

**OCCUPATIONAL HEALTH AND SAFETY (WORKERS  
COMPENSATION) AMENDMENT BILL 1987**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

This Bill is cognate with the Workers Compensation Bill 1987.

The object of this Bill is to amend the Occupational Health and Safety Act 1983 so as—

- (a) to increase penalties for offences under that Act;
- (b) to provide that proceedings for such an offence may be taken before the Industrial Commission rather than, as at present, the Supreme Court in its summary jurisdiction;
- (c) to increase the maximum penalty which may be imposed for such an offence by a Local Court or an industrial magistrate;
- (d) to enable the secretary of an industrial union whose members have an interest in the proceedings to institute proceedings for such an offence;
- (e) to empower the imposition of an additional penalty of up to 2 years imprisonment for a second or subsequent offence against that Act comprising wilful repetition of a previous offence;
- (f) to require employers to make available to their employees certain information relating to plant or substances used at a workplace;
- (g) to enable the formulation of industry codes of practice;
- (h) to expand the regulation making powers under that Act; and

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

---

(i) to make other minor or consequential amendments.

---

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that, with minor exceptions, the proposed Act will commence on such day or days as may be appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

Clause 4 amends section 10 of the Search Warrants Act 1985 as a consequence of the amendments made by Schedule 2 (3).

Clause 5 is a transitional provision.

Schedule 1 (1) defines "Industrial Commission" in the Principal Act to mean the Industrial Commission of New South Wales.

Schedule 1 (2) increases from \$50,000 to \$100,000 in the case of a corporation and from \$5,000 to \$10,000 in any other case the penalty for the following offences under the Principal Act:

section 15—employers to ensure health, safety and welfare of their employees

section 16—employers and self-employed persons to ensure health and safety of persons other than employees at places of work

section 17—persons in control of workplaces etc. used by non-employees to ensure health and safety

section 18—manufacturers, suppliers etc. to ensure health and safety as regards plant and substances for use at work

section 21—employer not to charge employees for things done or provided pursuant to statutory requirement

section 21A—person not to hinder aid to injured worker etc.

Schedule 1 (3) increases from \$1,000 to \$2,000 the penalty for the following offences:

section 19—employees at work to take care of others and to co-operate with employer

section 20—person not to interfere with or misuse things provided for health, safety and welfare

Schedule 1 (4) increases from \$5,000 to \$10,000 the penalty for the following offences:

section 23—failure to establish occupational health and safety committees in workplaces

section 26—unlawful dismissal of employees

section 27—failure to notify accidents and other matters

section 27A—failure to notify particulars of certain places of work

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

---

section 52—wilfully hindering or obstructing inspectors etc.

Schedule 1 (5) amends section 25 of the Principal Act to make a person guilty of an offence and liable to a penalty of up to \$4,000 if the person does not provide (as required by the regulations) appropriate training to a member of an occupational health and safety committee.

Schedule 1 (6) increases from \$100 to \$200 the daily penalty for failing to give effect to a court order to reimburse salary or wages to, or to reinstate, an unlawfully dismissed employee.

Schedule 1 (7) increases from \$2,000 to \$4,000 the penalty which may be provided for a breach of a regulation.

Schedule 1 (8) substitutes section 47 of the Principal Act, dealing with summary procedure for offences. The effect is that proceedings for an offence may now be taken before the Industrial Commission rather than the Supreme Court and the maximum penalty which may be imposed for an offence by a Local Court or an industrial magistrate is \$10,000 rather than \$5,000.

Schedule 1 (9) enables the secretary of an industrial union, the members of which are concerned in a proceeding, to commence proceedings for an offence against the Principal Act. Currently proceedings may only be instituted with the written consent of the Minister or a prescribed officer.

Schedule 1 (10) enables an additional penalty of up to 2 years imprisonment to be imposed for a second or subsequent offence against the Act if it comprises a wilful repetition of the act or omission constituting a previous offence.

Schedule 2 (1) amends section 15 of the Principal Act to require employers to make available to their employees information relating to the plant or substances used at a workplace, including research or tests carried out in connection with those substances.

Schedule 2 (2) amends section 17 of the Principal Act (which requires a person to ensure that non-domestic premises over which the person has some control are safe) to place the onus of proving that it was not reasonable or possible for the defendant to take a particular safety measure on the defendant.

Schedule 2 (3) enables inspectors under the Factories, Shops and Industries Act 1962 to enter domestic premises which are a workplace, but only with the consent of the occupier or with the authority of a search warrant executed in accordance with the Search Warrants Act 1985.

Schedule 2 (4) inserts into the Principal Act proposed Part IVA (Industry codes of practice) which contains the following provisions:

Proposed section 44A provides for the formulation and preparation of industry codes of practice by the Occupational Health, Safety and Rehabilitation Council of New South Wales. The Minister may approve of any such code and have the code published in the Government Gazette.

Proposed section 44B provides that in certain circumstances an industry code of practice is admissible in proceedings under the Principal Act and that a failure to comply with any relevant provision of the industry code of practice is evidence of a failure to comply with the Principal Act.

Occupational Health and Safety (Workers Compensation) Amendment 1987

Schedule 2 (5) amends section 45 of the Principal Act to expand the range of regulations which may be made under that Act by the Governor-in-Council. Regulations are authorised with respect to (among other things)—

- (a) the issuing of permits to persons carrying on any specified activity and the registering and licensing of businesses, activities and workplaces;
- (b) the charging of fees;
- (c) the regulation of substances (being provisions currently contained in Part VIIA of the Public Health Act 1902 but to be repealed by the proposed Public Health (Workers Compensation) Amendment Bill 1987); and
- (d) any matters which may be the subject of regulations under those Acts which are declared under the Principal Act to be associated occupational health and safety legislation.

Schedule 2 (6) inserts into the Principal Act proposed section 54 which enables a statement signed by the Co-ordinator of Occupational Health, Safety and Rehabilitation Services and stating the contents of certain government documents or records relating to occupational health and safety to be admissible in proceedings under that Act and to be evidence of the matters contained in the statement.

---

# OCCUPATIONAL HEALTH AND SAFETY (WORKERS COMPENSATION) AMENDMENT BILL 1987

NEW SOUTH WALES



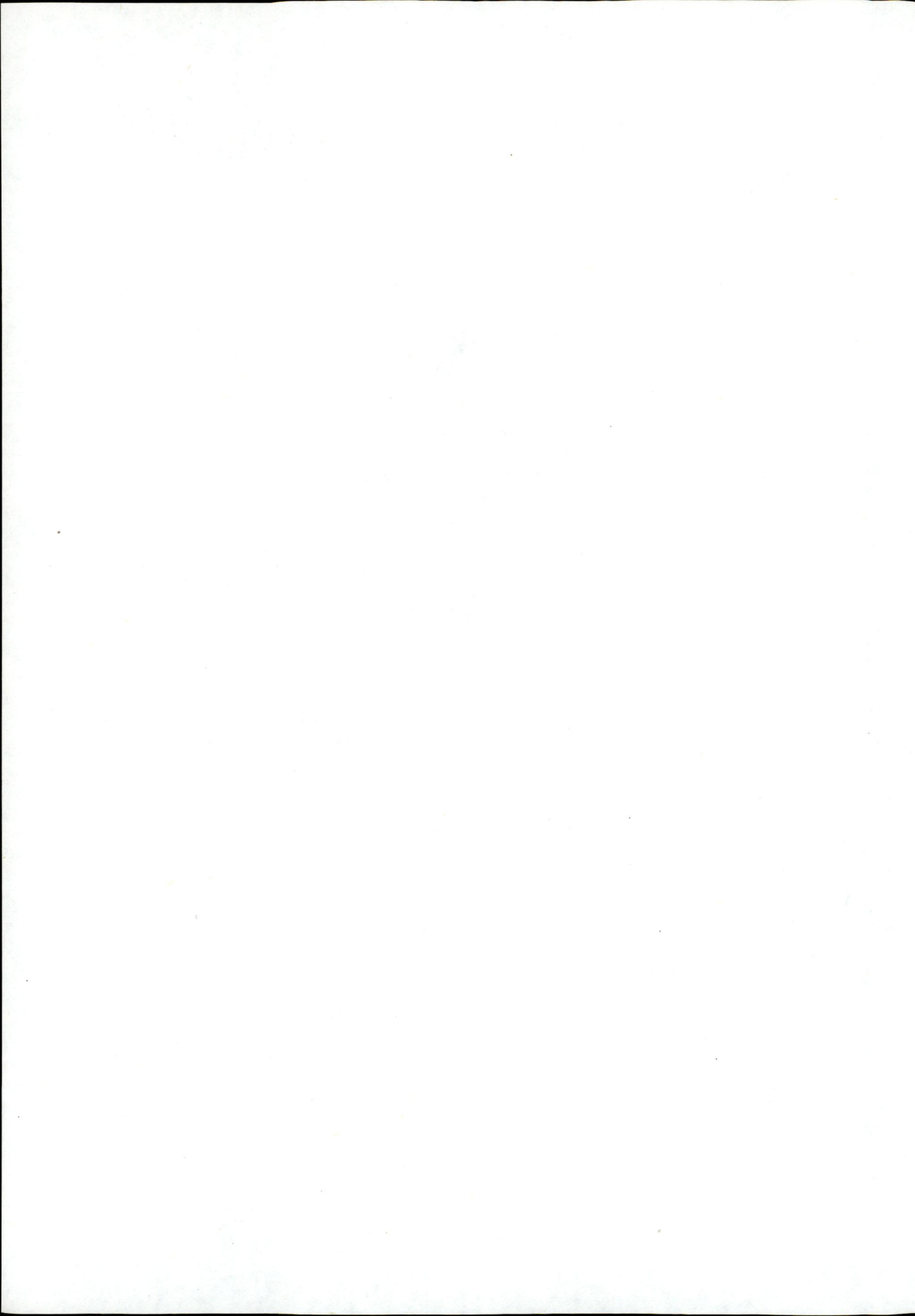
## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 20, 1983
4. Amendment of Act No. 37, 1985, s. 10 (Interpretation)
5. Transitional provision

SCHEDULE 1—AMENDMENTS TO THE OCCUPATIONAL HEALTH AND  
SAFETY ACT 1983 RELATING TO PENALTIES

SCHEDULE 2—MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983

---



# OCCUPATIONAL HEALTH AND SAFETY (WORKERS COMPENSATION) AMENDMENT BILL 1987

NEW SOUTH WALES



No.           , 1987

---

---

## A BILL FOR

An Act to amend the Occupational Health and Safety Act 1983 with respect to penalties and proceedings for offences, duties of employers, industry codes of practice and the making of regulations under that Act, and in other respects, and to amend consequentially the Search Warrants Act 1985.

---

---

Occupational Health and Safety (Workers Compensation) Amendment 1987

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

**5 Short title**

1. This Act may be cited as the "Occupational Health and Safety (Workers Compensation) Amendment Act 1987".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this  
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Amendment of Act No. 20, 1983**

15 3. The Occupational Health and Safety Act 1983 is amended in the manner set forth in Schedules 1 and 2.

**Amendment of Act No. 37, 1985, s. 10 (Interpretation)**

20 4. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10 in alphabetical order of Acts the following matter:

section 30A of the Occupational Health and Safety Act 1983;

**Transitional provision**

25 5. Proceedings for an offence under the Occupational Health and Safety Act 1983 which are commenced before the commencement of Schedule 1 (8) to this Act shall be dealt with as if this Act had not been enacted.

---



*Occupational Health and Safety (Workers Compensation) Amendment 1987*

## SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE OCCUPATIONAL HEALTH AND SAFETY  
ACT 1983 RELATING TO PENALTIES

- 5 (1) Section 4 (**Interpretation**)—  
Section 4 (1), definition of “Industrial Commission”—  
After the definition of “employer”, insert:  
“Industrial Commission” means the Industrial Commission of  
New South Wales;
- 10 (2) Sections 15, 16, 17 (1), 18, 21, 21A (**General duties of employers etc.**)—  
Omit “\$50,000 in the case of a corporation and \$5,000 in any  
other case” wherever occurring, insert instead “\$100,000 in the  
case of a corporation and \$10,000 in any other case”.
- (3) Sections 19, 20 (**General duties of employees etc.**)—  
15 Omit “\$1,000” wherever occurring, insert instead “\$2,000”.
- (4) Sections 23, 26 (1), 27 (1), 27A (1), 52 (**Miscellaneous**)—  
Omit “\$5,000” wherever occurring, insert instead “\$10,000”.
- (5) Section 25 (**Powers of members of occupational health and safety  
committees**)—  
20 Section 25 (3)—  
After section 25 (2), insert:  
(3) A person who is required by the regulations to provide any  
such training shall not fail or refuse to provide the training.  
Penalty: \$4,000.
- 25 (6) Section 26 (**Unlawful dismissal etc. of employee**)—  
Section 26 (4)—  
Omit “\$100”, insert instead “\$200”.
- (7) Section 45 (**Regulations generally**)—  
Section 45 (4)—  
30 Omit “\$2,000”, insert instead “\$4,000”.

*Occupational Health and Safety (Workers Compensation) Amendment 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE OCCUPATIONAL HEALTH AND SAFETY  
ACT 1983 RELATING TO PENALTIES—*continued*

## (8) Section 47—

Omit the section, insert instead:

**Summary procedure for offences**

5 47. (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily—

(a) before a Local Court constituted by a Magistrate sitting alone;

(b) before an industrial magistrate; or

(c) before the Industrial Commission.

10 (2) The maximum penalty that may be imposed in those proceedings by a Local Court or an industrial magistrate is \$10,000 or the maximum penalty provided in respect of the offence, whichever is the lesser.

15 (3) The maximum penalty that may be imposed in those proceedings by the Industrial Commission is the maximum penalty provided in respect of the offence.

(9) Section 48 (**Authority to prosecute**)—

Section 48 (1)—

Omit the subsection, insert instead:

20 (1) Proceedings for an offence against this Act or the regulations may be instituted only—

(a) with the written consent of the Minister or a prescribed officer; or

25 (b) by the secretary of an industrial union registered under the Industrial Arbitration Act 1940 any member or members of which are concerned in the matter to which the proceedings relate.

*Occupational Health and Safety (Workers Compensation) Amendment 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE OCCUPATIONAL HEALTH AND SAFETY  
ACT 1983 RELATING TO PENALTIES—*continued*

## (10) Section 51A—

After section 51, insert:

**Repetition of certain offences—additional penalty**

5 51A. (1) This section applies to proceedings for a second or  
subsequent offence against this Act which comprises a wilful  
repetition of the act or omission which constituted a previous  
offence.

10 (2) If the defendant in proceedings to which this section applies  
is a natural person, a sentence of imprisonment for a period not  
exceeding 2 years may be imposed in addition to or in substitution  
for any other penalty which may be imposed under this Act.

(3) This section applies even if the previous offence concerned  
was committed before the commencement of this section.

---

 SCHEDULE 2

15

(Sec. 3)

MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983

(1) Section 15 (**Employers to ensure health, safety and welfare of their  
employees**)—

20

(a) Section 15 (2) (d) (ii)—

Omit “or” where lastly occurring.

Occupational Health and Safety (Workers Compensation) Amendment 1987SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

## (b) Section 15 (2) (e), (f)—

At the end of section 15 (2) (e), insert:

; or

5 (f) to take such steps as are necessary to make available in connection with the use of any plant or substance at the place of work adequate information—

10 (i) about the use for which the plant is designed and about any conditions necessary to ensure that, when put to that use, the plant will be safe and without risks to health; or

15 (ii) about any research, or the results of any relevant tests which have been carried out, on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health when properly used.

## (c) Section 15 (3)—

After section 15 (2) (and before the penalty specified at the end of section 15), insert:

20 (3) For the purposes of this section, any plant or substance is not to be regarded as properly used by a person where it is used without regard to any relevant information or advice relating to its use which has been made available by the person's employer.

(2) Section 17 (**Persons in control of workplaces etc. used by non-employees to ensure health and safety**)—

25 Section 17 (1)—

Omit "take such measures as it is reasonable for a person in his position to take to".

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*.

(3) Sections 30, 30A—

Omit section 30, insert instead:

**Powers of inspectors to inspect workplaces**

5 30. (1) An inspector who is appointed under the Factories,  
Shops and Industries Act 1962 may, in relation to any premises  
which are a place of work and which are not a mine (within the  
meaning of the Mines Inspection Act 1901 or the Coal Mines  
Regulation Act 1982), exercise the powers of entry, inspection and  
10 examination of any factory or shop under section 73 of the  
Factories, Shops and Industries Act 1962.

(2) An inspector who is appointed under the Factories, Shops  
and Industries Act 1962 may not exercise the powers conferred  
by subsection (1) in relation to that part of any premises being  
used for residential purposes except—

- 15 (a) with the permission of the occupier of that part of the  
premises; or  
(b) under the authority conferred by a search warrant issued  
under section 30A.

20 (3) For the purpose of the exercise of the functions of any such  
inspector, the inspector may—

- (a) make examinations, enquiries and tests and take such  
photographs as the inspector considers necessary to  
ascertain whether the provisions of this Act and the  
regulations are being complied with;  
25 (b) take for analysis a sample of any substance or thing which  
in the inspector's opinion may be, contain or be  
contaminated by, a prescribed substance or a degradation  
product of a prescribed substance;  
30 (c) in the case of an inspector who is a legally qualified  
medical practitioner, carry out medical examinations; and  
(d) carry out biological tests in a prescribed manner in  
prescribed circumstances.

*Occupational Health and Safety (Workers Compensation) Amendment 1987*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued***Search warrant**

30A. (1) In this section—

“authorised justice” means—

(a) a Magistrate; or

(b) a justice of the peace employed in the Local Courts Administration, Attorney General’s Department.

(2) An inspector who is appointed under the Factories, Shops and Industries Act 1962 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 contravened in or on any premises.

(3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant—

(a) to enter the premises; and

(b) to search the premises for evidence of a contravention of this Act or the regulations.

(4) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Part IV<sub>A</sub>—

After Part IV, insert:

PART IV<sub>A</sub>

## INDUSTRY CODES OF PRACTICE

**Industry codes of practice**

44A. (1) For the purpose of providing practical guidance to employers, self-employed persons and employees, the Council may formulate and prepare industry codes of practice.

*Occupational Health and Safety (Workers Compensation) Amendment 1987*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

- (2) The Minister may, having regard to any recommendation of the Council, approve an industry code of practice.
- (3) An industry code of practice may—
- 5 (a) consist of any code, standard, rule, specification or provision relating to occupational health or safety approved by the Minister; or
- (b) apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the industry code of practice is approved or as amended, formulated or published from time to time.
- 10 (4) The Minister may, having regard to any recommendation of the Council, approve any amendment of the whole or any part of an industry code of practice or revoke the approval of an industry code of practice.
- 15 (5) The Minister shall cause to be published in the Gazette—
- (a) an approved industry code of practice;
- (b) an approved amendment of an industry code of practice; and
- (c) the revocation of approval of an industry code of practice.
- 20 (6) The Minister shall cause—
- (a) a copy of every approved industry code of practice;
- (b) if an approved industry code of practice has been amended, a copy of every approved industry code of practice as so amended; and
- 25 (c) if an approved industry code of practice applies, incorporates or refers to any other document, a copy of every such document,
- 30 to be made available for inspection by members of the public without charge at the office of the Department of Industrial Relations and Employment during normal office hours.

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

---

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

(7) An approved industry code of practice shall come into effect on the day on which the industry code of practice is published in the Gazette or on such later day as may be specified in the industry code of practice.

5 (8) An approved amendment of an industry code of practice shall come into effect on the day on which that amendment is published in the Gazette or on such later day as may be specified in the amendment.

10 (9) An approved industry code of practice shall cease to have effect at the end of the day on which the revocation of approval of the industry code of practice is published in the Gazette.

(10) A person shall not be liable to any civil or criminal proceedings because the person has failed to observe any provision of an approved industry code of practice.

15 **Use of industry codes of practice**

44B. In any proceedings under this Act in which it is alleged that a person contravened or failed to comply with a provision of this Act or the regulations—

20 (a) an approved industry code of practice which is relevant to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention or failure is admissible in evidence in those proceedings; and

25 (b) the person's failure at any material time to observe the approved industry code of practice is evidence of the matter to be established in those proceedings.



*Occupational Health and Safety (Workers Compensation) Amendment 1987*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*(5) Section 45 (**Regulations generally**)—

## (a) Section 45 (1A)—

After section 45 (1), insert:

- 5 (1A) Without limiting the generality of subsection (1), the  
Governor may make regulations for or with respect to—
- (a) regulating or prohibiting—
- (i) the manufacture, supply or use of any plant;
- (ii) the manufacture, supply, storage, transport or use of  
any substance; and
- 10 (iii) the carrying on of any process or the carrying out of  
any operation;
- (b) requiring any person to hold a permit, or any business,  
plant, substance or workplace to be licensed or registered,  
in any circumstances or as a condition of the carrying on  
15 of any activity or the doing of any thing;
- (c) the granting, renewal, cancellation or suspension of a  
permit, licence or certificate of registration;
- (d) prohibiting the carrying out of any activity by a person  
unless the person holds a permit or the use of any plant,  
20 substance or workplace unless it is licensed or registered;
- (e) the establishment, terms and conditions of membership,  
functions and procedure of a body which grants, renews,  
cancels or suspends permits, licences or certificates of  
registration;
- 25 (f) the circumstances in which permits, licences or certificates  
of registration may be cancelled or suspended;
- (g) the manner of application for granting or renewal of  
permits, licences or certificates of registration;
- 30 (h) the terms and conditions upon which permits, licences or  
certificates of registration may be granted;

Occupational Health and Safety (Workers Compensation) Amendment 1987SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

- (i) appeals against a decision of a body not to grant or renew or to cancel or suspend a permit, licence or certificate of registration;
- 5 (j) requiring persons, in any circumstances involving risk of absorption of any substance or risk of injury or poisoning arising out of the use of any substance, to undergo a biological test;
- 10 (k) requiring persons to abstain from eating, drinking or smoking in any circumstances involving risk of absorption of any substance or risk of injury or poisoning arising out of the use of any substance;
- 15 (l) measures for detecting and investigating cases in which absorption of any substance or injury or poisoning arising out of the use of any substance has occurred, including medical examinations, the making of biological tests and the notification of absences from work;
- 20 (m) the making, keeping and inspection of records of matters relating to the risk of absorption of, or risk of injury or poisoning arising out of the use of, any substance and the furnishing of returns and information relating to those matters including returns and information relating to medical examinations, biological tests and injury or poisoning;
- (n) the analysis of any substance;
- 25 (o) the fees chargeable or payable for doing any act or providing any service for the purposes of the regulations;
- (p) forms for the purposes of this Act and the regulations;
- (q) the manner of serving notices under this Act;
- 30 (r) appeals against a determination of an inspector who is appointed under the Factories, Shops and Industries Act 1962;

*Occupational Health and Safety (Workers Compensation) Amendment 1987*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

- (s) prohibiting disclosure of information obtained by a person in the course of implementing this Act or the regulations;
- (t) any information to be provided by an inspector who is appointed under the Factories, Shops and Industries Act 1962 to any person; and
- (u) any matter relating to occupational health and safety with respect to which regulations may be made under the associated occupational health and safety legislation.
- (b) Section 45 (3) (b)—  
Omit “or”.
- (c) Section 45 (3) (c), (d)—  
At the end of section 45 (3) (c), insert:  
; or
- (d) exempt any person or class of persons, either absolutely or subject to conditions, from any provision of the regulations,
- (6) Section 54—  
After section 53, insert:  
**Evidentiary statements**
54. In a prosecution for an offence against this Act or the regulations, a statement, purporting to be signed by the Co-ordinator of Occupational Health, Safety and Rehabilitation Services, relating to—
- (a) a document or record, being—
- (i) notification of an accident or other matter required by the regulations to be notified under section 27 or required to be notified under any provision of the associated occupational health and safety legislation or regulations made under that legislation;

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

---

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

(ii) a certificate of registration or renewal of registration of a factory or shop issued pursuant to the Factories, Shops and Industries Act 1962;

5

(iii) a certificate of competency issued under section 17 or 17A of the Construction Safety Act 1912; or

(iv) a certificate, licence or permit issued under a provision of the regulations; or

10

(b) any other prescribed matter contained in a prescribed departmental document or record concerning occupational health and safety,

and certifying that the contents of the statement are in accordance with the particulars contained in the document or record, 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.

15

# OCCUPATIONAL HEALTH AND SAFETY (WORKERS COMPENSATION) AMENDMENT ACT 1987 No. 80

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 20, 1983
4. Amendment of Act No. 37, 1985, s. 10 (Interpretation)
5. Transitional provision

SCHEDULE 1—AMENDMENTS TO THE OCCUPATIONAL HEALTH AND  
SAFETY ACT 1983 RELATING TO PENALTIES

SCHEDULE 2—MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983

---



**OCCUPATIONAL HEALTH AND SAFETY (WORKERS  
COMPENSATION) AMENDMENT ACT 1987 No. 80**

NEW SOUTH WALES



**Act No. 80, 1987**

An Act to amend the Occupational Health and Safety Act 1983 with respect to penalties and proceedings for offences, duties of employers, industry codes of practice and the making of regulations under that Act, and in other respects, and to amend consequentially the Search Warrants Act 1985. [Assented to 10 June 1987]

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

**Short title**

1. This Act may be cited as the "Occupational Health and Safety (Workers Compensation) Amendment Act 1987".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Amendment of Act No. 20, 1983**

3. The Occupational Health and Safety Act 1983 is amended in the manner set forth in Schedules 1 and 2.

**Amendment of Act No. 37, 1985, s. 10 (Interpretation)**

4. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10 in alphabetical order of Acts the following matter:

section 30A of the Occupational Health and Safety Act 1983;

**Transitional provision**

5. Proceedings for an offence under the Occupational Health and Safety Act 1983 which are commenced before the commencement of Schedule 1 (8) to this Act shall be dealt with as if this Act had not been enacted.

---



*Occupational Health and Safety (Workers Compensation) Amendment 1987*

---

## SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE OCCUPATIONAL HEALTH AND SAFETY  
ACT 1983 RELATING TO PENALTIES(1) Section 4 (**Interpretation**)—

Section 4 (1), definition of “Industrial Commission”—

After the definition of “employer”, insert:

“Industrial Commission” means the Industrial Commission of  
New South Wales;(2) Sections 15, 16, 17 (1), 18, 21, 21A (**General duties of employers etc.**)—Omit “\$50,000 in the case of a corporation and \$5,000 in any  
other case” wherever occurring, insert instead “\$100,000 in the  
case of a corporation and \$10,000 in any other case”.(3) Sections 19, 20 (**General duties of employees etc.**)—

Omit “\$1,000” wherever occurring, insert instead “\$2,000”.

(4) Sections 23, 26 (1), 27 (1), 27A (1), 52 (**Miscellaneous**)—

Omit “\$5,000” wherever occurring, insert instead “\$10,000”.

(5) Section 25 (**Powers of members of occupational health and safety  
committees**)—

Section 25 (3)—

After section 25 (2), insert:

(3) A person who is required by the regulations to provide any  
such training shall not fail or refuse to provide the training.

Penalty: \$4,000.

(6) Section 26 (**Unlawful dismissal etc. of employee**)—

Section 26 (4)—

Omit “\$100”, insert instead “\$200”.

(7) Section 45 (**Regulations generally**)—

Section 45 (4)—

Omit “\$2,000”, insert instead “\$4,000”.

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

SCHEDULE 1—*continued*

AMENDMENTS TO THE OCCUPATIONAL HEALTH AND SAFETY  
ACT 1983 RELATING TO PENALTIES—*continued*

(8) Section 47—

Omit the section, insert instead:

**Summary procedure for offences**

47. (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily—

- (a) before a Local Court constituted by a Magistrate sitting alone;
- (b) before an industrial magistrate; or
- (c) before the Industrial Commission.

(2) The maximum penalty that may be imposed in those proceedings by a Local Court or an industrial magistrate is \$10,000 or the maximum penalty provided in respect of the offence, whichever is the lesser.

(3) The maximum penalty that may be imposed in those proceedings by the Industrial Commission is the maximum penalty provided in respect of the offence.

(9) Section 48 (**Authority to prosecute**)—

Section 48 (1)—

Omit the subsection, insert instead:

(1) Proceedings for an offence against this Act or the regulations may be instituted only—

- (a) with the written consent of the Minister or a prescribed officer; or
- (b) by the secretary of an industrial union registered under the Industrial Arbitration Act 1940 any member or members of which are concerned in the matter to which the proceedings relate.

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

---

SCHEDULE 1—*continued*

AMENDMENTS TO THE OCCUPATIONAL HEALTH AND SAFETY  
ACT 1983 RELATING TO PENALTIES—*continued*

(10) Section 51A—

After section 51, insert:

**Repetition of certain offences—additional penalty**

51A. (1) This section applies to proceedings for a second or subsequent offence against this Act which comprises a wilful repetition of the act or omission which constituted a previous offence.

(2) If the defendant in proceedings to which this section applies is a natural person, a sentence of imprisonment for a period not exceeding 2 years may be imposed in addition to or in substitution for any other penalty which may be imposed under this Act.

(3) This section applies even if the previous offence concerned was committed before the commencement of this section.

---

SCHEDULE 2

(Sec. 3)

MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983

(1) Section 15 (**Employers to ensure health, safety and welfare of their employees**)—

(a) Section 15 (2) (d) (ii)—

Omit “or” where lastly occurring.

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

(b) Section 15 (2) (e), (f)—

At the end of section 15 (2) (e), insert:

; or

- (f) to take such steps as are necessary to make available in connection with the use of any plant or substance at the place of work adequate information—
- (i) about the use for which the plant is designed and about any conditions necessary to ensure that, when put to that use, the plant will be safe and without risks to health; or
  - (ii) about any research, or the results of any relevant tests which have been carried out, on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health when properly used.

(c) Section 15 (3)—

After section 15 (2) (and before the penalty specified at the end of section 15), insert:

(3) For the purposes of this section, any plant or substance is not to be regarded as properly used by a person where it is used without regard to any relevant information or advice relating to its use which has been made available by the person's employer.

(2) Section 17 (**Persons in control of workplaces etc. used by non-employees to ensure health and safety**)—

Section 17 (1)—

Omit "take such measures as it is reasonable for a person in his position to take to".

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

---

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

(3) Sections 30, 30A—

Omit section 30, insert instead:

**Powers of inspectors to inspect workplaces**

30. (1) An inspector who is appointed under the Factories, Shops and Industries Act 1962 may, in relation to any premises which are a place of work and which are not a mine (within the meaning of the Mines Inspection Act 1901 or the Coal Mines Regulation Act 1982), exercise the powers of entry, inspection and examination of any factory or shop under section 73 of the Factories, Shops and Industries Act 1962.

(2) An inspector who is appointed under the Factories, Shops and Industries Act 1962 may not exercise the powers conferred by subsection (1) in relation to that part of any premises being used for residential purposes except—

- (a) with the permission of the occupier of that part of the premises; or
- (b) under the authority conferred by a search warrant issued under section 30A.

(3) For the purpose of the exercise of the functions of any such inspector, the inspector may—

- (a) make examinations, enquiries and tests and take such photographs as the inspector considers necessary to ascertain whether the provisions of this Act and the regulations are being complied with;
- (b) take for analysis a sample of any substance or thing which in the inspector's opinion may be, contain or be contaminated by, a prescribed substance or a degradation product of a prescribed substance;
- (c) in the case of an inspector who is a legally qualified medical practitioner, carry out medical examinations; and
- (d) carry out biological tests in a prescribed manner in prescribed circumstances.

Occupational Health and Safety (Workers Compensation) Amendment 1987SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued***Search warrant**

30A. (1) In this section—

“authorised justice” means—

- (a) a Magistrate; or
- (b) a justice of the peace employed in the Local Courts Administration, Attorney General’s Department.

(2) An inspector who is appointed under the Factories, Shops and Industries Act 1962 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 contravened in or on any premises.

(3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant—

- (a) to enter the premises; and
- (b) to search the premises for evidence of a contravention of this Act or the regulations.

(4) Part III of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) Part IVA—

After Part IV, insert:

## PART IVA

## INDUSTRY CODES OF PRACTICE

**Industry codes of practice**

44A. (1) For the purpose of providing practical guidance to employers, self-employed persons and employees, the Council may formulate and prepare industry codes of practice.

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

(2) The Minister may, having regard to any recommendation of the Council, approve an industry code of practice.

(3) An industry code of practice may—

(a) consist of any code, standard, rule, specification or provision relating to occupational health or safety approved by the Minister; or

(b) apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the industry code of practice is approved or as amended, formulated or published from time to time.

(4) The Minister may, having regard to any recommendation of the Council, approve any amendment of the whole or any part of an industry code of practice or revoke the approval of an industry code of practice.

(5) The Minister shall cause to be published in the Gazette—

(a) an approved industry code of practice;

(b) an approved amendment of an industry code of practice; and

(c) the revocation of approval of an industry code of practice.

(6) The Minister shall cause—

(a) a copy of every approved industry code of practice;

(b) if an approved industry code of practice has been amended, a copy of every approved industry code of practice as so amended; and

(c) if an approved industry code of practice applies, incorporates or refers to any other document, a copy of every such document,

to be made available for inspection by members of the public without charge at the office of the Department of Industrial Relations and Employment during normal office hours.

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

(7) An approved industry code of practice shall come into effect on the day on which the industry code of practice is published in the Gazette or on such later day as may be specified in the industry code of practice.

(8) An approved amendment of an industry code of practice shall come into effect on the day on which that amendment is published in the Gazette or on such later day as may be specified in the amendment.

(9) An approved industry code of practice shall cease to have effect at the end of the day on which the revocation of approval of the industry code of practice is published in the Gazette.

(10) A person shall not be liable to any civil or criminal proceedings because the person has failed to observe any provision of an approved industry code of practice.

**Use of industry codes of practice**

44B. In any proceedings under this Act in which it is alleged that a person contravened or failed to comply with a provision of this Act or the regulations—

- (a) an approved industry code of practice which is relevant to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention or failure is admissible in evidence in those proceedings; and
- (b) the person's failure at any material time to observe the approved industry code of practice is evidence of the matter to be established in those proceedings.



*Occupational Health and Safety (Workers Compensation) Amendment 1987*

---

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

(5) Section 45 (**Regulations generally**)—

(a) Section 45 (1A)—

After section 45 (1), insert:

(1A) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to—

(a) regulating or prohibiting—

(i) the manufacture, supply or use of any plant;

(ii) the manufacture, supply, storage, transport or use of any substance; and

(iii) the carrying on of any process or the carrying out of any operation;

(b) requiring any person to hold a permit, or any business, plant, substance or workplace 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;

(c) the granting, renewal, cancellation or suspension of a permit, licence or certificate of registration;

(d) prohibiting the carrying out of any activity by a person unless the person holds a permit or the use of any plant, substance or workplace unless it is licensed or registered;

(e) the establishment, terms and conditions of membership, functions and procedure of a body which grants, renews, cancels or suspends permits, licences or certificates of registration;

(f) the circumstances in which permits, licences or certificates of registration may be cancelled or suspended;

(g) the manner of application for granting or renewal of permits, licences or certificates of registration;

(h) the terms and conditions upon which permits, licences or certificates of registration may be granted;

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

---

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

- (i) appeals against a decision of a body not to grant or renew or to cancel or suspend a permit, licence or certificate of registration;
- (j) requiring persons, in any circumstances involving risk of absorption of any substance or risk of injury or poisoning arising out of the use of any substance, to undergo a biological test;
- (k) requiring persons to abstain from eating, drinking or smoking in any circumstances involving risk of absorption of any substance or risk of injury or poisoning arising out of the use of any substance;
- (l) measures for detecting and investigating cases in which absorption of any substance or injury or poisoning arising out of the use of any substance has occurred, including medical examinations, the making of biological tests and the notification of absences from work;
- (m) the making, keeping and inspection of records of matters relating to the risk of absorption of, or risk of injury or poisoning arising out of the use of, any substance and the furnishing of returns and information relating to those matters including returns and information relating to medical examinations, biological tests and injury or poisoning;
- (n) the analysis of any substance;
- (o) the fees chargeable or payable for doing any act or providing any service for the purposes of the regulations;
- (p) forms for the purposes of this Act and the regulations;
- (q) the manner of serving notices under this Act;
- (r) appeals against a determination of an inspector who is appointed under the Factories, Shops and Industries Act 1962;

Occupational Health and Safety (Workers Compensation) Amendment 1987SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

- (s) prohibiting disclosure of information obtained by a person in the course of implementing this Act or the regulations;
- (t) any information to be provided by an inspector who is appointed under the Factories, Shops and Industries Act 1962 to any person; and
- (u) any matter relating to occupational health and safety with respect to which regulations may be made under the associated occupational health and safety legislation.

## (b) Section 45 (3) (b)—

Omit “or”.

## (c) Section 45 (3) (c), (d)—

At the end of section 45 (3) (c), insert:

; or

- (d) exempt any person or class of persons, either absolutely or subject to conditions, from any provision of the regulations,

## (6) Section 54—

After section 53, insert:

**Evidentiary statements**

54. In a prosecution for an offence against this Act or the regulations, a statement, purporting to be signed by the Co-ordinator of Occupational Health, Safety and Rehabilitation Services, relating to—

- (a) a document or record, being—
  - (i) notification of an accident or other matter required by the regulations to be notified under section 27 or required to be notified under any provision of the associated occupational health and safety legislation or regulations made under that legislation;

*Occupational Health and Safety (Workers Compensation) Amendment 1987*

---

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983—*continued*

- (ii) a certificate of registration or renewal of registration of a factory or shop issued pursuant to the Factories, Shops and Industries Act 1962;
  - (iii) a certificate of competency issued under section 17 or 17A of the Construction Safety Act 1912; or
  - (iv) a certificate, licence or permit issued under a provision of the regulations; or
- (b) any other prescribed matter contained in a prescribed departmental document or record concerning occupational health and safety,

and certifying that the contents of the statement are in accordance with the particulars contained in the document or record, 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.