 2 3
(5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way as affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence.	4 5 6 7
(6) The regulations may:	8
(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and	9 10 11
(b) prescribe the amount of penalty payable for the offence if dealt with under this section, and	12 13
(c) prescribe different amounts of penalties for different offences or classes of offences.	14 15
(7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.	16 17 18
(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.	19 20 21
(9) In this section:	22
<i>authorised officer</i> means:	23
(a) an inspector, or	24
(b) a person declared by the regulations to be an authorised officer for the purposes of this section.	25 26
109 Evidentiary statements	27
In a prosecution for an offence against this Act or the regulations, a statement, purporting to be signed by the General Manager of WorkCover or other prescribed person, relating to:	28 29 30
(a) a notification of an accident or other matter required to be notified by or under this Act, or	31 32
(b) a certificate, licence or permit issued under a provision of the regulations, or	33 34

(c) any other prescribed matter contained in a prescribed official document concerning occupational health and safety,	1 2
and certifying that the contents of the statement are in accordance with the particulars contained in the document, is admissible in any proceedings and is evidence of the matters contained in the statement without proof of the signature of the person by whom the statement purports to have been signed.	3 4 5 6 7
110 Onus of proof concerning reasonable excuse	8
In any proceedings for an offence against a provision of this Act or the regulations, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant.	9 10 11
Note. Provisions relating to victim impact statements with respect to proceedings for offences against this Act or the regulations are contained in Part 3 of the <i>Crimes (Sentencing Procedure) Act 1999</i> . That Act also contains other provisions relating to sentencing for those offences.	12 13 14 15
Division 2 Court orders in connection with offences	16
111 Operation of Division	17
(1) Application to proved offences	18
This Division applies where a court finds an offence against this Act or the regulations proved.	19 20
(2) Meaning of proved offences	21
Without limiting the generality of subsection (1), a court finds an offence proved if:	22 23
(a) the court convicts the offender of the offence, or	24
(b) the court makes an order under section 10 of the <i>Crimes (Sentencing Procedure) Act 1999</i> against the offender in relation to the offence.	25 26 27
(3) Definitions	28
In this Division:	29
<i>the court</i> means the court that finds the offence proved.	30
<i>the offender</i> means the person who is found to have committed the offence.	31 32

112 Orders generally	1
(1) Orders may be made	2
One or more orders may be made under this Division against the offender.	3 4
(2) Orders are additional	5
Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.	6 7 8
113 Orders for restoration	9
(1) The court may order the offender to take such steps as are specified in the order, within the period so specified, 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.	10 11 12 13
(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 application for such an extension is made before the end of that period.	14 15 16
114 Orders regarding costs and expenses of investigation	17
(1) The court may, if it appears to the court that WorkCover has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to WorkCover the costs and expenses so incurred in such amount as is fixed by the order.	18 19 20 21
(2) An order made by the Industrial Relations Commission under this section is enforceable under section 182 of the <i>Industrial Relations Act 1996</i> . An order made by a Local Court under this section is enforceable as if it were an order made by the Local Court when exercising jurisdiction under the <i>Local Courts (Civil Claims) Act 1970</i> .	22 23 24 25 26
(3) In this section:	27
<i>costs and expenses</i> , in relation to the investigation of an offence, means the costs and expenses in conducting any examination or test of anything during the investigation of the offence.	28 29 30
Note. See section 122 of the <i>Fines Act 1996</i> for orders requiring part of the fine imposed for an offence to be paid to the prosecutor.	31 32

115	Orders to publicise or notify offence	1
	(1) The court may do any one or more of the following:	2
	(a) order the offender to take specified action to publicise the offence, its consequences, the penalty imposed and any other related matter,	3 4 5
	(b) order the offender to take specified action to notify specified persons or classes of persons of the offence, its consequences, the penalty imposed and any other related matter (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct).	6 7 8 9 10 11
	(2) The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.	12 13 14
	(3) If the offender fails to comply with an order under this section, the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:	15 16 17 18
	(a) the original contravention, its consequences, the penalty imposed and any other related matter, and	19 20
	(b) the failure to comply with the order.	21
	(4) The reasonable cost of taking action referred to in subsection (3) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.	22 23 24
116	Orders to undertake OHS projects	25
	(1) The court may order the offender to carry out a specified project for the general improvement of occupational health, safety and welfare.	26 27
	(2) The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.	28 29 30
	(3) A Local Court may not make an order under this section unless it is satisfied that the cost of complying with the order does not exceed the maximum amount for which the General Division of a Local Court has jurisdiction under section 12 of the <i>Local Courts (Civil Claims) Act 1970</i> .	31 32 33 34 35

Clause 117 Occupational Health and Safety Bill 2000

Part 7 Criminal and other proceedings

Division 2 Court orders in connection with offences

117 Offence: failure to comply with order	1
(1) A person who, without reasonable excuse, fails to comply with an order under this Division is guilty of an offence.	2 3
Maximum penalty:	4
(a) in the case of a corporation (being a previous offender)—1,500 penalty units, or	5 6
(b) in the case of a corporation (not being a previous offender)—1,000 penalty units, or	7 8
(c) in the case of an individual (being a previous offender)—375 penalty units, or	9 10
(d) in the case of an individual (not being a previous offender)—250 penalty units.	11 12
(2) This section does not apply to an order under section 114 (Orders regarding costs and expenses of investigation).	13 14
Division 3 Proceedings against the Crown and government agencies	15 16
118 Act to bind Crown	17
This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.	18 19 20
119 Criminal proceedings against the Crown and agents of the Crown	21
(1) The Crown in any capacity may be prosecuted for an offence against this Act or the regulations.	22 23
(2) The Crown in any capacity may be served with a penalty notice in connection with an alleged offence against this Act or the regulations.	24 25
(3) In the case of an offence against this Act or the regulations committed or alleged to have been committed by an agency of the Crown that is a corporation:	26 27 28
(a) the corporation and not the Crown may be prosecuted for the offence, and	29 30

	(b) the corporation and not the Crown may be served with a penalty notice.	1 2
	Note. See section 123 for proceedings against successors of corporate agents of the Crown. The other provisions of this Act relating to corporations apply in respect of proceedings against corporate agents of the Crown.	3 4 5
	(4) For the purposes of this Division, <i>proceedings against the Crown</i> are proceedings to which this section applies (other than those against an agency of the Crown that is a corporation).	6 7 8
	(5) Proceedings against the Crown in right of New South Wales may be brought or taken under the title “State of New South Wales”.	9 10
120	Responsible agency for the purposes of proceedings against the Crown	11 12
	(1) The <i>responsible agency</i> for the purposes of proceedings against the Crown is the agency of the Crown:	13 14
	(a) whose acts or omissions are alleged to constitute the offence, or	15
	(b) if that agency has ceased to exist—that is the successor of that agency, or	16 17
	(c) if that agency has ceased to exist and there is no clear successor—that the court declares to be the responsible agency.	18 19
	(2) The responsible agency is to be specified in the charge for an offence for which the Crown is prosecuted or in any penalty notice served on the Crown. The responsible agency may, during any proceedings for an offence, be changed by the prosecutor with the leave of the court.	20 21 22 23
	(3) The responsible agency is entitled to act for the Crown in proceedings against the Crown.	24 25
	(4) Subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.	26 27 28
	(5) For the purposes of this section, a State owned corporation is taken to be an agency of the Crown in right of New South Wales.	29 30
121	Penalties in respect of proceedings against the Crown	31
	(1) In this section, <i>penalty</i> means:	32
	(a) the monetary penalty for an offence against this Act or the regulations, or	33 34

Clause 121	Occupational Health and Safety Bill 2000	
Part 7	Criminal and other proceedings	
Division 3	Proceedings against the Crown and government agencies	
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	(b) the amount payable under a penalty notice served in connection with such an offence, or	1 2
	(c) the amount payable under an order made under Division 2.	3
	(2) The penalty in respect of proceedings against the Crown is the penalty applicable in respect of offences committed by a corporation.	4 5
	(3) If that penalty differs for previous offenders, the Crown is a previous offender in relation to particular proceedings against the Crown only if the Crown is a previous offender in respect of the acts or omissions of the same responsible agency of the Crown (or any predecessor of that agency).	6 7 8 9 10
	(4) Enforcement proceedings under the <i>Fines Act 1996</i> cannot be taken in connection with penalties imposed in respect of proceedings against the Crown.	11 12 13
122	Investigation, improvement or prohibition notices in connection with the Crown	14 15
	(1) Investigation or improvement notices may be issued in respect of any activity of or controlled by the Crown and prohibition notices may be issued in respect of any contravention of this Act or the regulations by the Crown.	16 17 18 19
	(2) Any such notice may be served on the agency that would be the responsible agency if the Crown were prosecuted for an offence with respect to that activity or that contravention.	20 21 22
123	Proceedings against successors of government corporations	23
	(1) In this section, <i>government corporation</i> means:	24
	(a) a corporation that is an agent of the Crown, or	25
	(b) a State owned corporation, or	26
	(c) a corporation that is an area health service or statutory health corporation within the meaning of the <i>Health Services Act 1997</i> , or	27 28 29
	(d) a local council or county council, or	30
	(e) a public or local authority that is declared by the regulations to be a government corporation for the purposes of this section.	31 32

- (2) Proceedings for an offence against this Act or the regulations that were instituted against a government corporation before its dissolution, or that could have been instituted against a government corporation but for its dissolution, may be continued or instituted against its successor if the successor is a government corporation. 1
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- (3) Subsection (2) extends to proceedings that could have been instituted against a government corporation because of the operation of that subsection. 6
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- (4) A penalty notice served on a government corporation for an offence against this Act or the regulations or any penalty paid by a government corporation in respect of such a penalty notice: 9
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- (a) is taken to be a penalty notice served on its successor if the successor is a government corporation, or 12
13
- (b) is taken to be a penalty paid by any such successor, 14
as the case requires. 15

Division 4 Sentencing guidelines 16

124 Definitions 17

In this Division: 18

Full Bench means the Full Bench of the Industrial Relations Commission in Court Session. 19
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guideline judgment means a judgment of the Full Bench containing guidelines to be taken into account by the Industrial Relations Commission in Court Session, a Local Court, the District Court or the Supreme Court in sentencing persons convicted of an offence being: 21
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- (a) guidelines that apply generally, or 25
- (b) guidelines that apply to particular courts (or the Industrial Relations Commission in Court Session) or classes of courts, to particular offences or classes of offences, to particular penalties or classes of penalties or to particular classes of persons convicted of an offence (but not to particular persons). 26
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guideline proceedings means proceedings under section 125 on an application for a guideline judgment referred to in that section. 31
32

offence means an offence under this Act, the regulations or the associated occupational health and safety legislation. 1
2

State peak council has the meaning that it has in the *Industrial Relations Act 1996*. 3
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125 Guideline judgments on application of Attorney General 5

(1) The Full Bench may give a guideline judgment on application of the Attorney General. 6
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(2) An application for a guideline judgment may include submissions with respect to the framing of the guidelines. 8
9

(3) An application is not to be made in any proceedings before the Full Bench with respect to any particular person. 10
11

(4) The powers and jurisdiction of the Full Bench to give a guideline judgment in proceedings under this section in relation to an offence are the same as the powers and jurisdiction that the Court of Criminal Appeal has to give a guideline judgment in a pending proceeding relating to an offence (apart from section 37 of the *Crimes (Sentencing Procedure) Act 1999*). 12
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(5) A guideline judgment under this section may be given separately or may be included in any judgment of the Full Bench that it considers appropriate. 18
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126 Peak councils may intervene 21

(1) A State peak council, or a representative of a State peak council who is a legal practitioner, may appear in guideline proceedings. 22
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(2) Without limiting subsection (1), a State peak council or its representative may do either or both of the following: 24
25

(a) make submissions with respect to the framing of the guidelines, 26

(b) assist the Full Bench with respect to any relevant matter. 27

127 Full Bench may give persons or organisations leave to appear 28

(1) The Full Bench may grant leave to any person, organisation or government department or agency (or a representative of any person, organisation, department or agency who is a legal practitioner) to appear in guideline proceedings. 29
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(2) Without limiting subsection (1), any person, organisation, government department or agency that is granted leave to appear (or its representative, if any) may do either or both of the following:	1
(a) make submissions with respect to the framing of the guidelines,	2
(b) assist the Full Bench with respect to any relevant matter.	3
(3) This section does not apply to State peak councils.	4
128 Alteration of guideline judgments	5
A guideline judgment given in proceedings under this Division may be reviewed, varied or revoked in a subsequent guideline judgment of the Full Bench, whether made under this Division or apart from it.	6
129 Discretion of Full Bench preserved	7
Nothing in this Division:	8
(a) limits any power or jurisdiction of the Full Bench to give a guideline judgment that the Full Bench has apart from this Division, or	9
(b) requires the Full Bench to give any guideline judgment under this Division if it considers it inappropriate to do so.	10
130 Rules of Industrial Relations Commission	11
Rules of the Industrial Relations Commission may be made under the <i>Industrial Relations Act 1996</i> with respect to applications, and proceedings to determine applications, under this Division.	12
131 Use of evidence in giving guideline judgments	13
(1) Nothing in section 12 of the <i>Criminal Appeal Act 1912</i> or in section 163 (2) of the <i>Industrial Relations Act 1996</i> limits the evidence or other matters that the Full Bench may take into consideration in giving a guideline judgment (whether or not on an application under this Division) and the Full Bench may inform itself as it sees fit.	14
(2) The Full Bench must not increase a sentence in any appeal by reason of, or in consideration of, any evidence that is used by the Full Bench in giving a guideline judgment in the appeal but was not given in the original proceedings.	15

Part 8 Miscellaneous

1

132 Application of associated occupational health and safety legislation

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- (1) Subject to this section, the provisions of the associated occupational health and safety legislation are to be observed in addition to the provisions of this Act and the regulations. 3
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- (2) Except as provided by subsection (3), where any provision of the associated occupational health and safety legislation is inconsistent with a provision of this Act or the regulations, the provision of this Act or the regulations prevails. 6
7
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9
- (3) A person is not guilty of an offence under Part 2 in respect of any act or omission that is expressly required or permitted to be done or omitted by or under the associated occupational health and safety legislation. 10
11
12
13
- (4) Where an act or omission constitutes an offence: 14
 - (a) under this Act or the regulations, and 15
 - (b) under the associated occupational health and safety legislation, the offender is not liable to be punished twice in respect of the offence. 16
17

133 Application of Act to mines: references to WorkCover

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The regulations may provide that a reference in any provision of this Act to WorkCover, in connection with the application of the provision to a mine, is taken to be or include a reference to a specified government department or agency, or an officer of a government department or agency, exercising functions in connection with the administration of the *Mines Inspection Act 1901* or the *Coal Mines Regulation Act 1982*. 19
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Note. See, for example, Division 2 of Part 2 (Duty to consult), Part 4 (Industry codes of practice), and section 114 (Orders regarding costs and expenses of investigation). 26
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134 Application of Act to police officers

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To avoid doubt, a police officer is, for the purposes of this Act: 30

- (a) an employee of the Crown, and 31
- (b) at work throughout the time when the officer is on duty, but not otherwise. 32
33

135	Plant affecting public safety—extension of Act	1
(1)	In this section:	2
	<i>plant affecting public safety</i> means any plant (including but not limited to plant of the following kinds) that is prescribed by the regulations as plant affecting public safety, whether or not the plant is at a place of work or for use at work:	3
		4
		5
		6
	(a) boilers and pressure vessels,	7
	(b) escalators, lifts and moving walks,	8
	(c) scaffolding.	9
(2)	The following provisions of this Act extend to plant affecting public safety even though the plant is not at a place of work or is not for use at work:	10
		11
		12
	(a) Division 4 of Part 2 (Ancillary provisions),	13
	(b) Part 3 (Regulations) and Part 4 (Industry codes of practice),	14
	(c) Divisions 1, 2 and 4 of Part 5 (Investigations) and Part 6 (Investigation, improvement and prohibition notices).	15
		16
(3)	For the purposes of the application of those provisions:	17
	(a) a reference to work includes a reference to operating any plant affecting public safety, and	18
		19
	(b) a reference to a place of work includes a reference to any plant affecting public safety and the premises at or in which the plant is situated or used, and	20
		21
		22
	(c) a reference to occupational health and safety includes a reference to public health and safety.	23
		24
(4)	This section does not affect the application of this Act to plant affecting public safety apart from the operation of this section.	25
		26
136	Offence of obstructing or intimidating inspectors and others exercising functions under Act	27
		28
(1)	A person must not:	29
	(a) obstruct, hinder or impede any authorised official in the exercise of the official's functions under this Act, or	30
		31

- (b) intimidate or threaten or attempt to intimidate any authorised official in the exercise of the official's functions under this Act. 1
2

Maximum penalty: 3

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or 4
5
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or 6
7
- (c) in the case of an individual (being a previous offender)—225 penalty units, or 8
9
- (d) in the case of an individual (not being a previous offender)—150 penalty units. 10
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- (2) In this section: 12

authorised official means an inspector, an authorised representative (within the meaning of Division 3 of Part 5), a member of an OHS committee, an OHS representative or other person authorised to exercise functions under this Act or the regulations. 13
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137 Disclosure of information by inspectors and others 17

- (1) A person who is, or was at any time, an authorised official exercising functions under this Act must not disclose any information relating to any manufacturing or commercial secrets or working processes that was obtained by the authorised official in connection with the administration or execution of this Act (including the exercise of any function under this Act). 18
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Maximum penalty: 20 penalty units. 24

- (2) Subsection (1) does not operate to prevent the disclosure of information where that disclosure is: 25
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 - (a) made in connection with the administration or execution of this Act (including the exercise of any function under this Act), or 27
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 - (b) made with the prior permission of the Minister, or 29
 - (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing. 30
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(3) The Minister may grant the permission referred to in subsection (2) (b) only if the Minister is satisfied that to do so would be in the public interest.	1 2 3
(4) In this section: <i>authorised official</i> means an inspector, an authorised representative (within the meaning of Division 3 of Part 5), a member of an OHS committee, an OHS representative or other person authorised to exercise functions under this Act or the regulations. <i>this Act</i> includes the <i>Occupational Health and Safety Act 1983</i> .	4 5 6 7 8 9
138 Notes	10
Notes in the text of this Act do not form part of this Act.	11
139 Repeals	12
(1) The Acts specified in Schedule 1 are repealed.	13
(2) Different days may be appointed for the commencement of Schedule 1 for the purpose of repealing different Acts or different provisions of an Act on different days.	14 15 16
140 Amendment of other Acts	17
The Acts specified in Schedule 2 are amended as set out in that Schedule.	18 19
141 Savings, transitional and other provisions	20
Schedule 3 has effect.	21
142 Review of Act	22
(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	23 24 25
(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.	26 27
(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	28 29

Occupational Health and Safety Bill 2000

Schedule 1 Repeals

Schedule 1 Repeals

	1
(Section 139)	2
<i>Construction Safety Act 1912 No 38</i>	3
<i>Occupational Health and Safety Act 1983 No 20</i>	4
<i>Occupational Health and Safety Amendment Act 1997 No 51</i>	5
<i>Occupational Health and Safety Amendment (Sentencing Guidelines) Act 2000 No 9</i>	6
	7

Schedule 2	Amendment of other Acts	1
	(Section 140)	2
2.1	Crimes (Sentencing Procedure) Act 1999 No 92	3
[1]	Section 27 Application of Division	4
	Insert “the Industrial Relations Commission,” after “Supreme Court,” in section 27 (1).	5 6
[2]	Section 27 (2A)	7
	Insert after section 27 (2):	8
	(2A) In relation to an offence being dealt with by the Industrial Relations Commission, this Division applies only if:	9
	(a) the offence is an offence against Division 1 of Part 2 of the <i>Occupational Health and Safety Act 2000</i> , and	10 11 12
	(b) the offence results in the death of, or actual physical bodily harm to, any person.	13 14
[3]	Section 28 When victim impact statement may be received and considered	15 16
	Insert “, Industrial Relations Commission” after “Supreme Court” wherever occurring in section 28 (1), (3), (4), (5) and (6).	17 18
2.2	Dangerous Goods Act 1975 No 68	19
[1]	Section 5 Savings and relationship to other laws	20
	Omit “ <i>Occupational Health and Safety Act 1983</i> ” from section 5 (3).	21
	Insert instead “ <i>Occupational Health and Safety Act 2000</i> ”.	22
[2]	Section 5 (3)	23
	Omit “, the <i>Construction Safety Act 1912</i> ”.	24

[3] Section 31 Powers of inspectors	1
Insert after section 31 (7):	2
(8) An inspector who is proposing to undertake an inspection of a place of work with respect to a matter that may affect the health, safety or welfare of employees at the place of work:	3
(a) must, to the extent that it is practicable, consult a representative of the employees or an industrial organisation of employees whose members are employed at the place of work, and	4
(b) must, if requested to do so by the representative, take the representative on any such inspection.	5
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[4] Section 41 Regulations	12
Omit “ <i>Occupational Health and Safety Act 1983</i> ” from section 41 (2).	13
Insert instead “ <i>Occupational Health and Safety Act 2000</i> ”.	14
[5] Section 41 (2)	15
Omit “, the <i>Construction Safety Act 1912</i> ”.	16
[6] Sections 43A and 43B	17
Insert after section 43:	18
43A Penalty notices for certain offences	19
(1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations.	20
(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.	21
(3) A penalty notice may be served personally or by post.	22
(4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.	23
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- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way as affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence. 1
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- (6) The regulations may: 5
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and 6
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- (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and 9
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- (c) prescribe different amounts of penalties for different offences or classes of offences. 11
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- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court. 13
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- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences. 16
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- (9) In this section: 19
- authorised officer* means an inspector, or any other person declared by the regulations to be an authorised officer for the purposes of this section. 20
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- 43B Requirement to give name and address** 23
- (1) An authorised officer (within the meaning of section 43A) may require a person whom the officer reasonably suspects has committed an offence against this Act or the regulations to state the person's residential address and full name. 24
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- (2) Any such officer may request the person to provide reasonable proof of the person's identity. 28
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- (3) A person who, without reasonable excuse, fails to comply with a requirement of any such officer under this section is guilty of an offence. 30
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- Maximum penalty: 15 penalty units. 33

(4)	A person does not commit an offence against this section if:	1
(a)	the officer does not, at the time when the officer makes the requirement, show the person proof of the officer's authority, or	2 3 4
(b)	the officer does not, at the time when the officer makes the requirement, warn the person that it would be an offence not to comply with the requirement.	5 6 7
2.3	Electricity (Pacific Power) Act 1950 No 22	8
	Section 8E Application of certain provisions to subsidiary companies	9 10
	Omit section 8E (2) (a).	11
2.4	Factories, Shops and Industries Act 1962 No 43	12
[1]	Section 1 Name of Act and commencement	13
	Omit " <i>Factories</i> ," from section 1 (1).	14
[2]	Section 4 Definitions	15
	Omit the definitions of <i>Authority</i> , <i>Factory</i> , <i>Furniture</i> , <i>General Manager</i> , <i>Harbour</i> , <i>Inspector</i> , <i>Maintained</i> , <i>Manufacturing process</i> , <i>Mechanical power</i> , <i>Motor spirit</i> , <i>Prescribed</i> and <i>Ship</i> from section 4 (1).	16 17 18
[3]	Section 4 (1), definition of "Occupier"	19
	Omit "factory or" wherever occurring.	20
[4]	Section 4 (2)	21
	Omit the subsection.	22
[5]	Section 5 Extension of this Act and exemptions therefrom	23
	Omit the section.	24

[6] Section 6 Construction and application	1
Omit the section.	2
[7] Section 6A Part 3 to bind the Crown	3
Omit the section.	4
[8] Part 3 Health, safety and welfare in factories, shops and other industries (sections 9–73)	5
	6
Omit the Part.	7
[9] Section 74 Definitions	8
Omit the definition of <i>Furniture factory</i> from section 74 (1).	9
[10] Section 100 Powers of inspectors	10
Omit section 100 (1) (b).	11
[11] Section 100 (1) (f)	12
Omit “, warehouse, or furniture factory”. Insert instead “or warehouse”.	13
[12] Section 100 (2)	14
Omit “any furniture factory, or”.	15
[13] Section 144 Regulations	16
Omit section 144 (1) (e) (i).	17
[14] Section 144 (2)	18
Omit the subsection.	19
[15] Section 145 Proceedings	20
Omit section 145 (1) (a).	21
[16] Section 145 (5)	22
Omit “or, in a case where the informant is an inspector, by an officer of the WorkCover Authority”.	23
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Occupational Health and Safety Bill 2000

Schedule 2 Amendment of other Acts

[17] Section 145 (6)	1
Omit the subsection.	2
[18] Section 146 Service of order, notice or summons	3
Omit “factory,” wherever occurring.	4
[19] Section 147 Penalties	5
Omit section 147 (1) (a).	6
[20] Section 147 (2)	7
Omit the subsection.	8
[21] Section 147 (4)	9
Omit “factory,”.	10
[22] Section 148 Evidentiary provisions	11
Omit section 148 (1) (c).	12
[23] Section 148 (2)	13
Omit the subsection.	14
[24] Section 149 Contracting out	15
Omit “factory or”.	16
[25] Section 151 Penalty for forging certificates etc and false declaration	17
Omit “for the registration under this Act of any premises as a factory or”.	18
[26] Section 152 Penalty for destroying notices etc	19
Omit “factory,”.	20
[27] Schedule 2 Savings, transitional and other provisions	21
Omit Part 2.	22

2.5 Fines Act 1996 No 99	1
[1] Schedule 1 Statutory provisions under which penalty notices issued	2
Insert in alphabetical order:	3
<i>Dangerous Goods Act 1975</i> , section 43A	4
<i>Occupational Health and Safety Act 2000</i> , section 108	5
[2] Schedule 1	6
Omit “ <i>Occupational Health and Safety Act 1983</i> , section 51B”.	7
2.6 Industrial Relations Act 1996 No 17	8
[1] Section 70 Transfer to a safe job	9
Omit “ <i>Occupational Health and Safety Act 1983</i> ” from section 70 (1).	10
Insert instead “ <i>Occupational Health and Safety Act 2000</i> ”.	11
[2] Section 197A Appeals against acquittals in proceedings for offences against occupational health and safety legislation	12
Omit section 197A (10). Insert instead:	14
(10) In this section:	15
<i>occupational health and safety legislation</i> means the	16
<i>Occupational Health and Safety Act 2000</i> , the regulations	17
under that Act and the associated occupational health and	18
safety legislation within the meaning of that Act.	19

[3] Section 210 Freedom from victimisation	1
Insert at the end of section 210:	2
, or	3
(j) makes a complaint about a workplace matter that the person considers is not safe or a risk to health, or exercises functions (as a member of a committee or otherwise) with respect to workplace consultation conferred under Division 2 of Part 2 of the <i>Occupational Health and Safety Act 2000</i> .	4 5 6 7 8 9
[4] Section 396 Penalty notices	10
Omit “ <i>Occupational Health and Safety Act 1983</i> ” from section 396 (9).	11
Insert instead “ <i>Occupational Health and Safety Act 2000</i> ”.	12
2.7 Local Government Act 1993 No 30	13
[1] Section 68 What activities, generally, require the approval of the council?	14 15
Omit item 5 of Part F of the Table. Insert instead:	16
5 Install or operate amusement devices that are plant affecting public safety within the meaning of section 135 of the <i>Occupational Health and Safety Act 2000</i>	17 18 19
[2] Dictionary	20
Omit the definition of <i>amusement device</i> and the note to that definition.	21
2.8 Mines Inspection Act 1901 No 75	22
Section 29 Hours of work and associated working arrangements below ground	23 24
Omit “ <i>Occupational Health and Safety Act 1983</i> ” from section 29 (3).	25
Insert instead “ <i>Occupational Health and Safety Act 2000</i> ”.	26

2.9 Rail Safety Act 1993 No 50	1
[1] Section 85 Double jeopardy	2
Omit “ <i>Occupational Health and Safety Act 1983</i> ”.	3
Insert instead “ <i>Occupational Health and Safety Act 2000</i> ”.	4
[2] Section 96 Savings of other Acts etc	5
Omit “ <i>Occupational Health and Safety Act 1983</i> ”.	6
Insert instead “ <i>Occupational Health and Safety Act 2000</i> ”.	7
2.10 Search Warrants Act 1985 No 37	8
Section 10 Definitions	9
Omit “section 31H of the <i>Occupational Health and Safety Act 1983</i> ,”.	10
Insert instead “section 58 of the <i>Occupational Health and Safety Act 2000</i> ,”.	11
2.11 Workplace Injury Management and Workers Compensation Act 1998 No 86	12
Section 4 Definitions	14
Omit “ <i>Occupational Health and Safety Act 1983</i> ” from the definition of <i>occupational health and safety legislation</i> in section 4 (1).	15
Insert instead “ <i>Occupational Health and Safety Act 2000</i> ”.	16
	17

Schedule 3 Savings, transitional and other provisions	1
(Section 141)	2
Part 1 Regulations	3
1 Regulations	4
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: this Act	5 6 7
(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	8 9
(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	10 11 12
(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	13 14 15
(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	16 17 18
Part 2 Provisions consequent on enactment of this Act	19
Division 1 Preliminary	20
2 Definitions	21
In this Part:	22
<i>commencement of this Act</i> means, if this Act commences on different days, the day on which the relevant provision of this Act commences.	23 24
<i>former Act</i> means the <i>Occupational Health and Safety Act 1983</i> .	25

Division 2	Regulations under repealed Acts	1
3	Repeal of regulations	2
	Each of the following regulations is repealed, on the date appointed under this Act for the commencement of this clause in respect of the regulation concerned:	3
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		5
	(a) each regulation made under the former Act,	6
	(b) the following regulations under the <i>Factories, Shops and Industries Act 1962</i> :	7
		8
	<i>Abrasive Blasting Regulations</i>	9
	<i>Boiler and Pressure Vessel Regulations</i>	10
	<i>Chaff-cutting Machines (Safety) Regulation 1980</i>	11
	<i>Engine Drivers and Boiler Attendants Certification Regulations</i>	12
	<i>Explosive-powered Tool Regulations</i>	13
	<i>Factories (Health and Safety—Asbestos Processes) Regulation 1984</i>	14
		15
	<i>Factories (Health and Safety—Circular Saws) Regulations 1943</i>	16
		17
	<i>Factories (Health and Safety—Dipping in Flammable Solutions) Regulation 1976</i>	18
		19
	<i>Factories (Health and Safety) Electroplating Regulation 1988</i>	20
	<i>Factories (Health and Safety—Furnaces) Regulation 1983</i>	21
	<i>Factories (Health and Safety) General Regulations 1913</i>	22
	<i>Factories (Health and Safety—Spray Painting) Regulation 1977</i>	23
		24
	<i>Foundry Regulations</i>	25
	<i>Lead Regulations</i>	26
	<i>Local Government Industries (Machine Safety) Regulation</i>	27
	<i>Locomotive Regulations</i>	28

<i>Rural Industries (Machine Safety) Regulations</i>	1
<i>Timber Industry (Health and Safety) Regulation 1982</i>	2
<i>Welding Regulations</i>	3
(c) the <i>Construction Safety Regulations 1950</i> under the <i>Construction Safety Act 1912</i> .	4 5
4 Saving of regulations pending their repeal	6
(1) This clause applies if the provision of the Act under which any such regulation is made is repealed before the date appointed for the repeal of the regulation.	7 8 9
(2) Pending the repeal of any such regulation, the regulation is, to the extent that it could legally be made under this Act, taken to be a regulation made under this Act.	10 11 12
5 Temporary preservation of regulation-making powers under repealed associated legislation	13 14
Until the end of the period of 3 years after the repeal by this Act of any provision of an Act, regulations may be made under this Act for or with respect to any matter contained in that provision or any matter that could have been prescribed by regulation under that provision (but for its repeal).	15 16 17 18 19
6 Staged repeal under Subordinate Legislation Act 1989 of regulations to be repealed by this Part	20 21
A regulation that is to be repealed by this Part is taken not to be repealed by section 10 of the <i>Subordinate Legislation Act 1989</i> .	22 23
Division 3 Miscellaneous provisions	24
7 Associated legislation	25
Pending the repeal of any provision of an Act or regulation by this Act that was associated occupational health and safety legislation under the former Act, the provision is taken to be associated occupational health and safety legislation for the purposes of this Act.	26 27 28 29

8	OHS committees etc	1
(1)	An occupational health and safety committee established under section 23 of the former Act is, subject to the regulations, taken to be an OHS committee established under Division 2 of Part 2 of this Act.	2 3 4
(2)	The regulations may provide for the staged implementation of the duties imposed under Division 2 of Part 2 of this Act.	5 6
9	Industry codes of practice	7
	An industry code of practice approved and in force under Part 4A of the former Act immediately before the repeal of that Act is taken to be an approved industry code of practice under Part 4 of this Act.	8 9 10
10	Improvement or prohibition notices	11
(1)	An improvement notice may be issued under this Act in respect of a contravention of the former Act or the regulations under the former Act that occurred before the commencement of this Act.	12 13 14
(2)	An improvement notice or prohibition notice issued under the former Act and in force on the commencement of this Act is taken to be an improvement notice or prohibition notice issued under this Act.	15 16 17
(3)	Any appeal, review or other proceeding pending under the former Act with respect to an improvement notice or prohibition notice issued under the former Act, or a notice issued under section 21B, 21C or 31Z of the former Act, is taken to be a proceeding pending under the corresponding provision of this Act.	18 19 20 21 22
11	Inspectors	23
(1)	A person appointed as an inspector under Division 4 of Part 3 of the former Act and holding office on the repeal of the former Act is taken to be appointed as an inspector under this Act, subject to the regulations under this Schedule.	24 25 26 27
(2)	A written authority issued to the inspector under section 31C of the former Act is taken to be an identification card issued under this Act until its replacement under this Act, and may be used by the inspector even though it refers to provisions of the former Act.	28 29 30 31
(3)	A reference in any other Act, in an instrument made under any Act or in any document of any kind to a former inspector is to be construed as a reference to an inspector under this Act. In this subclause, <i>former inspector</i> means:	32 33 34 35

(a)	an inspector appointed under Division 4 of Part 3 of the former Act, or	1 2
(b)	an inspector appointed under the <i>Factories, Shops and Industries Act 1962</i> , or	3 4
(c)	an inspector appointed under the <i>Construction Safety Act 1912</i> .	5
12	Investigative powers and related matters	6
(1)	Part 5 (Investigations) extends to the exercise of powers in connection with the former Act or a regulation under the former Act in respect of offences committed against the former Act or the regulation before its repeal or in respect of any other matter that continues to have any force or effect (except as provided by or under this Schedule).	7 8 9 10 11
(2)	In subclause (1), <i>former Act</i> includes any Act or provision of an Act that is repealed by this Act.	12 13
(3)	Section 88 applies to any report prepared or made public under section 31AQ of the former Act.	14 15
13	Criminal and other proceedings for offences under former Act	16
(1)	Part 7 (Criminal and other proceedings) extends (subject to this clause) to proceedings in connection with the former Act in respect of offences committed against the former Act before its repeal or in respect of any related matter that continues to have force or effect.	17 18 19 20
(2)	This clause applies whether any such proceedings are pending on the repeal of the former Act or whether the proceedings are instituted after that repeal.	21 22 23
(3)	Part 7 applies with such modifications as are prescribed by the regulations or as are necessary for the purposes of applying that Part to any such proceedings.	24 25 26
(4)	Division 3 of Part 7 does not authorise any such proceedings against the Crown or any agent of the Crown if those proceedings would not have been authorised under the former Act.	27 28 29
(5)	In this clause, <i>former Act</i> includes any Act or provision of an Act that is repealed by this Act.	30 31

14 Sentencing guidelines	1
An application for a guideline judgement pending under Part 7 of the former Act on the repeal of that Part, and any guideline judgement given under that Part, is taken to be an application for a guideline judgement pending under Division 4 of Part 7 of this Act or a guideline judgement given under that Division, as the case requires.	2 3 4 5 6
15 Existing notices, exemptions etc	7
(1) A notice, direction, order, requirement or exemption that:	8
(a) is given, issued or made under the former Act, and	9
(b) is in force on the repeal of the former Act,	10
has effect for the purposes of any corresponding provision of or made under this Act, unless this Act or the regulations otherwise provide.	11 12
(2) In this clause, <i>former Act</i> includes any Act or provision of an Act that is repealed by this Act.	13 14
16 Victim impact statements	15
The amendments made by this Act to the <i>Crimes (Sentencing Procedure) Act 1999</i> do not apply to proceedings instituted before the commencement of those amendments.	16 17 18
17 General saving	19
Any thing done under an Act or a provision of an Act repealed by this Act that has any force or effect immediately before its repeal is taken to have been done under the corresponding provision of this Act, subject to any express or implied provision to the contrary in this Act or the regulations made under this Act.	20 21 22 23 24