

**Reprint  
as at 4 April 2016**



## **Health and Safety in Employment Act 1992**

Public Act      1992 No 96  
Date of assent    27 October 1992  
Commencement    see section 1(2)

Health and Safety in Employment Act 1992: repealed, on 4 April 2016, by section 231(1) of the Health and Safety at Work Act 2015 (2015 No 70).

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#### **Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

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**An Act to reform the law relating to the health and safety of employees, and other people at work or affected by the work of other people**

**1 Short Title and commencement**

- (1) This Act may be cited as the Health and Safety in Employment Act 1992.
- (2) This Act shall come into force on 1 April 1993.

**Part 1**  
**Preliminary**

**2 Interpretation**

- (1) In this Act, unless the context otherwise requires,—

**accident** means an event that—

- (a) causes any person to be harmed; or
- (b) in different circumstances, might have caused any person to be harmed

**approved code of practice** means a code of practice for the time being approved under section 20A; but where any amendment of the code of practice has been approved under that section, means the code of practice as amended

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

**at work**, in relation to any person, means present, for gain or reward, in the person's place of work

**Board** means the New Zealand Mining Board of Examiners established under section 20D

**coal** has the meaning given to it in section 19L

**coastal cargo** has the same meaning as in section 198(6) of the Maritime Transport Act 1994

**compliance order** means an order made under section 137 of the Employment Relations Act 2000

**contractor** means a person engaged by any person (otherwise than as an employee) to do any work for gain or reward

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



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

**department** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**employee**, subject to sections 3C to 3F, means any person of any age employed by an employer to do any work (other than residential work) for hire or reward under a contract of service and, in relation to any employer, means an employee of the employer

**employer**, subject to sections 3C to 3F,—

- (a) means a person who or that employs any other person to do any work for hire or reward; and, in relation to any employee, means an employer of the employee; and
- (b) includes, in relation to any person employed by the chief executive or other employee of a Crown organisation to do any work for the Crown organisation for hire or reward, that Crown organisation

**enforcement action** means,—

- (a) in relation to an inspector,—
  - (i) the filing of a charging document under this Act; or
  - (ii) the issuing of an infringement notice under this Act; or
  - (iii) the making of an application for a compliance order; and
- (b) in relation to a person other than an inspector,—
  - (i) the filing of a charging document under this Act; or
  - (ii) the making of an application for a compliance order

**facility** includes amenity and equipment

**fail** includes refuse; and **failure** includes refusal

**harm**—

- (a) means illness, injury, or both; and
- (b) includes physical or mental harm caused by work-related stress

**hazard**—

- (a) means an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation, or substance (whether arising or caused within or outside a place of work) that is an actual or potential cause or source of harm; and
- (b) includes—
  - (i) a situation where a person's behaviour may be an actual or potential cause or source of harm to the person or another person; and

- (ii) without limitation, a situation described in subparagraph (i) resulting from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person's behaviour

**hazard notice** has the meaning given to it in section 19ZF(1) or 46A(1), as applicable

**health and safety committee** means a committee established to support the ongoing improvement of health and safety in a place of work

**health and safety medical practitioner** means a person for the time being appointed under section 34(1)

**health and safety representative** means an employee elected, as an individual or as a member of a health and safety committee or both, to represent the views of employees in relation to health and safety at work

**healthy** means unharmed; and **health** has a corresponding meaning

**home** means a place occupied as a dwellinghouse; and includes any garden, yard, garage, outhouse, or other appurtenance, of a home

**improvement notice** means a notice under section 39(1) or (2) or 39A

**industry health and safety representative** has the meaning given to it in section 19L

**infringement notice** means a notice given under section 56B

**inspector** means a health and safety inspector for the time being appointed under section 29(1)

**inspector's notice** means an improvement notice or a prohibition notice

**limited child care centre** means any premises used regularly for the care of 3 or more children (not being children of the persons providing the care, or children enrolled at a school being provided with care before or after school) under the age of 6, none of whom attends for any period exceeding 2 hours per day, in circumstances where the children's parents or caregivers are—

- (a) in close proximity to the children and are able to be contacted; and
- (b) able to resume responsibility for children at short notice

**limited child care service provider** means the body, agency, or person who or that operates a limited child care centre

**machinery** means an engine, motor, or other appliance that provides mechanical energy derived from compressed air, the combustion of fuel, electricity, gas, gaseous products, steam, water, wind, or any other source; and includes—

- (a) any plant by or to which the motion of any machinery is transmitted; and
- (b) a lifting machine, a lifting vehicle, a machine whose motive power is wholly or partly generated by the human body, and a tractor

**matter**, in sections 54, 54A, 54C, 54E, 56B, and 56C, means—

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

**medical practitioner** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine.

**mine operator** has the meaning given to it in section 19L

**mine worker** has the meaning given to it in section 19L

**mineral** has the meaning given to it in section 19L

**mining operation** has the meaning given to it in section 19L

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**New Zealand** includes all airspace within the territorial limits of New Zealand

**New Zealand ship** has the same meaning as in section 2(1) of the Ship Registration Act 1992

**permit operator** has the meaning given to it in section 19L

**person** includes the Crown

**person who controls a place of work** in relation to a place of work, means a person who is—

- (a) the owner, lessee, sublessee, occupier, or person in possession, of the place or any part of it; or
- (b) the owner, lessee, sublessee, or bailee, of any plant in the place

**petroleum operations** means petroleum operations prescribed for the purposes of this Act by regulations made under this Act

**phenomenon** includes radiation

**place of work** means a place (whether or not within or forming part of a building, structure, or vehicle) where any person is to work, is working, for the time being works, or customarily works, for gain or reward; and, in relation to an employee, includes a place, or part of a place, under the control of the employer (not being domestic accommodation provided for the employee),—

- (a) where the employee comes or may come to eat, rest, or get first-aid or pay; or
- (b) where the employee comes or may come as part of the employee's duties to report in or out, get instructions, or deliver goods or vehicles; or
- (c) through which the employee may or must pass to reach a place of work

**plant** includes—

- (a) appliance, equipment, fitting, furniture, implement, machine, machinery, tool, and vehicle; and
- (b) part of any plant, the controls of any plant, and any thing connected to any plant

**principal** means a person who or that engages any person (otherwise than as an employee) to do any work for gain or reward

**prohibition notice** means a notice under section 41(1) or 41A

**quarrying operation** has the meaning given to it in section 19N

**residential work**, in relation to the occupier of a home, means—

- (a) domestic work done or to be done in the home; or
- (b) work done or to be done in respect of the home,—

by a person employed or engaged by the occupier solely to do work of one or both of those kinds in relation to the home

**safe**,—

- (a) in relation to a person, means not exposed to any hazards; and
- (b) in every other case, means free from hazards;—

and **unsafe** and **safety** have corresponding meanings

**Secretary** means the chief executive of the department

**serious harm**, subject to subsection (4), means death, or harm of a kind or description declared by the Governor-General by Order in Council to be serious for the purposes of this Act; and **seriously harmed** has a corresponding meaning

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

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

- (a) serious harm; or
- (b) harm (being harm that is more than trivial) the severity of whose effects on any person depend (entirely or among other things) on the extent or frequency of the person's exposure to the hazard; or
- (c) harm that does not usually occur, or usually is not easily detectable, until a significant time after exposure to the hazard

**site health and safety committee** has the meaning given to it in section 19L

**site health and safety representative** has the meaning given to it in section 19L

**site senior executive** has the meaning given to it in section 19L

**subcontractor** means a person engaged (otherwise than as an employee) by any contractor or subcontractor to do for gain or reward any work the contractor or subcontractor has been engaged (as contractor or subcontractor) to do

**substance** includes a thing that is an organic material, whether living or not

**suspension notice** means a notice under section 37(1)

**tourist mining operation** has the meaning given to it in section 19L

**trained health and safety representative** has the meaning set out in section 46A(1)

**tunnelling operation** has the meaning given to it in section 19O

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

**volunteer**—

- (a) means a person who—
  - (i) does not expect to be rewarded for work to be performed as a volunteer; and
  - (ii) receives no reward for work performed as a volunteer; and
- (b) does not include a person who is in a place of work for the purpose of receiving on the job training or gaining work experience

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

- (2) For the avoidance of doubt, it is hereby declared that—
  - (a) a person may at the one time be 2 or more of any of the following: a contractor, an employer, a person who controls a place of work, a principal, a self-employed person, and a subcontractor; and this Act may impose duties on or in respect of the person accordingly; and
  - (b) this Act may at the one time impose the same duty on 2 or more persons, whether in the same capacity or different capacities; and
  - (c) a duty imposed by this Act on any person is not diminished or affected by the fact that it is also imposed on 1 or more other persons, whether in the same capacity or in different capacities.
- (3) To avoid doubt, a person is in a place of work whenever and wherever the person performs work including in a place that—
  - (a) the person moves through; or
  - (b) itself moves.
- (4) Until the commencement of the first Order in Council made under this Act declaring harm of any kind or description to be serious for the purposes of this Act, harm of any of the kinds and descriptions specified in Schedule 1 shall be deemed to be serious harm.

Section 2(1) **all practicable steps**: repealed, on 5 May 2003, by section 4(1) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **approved code of practice**: replaced, on 16 December 2013, by section 4(2) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **Armed Forces**: inserted, on 5 May 2003, by section 4(2) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **Board**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **coal**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **coastal cargo**: inserted, on 5 May 2003, by section 4(3) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **compliance order**: inserted, on 5 May 2003, by section 4(4) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **crew**: repealed, on 5 May 2003, by section 4(4) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **Crown organisation**: inserted, on 18 October 2002, by section 23(1) of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Section 2(1) **demise charter**: inserted, on 5 May 2003, by section 4(4) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **departmental medical practitioner**: repealed, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 2(1) **employee**: substituted, on 5 May 2003, by section 4(5) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **employer**: substituted, on 18 October 2002, by section 23(2) of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Section 2(1) **employer**: amended, on 5 May 2003, by section 4(6) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **enforcement action**: inserted, on 5 May 2003, by section 4(7) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **enforcement action** paragraph (a)(i): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 2(1) **enforcement action** paragraph (b)(i): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 2(1) **harm**: substituted, on 5 May 2003, by section 4(8) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **hazard**: substituted, on 5 May 2003, by section 4(8) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **hazard notice**: replaced, on 16 December 2013, by section 4(3) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **health and safety committee**: inserted, on 5 May 2003, by section 4(8) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **health and safety medical practitioner**: inserted, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 2(1) **health and safety representative**: inserted, on 5 May 2003, by section 4(8) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **improvement notice**: replaced, on 16 December 2013, by section 4(4) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **industry health and safety representative**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **infringement notice**: inserted, on 5 May 2003, by section 4(9) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **limited child care centre**: inserted, on 21 December 2010, by section 4 of the Health and Safety in Employment Amendment Act 2010 (2010 No 135).

Section 2(1) **limited child care service provider**: inserted, on 21 December 2010, by section 4 of the Health and Safety in Employment Amendment Act 2010 (2010 No 135).

Section 2(1) **matter**: inserted, on 5 May 2003, by section 4(10) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **medical practitioner**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **mine operator**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **mine worker**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **mineral**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **mining operation**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **New Zealand**: inserted, on 5 May 2003, by section 4(11) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **New Zealand ship**: inserted, on 5 May 2003, by section 4(11) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **permit operator**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **petroleum operations**: inserted, on 1 February 1995, by section 203 of the Maritime Transport Act 1994 (1994 No 104).

Section 2(1) **place of work**: amended, on 5 May 2003, by section 4(12) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **prohibition notice**: replaced, on 16 December 2013, by section 4(5) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **quarrying operation**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **registered medical practitioner**: repealed, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **ship**: inserted, on 5 May 2003, by section 4(13) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **site health and safety committee**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **site health and safety representative**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **site senior executive**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **tourist mining operation**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **trained health and safety representative**: added, on 5 May 2003, by section 4(14) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **tunnelling operation**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(1) **union**: added, on 5 May 2003, by section 4(14) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **volunteer**: added, on 5 May 2003, by section 4(14) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 2(1) **WorkSafe**: inserted, on 16 December 2013, by section 4(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 2(3): substituted, on 5 May 2003, by section 4(15) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

## 2A All practicable steps

- (1) In this Act, **all practicable steps**, in relation to achieving any result in any circumstances, means all steps to achieve the result that it is reasonably practicable to take in the circumstances, having regard to—
- (a) the nature and severity of the harm that may be suffered if the result is not achieved; and
  - (b) the current state of knowledge about the likelihood that harm of that nature and severity will be suffered if the result is not achieved; and
  - (c) the current state of knowledge about harm of that nature; and
  - (d) the current state of knowledge about the means available to achieve the result, and about the likely efficacy of each of those means; and
  - (e) the availability and cost of each of those means.
- (2) To avoid doubt, a person required by this Act to take all practicable steps is required to take those steps only in respect of circumstances that the person knows or ought reasonably to know about.

Section 2A: inserted, on 5 May 2003, by section 5 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

## 3 Application of Act to the Crown

- (1) Except as expressly provided in subsections (2) and (3), this Act binds the Crown.
- (2) An instrument of the Crown may be prosecuted for an offence against this Act if, and only if,—
- (a) that instrument is a Crown organisation; and
  - (b) the offence is alleged to have been committed by the Crown organisation; and
  - (c) the proceedings are instituted—
    - (i) against the Crown organisation in its own name and do not cite the Crown as a defendant; and
    - (ii) in accordance with the Crown Organisations (Criminal Liability Act) 2002.
- (3) The Crown may not be prosecuted for an offence against this Act, except to the extent and in the manner provided in subsection (2).

Section 3(1): amended, on 18 October 2002, by section 24(1) of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).



Section 3(2): substituted, on 18 October 2002, by section 24(2) of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Section 3(3): added, on 18 October 2002, by section 24(2) of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

### **3A Application of Act to aircraft**

- (1) This Act applies to—
  - (a) a person employed or engaged to work on board an aircraft; and
  - (b) the person who employs or engages the person specified in paragraph (a); and
  - (c) the aircraft as a place of work.
- (2) However, this Act applies only while an aircraft is—
  - (a) operating on a flight beginning at a place in New Zealand and ending at that same place; or
  - (b) operating between 2 places in New Zealand (not as part of a flight beginning or ending outside New Zealand); or
  - (c) operating outside New Zealand, and the person is employed or engaged under an employment agreement or contract for services governed by New Zealand law.
- (3) For the purposes of subsection 2(c), an aircraft operating in New Zealand as part of a flight beginning or ending outside New Zealand must be treated as operating outside New Zealand.
- (4) Section 16 does not apply to an aircraft while it is taking off, flying, or landing.
- (5) To avoid doubt, where this Act applies outside New Zealand, the provisions relating to offences apply even though an act or omission that constitutes an offence occurred in respect of an aircraft outside New Zealand.

Section 3A: inserted, on 5 May 2003, by section 6 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

### **3B Application of Act to ships**

- (1) This Act applies—
  - (a) to a person—
    - (i) employed or engaged under an employment agreement or contract for services governed by New Zealand law to work on board a New Zealand ship or on board a foreign ship carrying coastal cargo while the foreign ship is on demise charter to a New Zealand-based operator; or
    - (ii) performing work on a foreign ship while it is carrying out petroleum operations in New Zealand continental waters (as defined in section 222(1) of the Maritime Transport Act 1994); and

- (b) to the person who employs or engages the person described in paragraph (a); and
  - (c) to the ship as a place of work.
- (2) Where this Act applies in respect of a New Zealand ship, it applies whether the ship is operating inside or outside New Zealand.
- (3) Section 16 does not apply to a ship while it is at sea.
- (4) To avoid doubt, where this Act applies outside New Zealand, the provisions relating to offences apply even though an act or omission that constitutes an offence occurred in respect of a ship outside New Zealand.

Section 3B: inserted, on 5 May 2003, by section 6 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

### **3C Application of certain provisions to volunteers doing regular work**

- (1) This section applies if—
  - (a) a volunteer does work for another person (being an employer or self-employed person) with the knowledge or consent of the other person; and
  - (b) the volunteer does the work on an ongoing and regular basis for that other person; and
  - (c) the work is an integral part of the business of the employer or self-employed person.
- (2) When this section applies, sections 6 to 12, 19, and Part 4 apply with all necessary modifications,—
  - (a) as if the volunteer were an employee of the other person; and
  - (b) as if the other person were the volunteer's employer; and
  - (c) as if the volunteer were at work when doing work for the other person.
- (3) This section does not apply in respect of a volunteer doing any of the following voluntary work activities:
  - (a) participation in a fundraising activity; or
  - (b) assistance with sports or recreation for—
    - (i) a sports club;
    - (ii) a recreation club;
    - (iii) an educational institution; or
  - (c) assistance with activities for an educational institution outside the premises of the educational institution; or
  - (d) providing care for another person in the volunteer's home.

Section 3C: inserted, on 5 May 2003, by section 6 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

### **3D Protections for other volunteers**

- (1) This section applies in respect of all volunteers doing any voluntary work activity in respect of whom section 3C does not apply.
- (2) The person for whom such a volunteer does the work activity should take all practicable steps to ensure the health and safety of the volunteer while he or she is doing the work activity, in particular by taking hazards into account when planning the work activity.
- (3) If an inspector becomes aware of a significant hazard relating to the work activity, the inspector must, as soon as practicable, contact the person for whom the volunteer is doing the work activity (or the person's representative) to discuss means of eliminating, isolating, or minimising the hazard.
- (4) If this section applies, sections 39, 41, and 49 do not apply.

Section 3D: inserted, on 5 May 2003, by section 6 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

### **3E Application of Act to persons receiving on the job training or gaining work experience**

- (1) This Act, except for Part 2A, applies when a person who is not an employee is in a place of work for the purpose of receiving on the job training or gaining work experience (**person A**).
- (2) For the purposes of this Act,—
  - (a) person A must be treated as if he or she were an employee of the person who has agreed to provide the on the job training or work experience (**person B**); and
  - (b) person B must be treated as if that person were person A's employer; and
  - (c) person A must be treated as if he or she were at work when in the place of work for the purposes set out in subsection (1).

Section 3E: inserted, on 5 May 2003, by section 6 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

### **3F Application of Act to loaned employees**

- (1) This Act, except for Part 2A, applies when—
  - (a) an employer or principal (**person A**) places an employee (the **loaned employee**) at the disposal of another person (**person B**, being an employer or a self-employed person) to do work for person B; and
  - (b) there is no contractual relationship between person A and person B regarding the work to be performed by the loaned employee.
- (2) For the purposes of this Act,—
  - (a) a loaned employee must be treated as if he or she were an employee of person B (instead of person A) while the loaned employee is working for person B; and

- (b) person A has a duty to ensure that the loaned employee is capable of doing the proposed work safely and that person B is aware of person B's duties under this Act; and
- (c) person B must be treated as if person B were the employer of the loaned employee (instead of person A) while the loaned employee is working for person B; and
- (d) the loaned employee must be treated as if he or she were at work when doing work for person B.

Section 3F: inserted, on 5 May 2003, by section 6 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

### **3G Provisions affecting application of amendments to this Act**

Schedule 1AA contains application, transitional, and savings provisions that affect other provisions of this Act as from time to time amended, repealed, or repealed and replaced (*see* section 63).

Section 3G: inserted, on 16 December 2013, by section 5 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

## **4 Act not to affect other legislation**

Nothing in this Act, or in any code of practice under this Act, derogates from the effect of any other enactment for the time being in force.

## **5 Object of Act**

The object of this Act is to promote the prevention of harm to all persons at work and other persons in, or in the vicinity of, a place of work by—

- (a) promoting excellence in health and safety management, in particular through promoting the systematic management of health and safety; and
- (b) defining hazards and harm in a comprehensive way so that all hazards and harm are covered, including harm caused by work-related stress and hazardous behaviour caused by certain temporary conditions; and
- (c) imposing various duties on persons who are responsible for work and those who do the work; and
- (d) setting requirements that—
  - (i) relate to taking all practicable steps to ensure health and safety; and
  - (ii) are flexible to cover different circumstances; and
- (e) recognising that volunteers doing work activities for other persons should have their health and safety protected because their well-being and work are as important as the well-being and work of employees; and
- (f) recognising that successful management of health and safety issues is best achieved through good faith co-operation in the place of work and, in particular, through the input of the persons doing the work; and

- (g) providing a range of enforcement methods, including various notices and prosecution, so as to enable an appropriate response to a failure to comply with the Act depending on its nature and gravity; and
- (h) prohibiting persons from being indemnified or from indemnifying others against the cost of fines and infringement fees for failing to comply with the Act.

Section 5: substituted, on 5 May 2003, by section 7 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

## **Part 2**

### **Duties relating to health and safety in employment**

#### *General duties of employers*

#### **6 Employers to ensure safety of employees**

Every employer shall take all practicable steps to ensure the safety of employees while at work; and in particular shall take all practicable steps to—

- (a) provide and maintain for employees a safe working environment; and
- (b) provide and maintain for employees while they are at work facilities for their safety and health; and
- (c) ensure that plant used by any employee at work is so arranged, designed, made, and maintained that it is safe for the employee to use; and
- (d) ensure that while at work employees are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working, or use of things—
  - (i) in their place of work; or
  - (ii) near their place of work and under the employer's control; and
- (e) develop procedures for dealing with emergencies that may arise while employees are at work.

#### *Duties of employers in relation to hazard management*

#### **7 Identification of hazards**

- (1) Every employer shall ensure that there are in place effective methods for—
  - (a) systematically identifying existing hazards to employees at work; and
  - (b) systematically identifying (if possible before, and otherwise as, they arise) new hazards to employees at work; and
  - (c) regularly assessing each hazard identified, and determining whether or not it is a significant hazard.
- (2) Where there occurs any accident or harm in respect of which an employer is required by section 25(1) to record particulars, the employer shall take all prac-

ticable steps to ensure that the occurrence is so investigated as to determine whether it was caused by or arose from a significant hazard.

**8 Significant hazards to employees to be eliminated if practicable**

Where there is a significant hazard to employees at work, the employer shall take all practicable steps to eliminate it.

**9 Significant hazards to employees to be isolated where elimination impracticable**

Where—

- (a) there is a significant hazard to employees at work; and
- (b) either—
  - (i) there are no practicable steps that may be taken to eliminate it; or
  - (ii) all practicable steps to eliminate it have been taken, but it has not been eliminated,—

the employer shall take all practicable steps to isolate it from the employees.

**10 Significant hazards to employees to be minimised, and employees to be protected, where elimination and isolation impracticable**

(1) Where—

- (a) there is a significant hazard to employees at work; and
- (b) either—
  - (i) there are no practicable steps that may be taken to eliminate it; or
  - (ii) all practicable steps to eliminate it have been taken, but it has not been eliminated; and
- (c) either—
  - (i) there are no practicable steps that may be taken to isolate it from the employees; or
  - (ii) all practicable steps to isolate it from the employees have been taken, but it has not been isolated,—

the employer shall take the steps set out in subsection (2).

(2) The steps are—

- (a) to take all practicable steps to minimise the likelihood that the hazard will be a cause or source of harm to the employees; and
- (b) to provide, make accessible to, and ensure the use by the employees of suitable clothing and equipment to protect them from any harm that may be caused by or may arise out of the hazard; and
- (c) to monitor the employees' exposure to the hazard; and

- (d) to take all practicable steps to obtain the employees' consent to the monitoring of their health in relation to the hazard; and
  - (e) with their informed consent, to monitor the employees' health in relation to exposure to the hazard.
- (3) An employer does not comply with subsection (2)(b) by—
- (a) paying an employee an allowance or extra salary or wages instead of providing the protective clothing or equipment; or
  - (b) requiring an employee to provide his or her own protective clothing or equipment as a precondition of employment or as a term or condition in an employment agreement.
- (4) However, an employer does not have to comply with subsection (2)(b) in relation to protective clothing if—
- (a) an employee genuinely and voluntarily chooses to provide his or her own protective clothing for reasons of his or her comfort or convenience; and
  - (b) the employer is satisfied that the protective clothing is suitable in terms of subsection (2)(b).
- (5) An employee who has chosen to provide his or her own protective clothing under subsection (4) may, after giving reasonable notice to the employer, choose that the employer provide protective clothing under subsection (2)(b) instead of providing it himself or herself.
- (6) Nothing in subsections (4) or (5) derogates from the responsibility of the employer under subsection (2)(b).

Section 10(2)(b): amended, on 5 May 2003, by section 8(1) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 10(3): added, on 5 May 2003, by section 8(2) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 10(4): added, on 5 May 2003, by section 8(2) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 10(5): added, on 5 May 2003, by section 8(2) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 10(6): added, on 5 May 2003, by section 8(2) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

### *Duties of employers in relation to information*

## **11 Employees to be given results of monitoring**

- (1) This section applies to the results of any monitoring of any employee or place of work if it was undertaken in compliance with this Act; and—
- (a) if the monitoring was undertaken by or on behalf of an employer; or
  - (b) if—

- (i) the monitoring was undertaken by or on behalf of a department (within the meaning of the State Sector Act 1988); and
  - (ii) the results have been given to an employer.
- (2) Subject to subsection (3), every employer shall ensure that—
  - (a) every employee is given all results to which this section applies of monitoring of the employee (whether as an individual or as one of a number of employees) in relation to health or safety; and
  - (b) all employees who ask for them are given all results to which this section applies of general monitoring of—
    - (i) conditions in the employee's place of work; or
    - (ii) the health or safety of employees there.
- (3) Every employer shall ensure that—
  - (a) there are omitted from all results to which this section applies given to any individual employee all information that identifies, or discloses anything about, any other individual employee; and
  - (b) there are omitted from all results to which this section applies given to any group of employees all information that identifies, or discloses anything about, any employee.
- (4) An employer is not required under this section to give an employee the results of monitoring to the extent that those results have already been provided to the employee under section 12A.

Section 11(4): inserted, on 16 December 2013, by section 6 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

## **12 Information for employees generally and health and safety representatives**

- (1) Every employer shall ensure that every employee who does work of any kind, or uses plant of any kind, or deals with a substance of any kind, in a place of work has been given, and is provided with ready access to, information in a form and manner that the employee is reasonably likely to understand about—
  - (a) what to do if an emergency arises while the employee is doing work of that kind, using plant of that kind, or dealing with substances of that kind, in that place; and
  - (b) all identified hazards to which the employee is or may be exposed while doing work of that kind, using plant of that kind, or dealing with substances of that kind, in that place, and the steps to be taken to minimise the likelihood that the hazards will be a cause or source of harm to the employee; and
  - (c) all identified hazards the employee will or may create while doing work of that kind, using plant of that kind, or dealing with substances of that kind, in that place, and the steps to be taken to minimise the likelihood that the hazards will be a cause or source of harm to other people; and



- (d) where all necessary safety clothing, devices, equipment, and materials are kept.
- (2) An employer must ensure that all health and safety representatives in a place of work have ready access to sufficient information about health and safety systems and health and safety issues in the place of work to enable the representatives to perform their functions effectively.

Section 12 heading: amended, on 5 May 2003, by section 9(1) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 12(1): amended, on 5 May 2003, by section 9(2) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 12(2): added, on 5 May 2003, by section 9(3) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

### *Duties of mine operators in relation to information*

Heading: inserted, on 16 December 2013, by section 7 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

## **12A Mine workers to be given results of monitoring**

- (1) This section applies to the results of any monitoring of any mine worker or any mining operation undertaken in compliance with this Act or regulations made under this Act if the monitoring was—
  - (a) undertaken by or on behalf of a mine operator; or
  - (b) undertaken by or on behalf of a department (within the meaning of the State Sector Act 1988) or WorkSafe and the results have been given to a mine operator.
- (2) Subject to subsection (3), every mine operator must ensure that—
  - (a) every mine worker is given all results to which this section applies of monitoring of the mine worker (whether as an individual or as one of a number of mine workers) in relation to health or safety; and
  - (b) all mine workers are given all results to which this section applies of general monitoring of—
    - (i) conditions in the mining operation; or
    - (ii) the health or safety of mine workers there.
- (3) Every mine operator must ensure that—
  - (a) there are omitted from all results to which this section applies given to any individual mine worker all information that identifies, or discloses anything about, any other individual mine worker; and
  - (b) there are omitted from all results to which this section applies given to any group of mine workers all information that identifies, or discloses anything about, any individual mine worker.

Section 12A: inserted, on 16 December 2013, by section 7 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**12B Information for site health and safety representatives**

A mine operator must ensure that all site health and safety representatives in the mining operation have ready access to sufficient information about health and safety systems and health and safety issues in the mining operation to enable the representatives to perform their functions and exercise their powers effectively.

Section 12B: inserted, on 16 December 2013, by section 7 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

*Duties of employers in relation to training and supervision***13 Training and supervision**

Every employer shall take all practicable steps to ensure that every employee who does work of any kind, or uses plant of any kind, or deals with a substance of any kind, in a place of work—

- (a) either—
  - (i) has; or
  - (ii) is so supervised, by a person who has,—  
such knowledge and experience of similar places, and work, plant, or substances of that kind, as to ensure that the employee's doing the work, using the plant, or dealing with the substance, is not likely to cause harm to the employee or other people; and
- (b) is adequately trained in the safe use of all plant, objects, substances, and protective clothing and equipment that the employee is or may be required to use or handle.

*Duties of mine operators in relation to training and supervision*

Heading: inserted, on 16 December 2013, by section 8 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**13AA Training and supervision of mine workers**

Every mine operator must take all practicable steps to ensure that every mine worker who does work of any kind, or uses plant of any kind, or deals with a substance of any kind, in a mining operation—

- (a) has, or is so supervised by a person who has, such knowledge and experience of similar places, and work, plant, or substances of that kind, as to ensure that the mine worker's doing the work, using the plant, or dealing with the substance is not likely to cause harm to the mine worker or other people; and
- (b) is adequately trained in the safe use of all plant, objects, substances, and protective clothing and equipment that the mine worker is or may be required to use or handle.

Section 13AA: inserted, on 16 December 2013, by section 8 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

*Duties of employers in relation to Police vetting of employees at limited child care centres*

Heading: inserted, on 21 December 2010, by section 6 of the Health and Safety in Employment Amendment Act 2010 (2010 No 135).

**13A Limited child care centre employees must be suitable**

A limited child care service provider must take all practicable steps to ensure every employee employed to care for children in a limited child care centre is suitable for that role.

Section 13A: inserted, on 21 December 2010, by section 6 of the Health and Safety in Employment Amendment Act 2010 (2010 No 135).

**13B Police vetting of employees at limited child care centres**

The service provider of a limited child care centre must obtain a Police vet of every person—

- (a) whom the service provider employs, or intends to employ, in a position at the limited child care centre; and
- (b) who is to work at the service during normal opening hours; and
- (c) who is not a registered teacher or holder of a limited authority to teach.

Section 13B: inserted, on 21 December 2010, by section 6 of the Health and Safety in Employment Amendment Act 2010 (2010 No 135).

**13C Police vetting of contractors and their employees who work at limited child care centres**

- (1) The service provider of a limited child care centre must obtain a Police vet of every contractor, or the employee of a contractor, who has, or is likely to have, unsupervised access to children at the centre during normal opening hours.
- (2) In this section, contractor means a person who, under contract (other than an employment contract), works at a limited child care centre.

Section 13C: inserted, on 21 December 2010, by section 6 of the Health and Safety in Employment Amendment Act 2010 (2010 No 135).

**13D Police vet must be obtained before person has unsupervised access to children**

- (1) A Police vet required under section 13B or 13C must be obtained before the person has, or is likely to have, unsupervised access to children at the centre during normal opening hours.
- (2) The service provider of a limited child care centre that is required under section 13B or 13C to obtain a Police vet of a person must apply for the vet no later than 2 weeks after the person begins work at the centre.

Section 13D: inserted, on 21 December 2010, by section 6 of the Health and Safety in Employment Amendment Act 2010 (2010 No 135).

### **13E Procedures relating to Police vets under section 13B or 13C**

The service provider of a limited child care centre that applies for a Police vet of a person under section 13B or 13C—

- (a) must ensure that strict confidentiality is observed for Police vets; and
- (b) must not take adverse action in relation to a person who is the subject of a Police vet until—
  - (i) the person has validated the information contained in the vet; or
  - (ii) the person has been given a reasonable opportunity to validate the information, but has failed to do so within a reasonable period.

Section 13E: inserted, on 21 December 2010, by section 6 of the Health and Safety in Employment Amendment Act 2010 (2010 No 135).

### **14 Employers to involve employees in development of health and safety procedures**

*[Repealed]*

Section 14: repealed, on 5 May 2003, by section 10 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

#### *Other duties*

### **15 Duties of employers to people who are not employees**

Every employer shall take all practicable steps to ensure that no action or inaction of any employee while at work harms any other person.

### **16 Duties of persons who control places of work**

- (1) A person who controls a place of work (other than a home occupied by the person) must take all practicable steps to ensure that no hazard that is or arises in the place harms—
  - (a) people in the vicinity of the place (including people in the vicinity of the place solely for the purpose of recreation or leisure):
  - (b) people who are lawfully at work in the place—
    - (i) as employees of the person; or
    - (ii) as contractors engaged by the person; or
    - (iii) as subcontractors to a contractor engaged by the person; or
    - (iv) as employees of a contractor or subcontractor to whom subparagraph (ii) or subparagraph (iii) applies.
- (2) A person who controls a place of work (other than a home occupied by the person) must take all practicable steps to ensure that no hazard that is or arises in the place harms people—

- (a) who are in the place with the express or implied consent of the person; and
  - (b) who—
    - (i) have paid the person (directly or indirectly) to be there or to undertake an activity there; or
    - (ii) are there to undertake activities that include buying or inspecting goods from whose sale the person derives or would derive (directly or indirectly) any gain or reward.
- (3) A person who—
- (a) controls a place of work (other than a home occupied by the person); and
  - (b) knows of any significant hazard that—
    - (i) is in, or is likely to arise in, the place of work; and
    - (ii) arises from work that is being carried on, or has been carried on, for gain or reward in the place of work; and
    - (iii) would not, in the ordinary course of events, be reasonably expected to be in, or to be likely to arise in, a place of work of that type; and
  - (c) either—
    - (i) expressly authorises any other person to be in the place of work; or
    - (ii) has personally received oral advice that any other person will, under the authority of any enactment, be working in the place of work; and
  - (d) is not obliged, in relation to that other person, to comply with subsection (1) or subsection (2)—
- must take all practicable steps to warn that other person of the significant hazard.
- (4) Except in the case of the practicable steps required by this section to be taken in relation to any person described in subsection (2) or subsection (3)(c)(i), this section does not impose on any person who controls a place of work any duty in respect of any person who is in the place of work solely for the purpose of recreation or leisure.
- (5) The warning required to be given to a person to whom subsection (3)(c)(i) applies—
- (a) must be given to that person at the time at which the express authority to be in the place of work is given to that person; but
  - (b) if the express authority is given in respect of a group of persons or a body of persons, whether corporate or unincorporate, it is sufficient if

the warning is given at that time to a representative or member of that group or body of persons.

- (6) The oral advice required by subsection (3)(c)(ii) must be given by the person who will be working in the place of work or by that person's employer.

Section 16: substituted, on 18 March 1998, by section 2 of the Health and Safety in Employment Amendment Act 1998 (1998 No 3).

### **17 Duties of self-employed people**

Every self-employed person shall take all practicable steps to ensure that no action or inaction of the self-employed person while at work harms the self-employed person or any other person.

### **18 Duties of principals**

- (1) Every principal shall take all practicable steps to ensure that—
- (a) no employee of a contractor or subcontractor; and
  - (b) if an individual, no contractor or subcontractor,—
- is harmed while doing any work (other than residential work) that the contractor was engaged to do.
- (2) Subsection (1) shall be read subject to section 2(2).

### **18A Duties of persons selling or supplying plant for use in place of work**

- (1) A person who hires, leases, or loans to another person plant that can be used in a place of work must—
- (a) ascertain from the other person (so far as is practicable) before hiring, leasing, or loaning the plant—
    - (i) whether the plant is to be used in a place of work; and
    - (ii) if so, the intended use of the plant; and
  - (b) if he or she ascertains that it is to be used in a place of work, take all practicable steps to ensure that the plant is designed and made, and has been maintained, so that it is safe for its intended use.
- (2) A person who sells or supplies (other than in a situation covered by subsection (1)) to another person plant that can be used in a place of work must take all practicable steps to ensure that the plant is designed and made, and has been maintained, so that it is safe for any known intended use or any use of that plant that the person could reasonably expect.
- (3) In addition to the other obligations in this section, if a person who hires, leases, sells, or otherwise supplies to another person plant to be used in a place of work agrees to install or arrange the plant, the person must take all practicable steps to install or arrange the plant so that it is safe for its intended use.
- (4) This section does not apply to the sale of plant, whether or not in trade, if the plant—

- (a) is secondhand; and
  - (b) is sold as is.
- (5) In subsection (4)(b), **as is** means that the plant is sold without any representations or warranties about its quality, durability, or fitness, and with the entire risk in those respects to be borne by the buyer.
- (6) This section does not limit the Consumer Guarantees Act 1993.

Section 18A: inserted, on 5 May 2003, by section 11 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

## **19 Duties of employees**

Every employee shall take all practicable steps to ensure—

- (a) the employee's safety while at work (including by using suitable protective clothing and suitable protective equipment provided by the employer or, if section 10(4) applies, suitable protective clothing provided by the employee himself or herself); and
- (b) that no action or inaction of the employee while at work causes harm to any other person.

Section 19(a): amended, on 5 May 2003, by section 12 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

## **Part 2A Employee participation**

Part 2A: inserted, on 5 May 2003, by section 13 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

### **19A Purpose of Part 2A**

The purpose of this Part is to require the participation of employees in processes relating to health and safety in the place of work so that—

- (a) all persons with relevant knowledge and expertise can help make the place of work healthy and safe; and
- (b) when making decisions that affect employees and their work, an employer has information from employees who face the health and safety issues in practice.

Section 19A: inserted, on 5 May 2003, by section 13 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

### **19B General duty to involve employees in health and safety matters**

- (1) Every employer must provide reasonable opportunities for the employer's employees to participate effectively in ongoing processes for improvement of health and safety in the employees' places of work.
- (2) Without limiting subsection (1), ongoing processes for improvement of health and safety include the matters referred to in sections 6 to 13.

- (3) In complying with this Part, an employer must take into account any approved code of practice for employee participation in workplace health and safety.
- (4) If a health and safety committee or a health and safety representative makes a recommendation regarding health and safety in a place of work, the employer must either adopt the proposal or provide a written statement to the health and safety committee or health and safety representative setting out the reasons for not adopting the proposal.
- (5) In subsection (1), **reasonable opportunities** means opportunities that are reasonable in the circumstances, having regard to relevant matters such as—
  - (a) the number of employees employed by the employer; and
  - (b) the number of different places of work for the employees and the distance between them; and
  - (c) the likely potential sources or causes of harm in the place of work; and
  - (d) the nature of the work that is performed and the way that it is arranged or managed by the employer; and
  - (e) the nature of the employment arrangements, including the extent and regularity of employment of seasonal or temporary employees; and
  - (f) the willingness of employees and unions to develop employee participation systems; and
  - (g) the overriding duty to act in good faith.

Section 19B: inserted, on 5 May 2003, by section 13 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

### **19C Development of employee participation system**

- (1) This section applies if an employer employs—
  - (a) fewer than 30 employees, whether or not at a single location, and 1 or more of the employees, or a union representing them, requires the development of a system for employee participation; or
  - (b) 30 or more employees, whether or not at a single location.
- (2) The following persons must co-operate in good faith to seek to develop, agree, implement, and maintain a system that sets out the ways in which the employer must seek to comply with section 19B(1):
  - (a) the employer;
  - (b) the employees who wish to be involved;
  - (c) a union or unions representing any of the employees.
- (3) A system must specify a process by which it must be reviewed, but otherwise may include any matters on which the employer, employees, and any union representing them, agree complies with this Part; provided that in doing so they must take into account Part 1 of Schedule 1A and Part 2 of Schedule 1A; and provided further that, at any time after the expiry of 12 months from the date



the system is agreed, 1 or more employees or a union on their behalf may initiate the development of a new employee participation system in accordance with this Act.

- (4) A system may include a provision increasing or decreasing the maximum—
  - (a) number of days' paid leave that the employer is required to allow a health and safety representative to take for health and safety training under section 19E(1):
  - (b) total number of days' paid leave that the employer is required to allow health and safety representatives to take for health and safety training under sections 19E(2) and 19F.
- (5) A system may allow for more than 1 health and safety representative or health and safety committee and, in that case, each representative or committee may represent a particular type of work, or place of work of the employer, or another grouping.
- (6) Subsection (2) is complied with if a system of employee participation in health and safety in the place of work is in existence that was implemented before the commencement of this section and if—
  - (a) it complies with section 19B or is amended to comply with section 19B; and
  - (b) it specifies a process for its review or is amended to specify a process for its review; and
  - (c) it is acceptable to the persons referred to in subsection (2).
- (7) If a system is no longer in place, or functioning, a new system must be developed, agreed, implemented, and maintained in accordance with this section.

Section 19C: inserted, on 5 May 2003, by section 13 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

#### **19D Provisions that apply if employer and employees fail to develop system for employee participation**

Part 3 of Schedule 1A applies if an employer is required to seek to develop a system for employee participation under section 19C and a system is not developed within the relevant time period set out in Part 3 of Schedule 1A.

Section 19D: inserted, on 5 May 2003, by section 13 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

#### **19E Training of health and safety representatives**

- (1) An employer must allow a health and safety representative 2 days' paid leave each year to attend health and safety training approved under section 19G.
- (2) The number of days' paid leave that an employer must allow a health and safety representative to take in a year is subject to the maximum total number of days' paid leave that that employer is required to allow under section 19F.

- (3) Sections 78 and 79 of the Employment Relations Act 2000 apply when a health and safety representative is proposing to take, and is taking, the leave as if—
- (a) the representative were an eligible employee; and
  - (b) the leave were employment relations education leave.
- (4) In this section and section 19F, **year**—
- (a) means a period of 12 months beginning on 1 April and ending on the close of 31 March; and
  - (b) includes the period beginning on 5 May 2003 and ending on the close of 31 March 2004.
- (5) Subsections (1) and (2) are subject to section 19C(4).

Section 19E: inserted, on 5 May 2003, by section 13 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

**19F Calculation of maximum total number of days' paid leave for health and safety training**

- (1) The maximum total number of days' paid leave that an employer is required to allow in a year under section 19E is based on the number of employees employed by the employer as at the specified date in the year, and is determined in accordance with the following table:

<b>Employees as at the specified date in a year</b>	<b>Maximum total number of days' paid leave that employer is required to allow to be taken</b>
1–5	2
6–50	6
51–280	1 day for every 8 employees or part of that number
281 or more	35 days plus 5 days for every 100 employees or part of that number

- (2) In this section, **specified date**—
- (a) means 1 April; and
  - (b) for the period beginning on 5 May 2003 and ending on the close of 31 March 2004, includes 5 May 2003.
- (3) This section is subject to section 19C(4)(b).

Section 19F: inserted, on 5 May 2003, by section 13 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

**19G Minister may approve occupational health and safety training**

- (1) The Minister may approve courses of occupational health and safety training to be carried out at a place of work or elsewhere.
- (2) The Minister may approve a course only if he or she is satisfied that the course is—

- (a) consistent with the object of this Act; and
  - (b) relevant to the role of a health and safety representative.
- (3) The Minister may delegate his or her power under subsection (1) to 1 or more persons.
  - (4) To avoid doubt, a course approved under this section may be a course that is also approved under section 72 of the Employment Relations Act 2000.
  - (5) For the purposes of Part 2B, the reference to a health and safety representative in section 19G(2)(b) means a site health and safety representative.

Section 19G: inserted, on 5 May 2003, by section 13 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 19G(1): amended, on 1 December 2004, by section 3 of the Health and Safety in Employment Amendment Act 2004 (2004 No 87).

Section 19G(5): inserted, on 16 December 2013, by section 9 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### **19H System for employee participation in Armed Forces**

- (1) This Part does not apply to members of the Armed Forces.
- (2) The Chief of Defence Force must develop and implement a system for employee participation in workplace health and safety for members of the Armed Forces.
- (3) The system must be consistent with section 19B.
- (4) The Chief of Defence Force must consult with WorkSafe when developing the system.

Section 19H: inserted, on 5 May 2003, by section 13 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 19H(4): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

#### **19I Meaning of employee in sections 19C(1) and 19F(1)**

In sections 19C(1) and 19F(1), an **employee** means an employee who has worked for his or her employer for at least 180 hours over the previous 12-month period.

Section 19I: inserted, on 5 May 2003, by section 13 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

#### **19J Relationship of this Part with Part 2B**

Except as provided in this Part or Part 2B, nothing in this Part applies to a mining operation.

Section 19J: inserted, on 16 December 2013, by section 10 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

## Part 2B

### Worker participation in health and safety in mining sector

Part 2B: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### 19K Purpose of Part

The purpose of this Part is to require the participation of mine workers in processes relating to health and safety in a mining operation so that—

- (a) all persons with relevant knowledge and expertise can help make the mining operation healthy and safe; and
- (b) when making decisions that affect mine workers and their work, a mine operator has information from mine workers who face the health and safety issues in practice.

Section 19K: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### 19L Interpretation

In this Act,—

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

- (a) the extraction of gold from river deposits of sand or gravel:
- (b) the extraction of ironsand from sand or gravel

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

- (a) includes every other substance worked or normally worked with coal; but
- (b) does not include coal in the form of peat

**industry health and safety representative** means a person appointed in accordance with section 19ZU

**licence or other permission** means a lease, licence, or other instrument under which a person with an interest in land (including, for example, the owner of the land) permits another person to carry out a mining operation on the land

**mine operator** means,—

- (a) in respect of a mining operation carried out under a permit granted under the Crown Minerals Act 1991,—
  - (i) the person appointed by the permit operator to manage and control the mining operation; or
  - (ii) the permit operator, if no such person has been appointed:
- (b) in respect of a mining operation (not being a mining operation described in paragraph (a)) carried out under a licence or other permission,—

- (i) the person appointed to manage and control the mining operation by the person who holds the licence or other permission to carry out mining operations; or
  - (ii) the person who holds the licence or other permission to carry out mining operations, if no such person has been appointed:
- (c) in any other case,—
- (i) the person appointed to manage and control the mining operation by the owner of the land where the mining operation is being carried out; or
  - (ii) the owner of the land where the mining operation is being carried out, if no such person has been appointed

**mine worker** means a person who works in a mining operation, either as an employee or as a self-employed person

**mineral** means a naturally occurring inorganic substance beneath or at the surface of the earth, and—

- (a) includes metallic minerals, non-metallic minerals, and precious stones; but
- (b) does not include clay, coal, gravel, limestone, sand, or stone

**mining operation** has the meaning given to it in section 19M

**peat** means combustible, soft, porous, or compressed sedimentary deposit of plant origin with a high water content

**permit operator** has the same meaning as in section 2 of the Crown Minerals Act 1991

**quarrying operation** has the meaning given to it in section 19N

**site health and safety committee** means a committee established to support the ongoing improvement of health and safety in a mining operation

**site health and safety representative** means a mine worker elected as a site health and safety representative, as an individual or as a member of a site health and safety committee, or both

**site senior executive** means the person appointed as the site senior executive by the mine operator

**tourist mining operation** means an operation that has the purpose of—

- (a) mine education; or
- (b) mine research; or
- (c) mine tourism

**tunnelling operation** has the meaning given to it in section 19O.

Section 19L: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19M Meaning of mining operation**

In this Act, **mining operation**—

- (a) means the extraction of coal and minerals and the place at which the extraction is carried out; and
- (b) includes any of the following activities and the place at which they are carried out:
  - (i) exploring for coal:
  - (ii) mining for coal or minerals:
  - (iii) processing coal or minerals associated with a mine:
  - (iv) producing or maintaining tailings, spoil heaps, and waste dumps:
  - (v) the excavation, removal, handling, transport, and storage of coal, minerals, substances, contaminants, and wastes at the place where the activities described in subparagraphs (i) to (iv) are carried out:
  - (vi) the construction, operation, maintenance, and removal of plant and buildings at the place where the activities described in subparagraphs (i) to (iv) are carried out:
  - (vii) preparatory, maintenance, and repair activities associated with the activities described in subparagraphs (i) to (iv); and
- (c) includes—
  - (i) a tourist mining operation:
  - (ii) a tunnelling operation; but
- (d) does not include—
  - (i) exploring for minerals:
  - (ii) an alluvial mining operation:
  - (iii) a mining operation wholly on or under the seabed on the seaward side of the mean high-water mark:
  - (iv) a quarrying operation.

Section 19M: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19N Meaning of quarrying operation**

(1) In this Act, **quarrying operation**—

- (a) means an activity carried out above ground for the purpose of—
  - (i) extracting any material, other than any coal or any mineral, from the earth; or
  - (ii) processing any material, other than any coal or any mineral, at the place where the material is extracted; and

- (b) includes the place where an activity described in paragraph (a) is carried out; and
  - (c) includes any place in which any material extracted or processed in a quarry is crushed or screened.
- (2) Subsection (1) applies whether or not the material is to be extracted or processed for commercial gain and whether or not the material is extracted or processed by the use of explosives.

Section 19N: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19O Meaning of tunnelling operation**

In this Act, **tunnelling operation**—

- (a) means an operation involving extraction of fill with the purpose of creating a tunnel or shaft or enlarging or extending any tunnel or shaft; and
- (b) includes the place where an operation described in paragraph (a) is carried out; but
- (c) excludes any tunnelling operation of a kind declared under section 19P not to be a tunnelling operation.

Section 19O: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19P Governor-General may, by Order in Council, exclude operations from section 19O**

The Governor-General may, by Order in Council made on the recommendation of the Minister, declare that certain operations or classes of operation are not tunnelling operations for the purposes of section 19O.

Section 19P: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19Q General duty to involve mine workers in health and safety matters**

- (1) Every mine operator must ensure that there is, for a mining operation, a documented worker participation system that provides reasonable opportunities for the mine workers to participate effectively in ongoing processes for the improvement of health and safety in the mining operation.
- (2) Without limiting subsection (1), **ongoing processes for the improvement of health and safety** include the matters referred to in sections 6 to 13AA.
- (3) In complying with this Part, a mine operator must take into account any relevant approved code of practice.
- (4) If a site health and safety committee or a site health and safety representative makes a recommendation regarding health and safety in a mining operation, the mine operator must either adopt the proposal or provide a written statement to the site health and safety committee or site health and safety representative setting out the reasons for not adopting the proposal.

- (5) In subsection (1), **reasonable opportunities** means opportunities that are reasonable in the circumstances, having regard to relevant matters such as—
- (a) the number of mine workers in the mining operation; and
  - (b) the likely potential sources or causes of harm in the mining operation; and
  - (c) the nature of the work that is performed and the way that it is arranged or managed by the mine operator; and
  - (d) the nature of the employment arrangements or contracting arrangements, including the extent and regularity of employment or engagement of temporary mine workers; and
  - (e) the willingness of mine workers and unions to develop worker participation systems; and
  - (f) in relation to employers and employees, the overriding duty to act in good faith.

Section 19Q: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### *Worker participation system*

Heading: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19R Development of worker participation system**

- (1) The following persons must co-operate in good faith to seek to develop, agree, implement, and maintain a worker participation system that sets out the ways in which the mine operator must seek to comply with section 19Q(1):
- (a) the mine operator;
  - (b) the mine workers who wish to be involved;
  - (c) a union or unions representing any of the mine workers.
- (2) A worker participation system may include any matters that the mine operator, mine workers, and any union representing them, agree comply with this Part.
- (3) If the system includes provision for site health and safety representatives, those representatives must be elected by the mine workers in the mining operation.
- (4) If 1 or more mine workers request that the system include provision for site health and safety representatives, there must be provision for the election of at least 1 site health and safety representative.
- (5) A system may allow for more than 1 site health and safety representative or 1 site health and safety committee and, in that case, each representative or committee may represent a particular type of work of the mine operator, or another grouping agreed in, or determined in accordance with, the system.

Section 19R: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).



### **19S Training of site health and safety representatives**

- (1) Sections 19E to 19G apply to any site health and safety representative under this Part who is an employee.
- (2) A worker participation system may include a provision increasing or decreasing the maximum—
  - (a) number of days' paid leave that the employers of mine workers are required to allow site health and safety representatives who are employees to take for health and safety training under section 19E(1) (as applied by subsection (1));
  - (b) total number of days' paid leave that employers of mine workers are required to allow site health and safety representatives and health and safety representatives to take for health and safety training under sections 19E(2) and 19F (as applied by subsection (1)).
- (3) Despite subsection (2) and section 19E(1) and (2) (as applied by subsection (1)), a worker participation system must ensure that every site health and safety representative who is an employee has sufficient paid leave to attend training reasonably required to attain the competency requirements for site health and safety representatives prescribed by or under regulations made under this Act.

Section 19S: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19T Review and replacement of worker participation systems**

- (1) A worker participation system must specify a process by which it must be reviewed.
- (2) At any time after the expiry of 12 months from the date the system is agreed, 1 or more mine workers or a union on their behalf may initiate the development of a new system in accordance with this Act.
- (3) If a system is no longer in place, or functioning, a new system must be developed, agreed, implemented, and maintained in accordance with section 19R.

Section 19T: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19U Prescribed provisions apply if no scheme in place**

- (1) The provisions prescribed in regulations made under this Act apply if a worker participation system is not developed—
  - (a) within 3 months of the date on which a mining operation begins; or
  - (b) if section 19T(3) applies, within 3 months of the date on which any person initiates the development of a new system.
- (2) If the prescribed provisions apply, and have applied continuously for a period of 6 months or more, 1 or more mine workers or a union on their behalf may initiate the development of a new system in accordance with section 19R.

Section 19U: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### *Site health and safety representatives*

Heading: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### **19V Election of site health and safety representatives**

If a worker participation system provides for the election of 1 or more site health and safety representatives, but does not provide for the conduct of those elections, the requirements for the conduct of elections prescribed in regulations made under this Act apply.

Section 19V: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### **19W Functions of site health and safety representatives**

The functions of a site health and safety representative are, in relation to the mining operation in respect of which the representative is appointed,—

- (a) to represent mine workers in matters relating to health and safety:
- (b) to investigate complaints from mine workers regarding health and safety:
- (c) if requested by a mine worker, to represent the worker in relation to a matter relating to health and safety (including a complaint):
- (d) to identify hazards in the mining operation and bring them to the attention of the mine operator or site senior executive:
- (e) to monitor measures taken by the mine operator that are relevant to health and safety:
- (f) to provide feedback to the mine operator or site senior executive about whether the requirements of this Act or regulations made under this Act are being complied with:
- (g) to promote the interests of mine workers who have been harmed at work, including in relation to arrangements for harmed workers' rehabilitation and return to work.

Section 19W: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### **19X No duty on site health and safety representatives**

Nothing in this Act imposes a duty on a site health and safety representative in that capacity.

Section 19X: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

*Powers of site health and safety representatives*

Heading: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19Y Competency requirements for exercise of certain powers**

A site health and safety representative must not exercise any power under section 19ZA, 19ZG, or 19ZH unless he or she meets the competency requirements for site health and safety representatives prescribed by or under regulations made under this Act.

Section 19Y: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19Z Power of site health and safety representative to attend interview**

With the consent of the mine worker, a site health and safety representative may attend any interview relating to health and safety that the worker has with the mine operator, the site senior executive or any other representative of the mine operator, or an inspector.

Section 19Z: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZA Power of site health and safety representative to enter and inspect mining operation**

- (1) A site health and safety representative may enter and inspect any area of a mining operation at any reasonable time to perform the functions of the site health and safety representative.
- (2) Before exercising the power under this section, the site health and safety representative must give reasonable notice to the site senior executive.
- (3) In exercising the power under this section, the site health and safety representative must comply with any reasonable procedures and requirements applying in the mining operation that relate to health and safety.

Section 19ZA: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZB Power of site health and safety representative to examine and copy documents**

A site health and safety representative may examine and copy any documents relevant to health and safety that are held by the mine operator, if the site health and safety representative has reason to believe that the documents contain information required to assess whether procedures at the mining operation are sufficient to achieve compliance with this Act and any regulations made under this Act.

Section 19ZB: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZC Power to require assistance**

A site health and safety representative may require the site senior executive or person in charge of the relevant part or aspect of a mining operation to give the site health and safety representative reasonable assistance in the exercise of a power under section 19ZA or 19ZB.

Section 19ZC: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZD Power of site health and safety representative to accompany inspector**

- (1) A site health and safety representative may accompany an inspector who has, under section 31, entered a mining operation.
- (2) An inspector may refuse to allow a site health and safety representative accompanying the inspector under this section to be present—
  - (a) during any discussion in which personal information may be disclosed (unless the person who is the subject of the information has expressly consented to the site health and safety representative being present):
  - (b) if the inspector believes that the presence of the site health and safety representative would prejudice the maintenance of the law, including the investigation and prosecution of offences.
- (3) In this section, **personal information** has the meaning given to it in section 2(1) of the Privacy Act 1993.

Section 19ZD: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZE Site health and safety representative may consult inspector**

A site health and safety representative may consult with an inspector on any health and safety issue.

Section 19ZE: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZF Trained site health and safety representatives may issue hazard notices**

- (1) In this section,—

**hazard notice** means a notice that—

  - (a) describes a hazard identified in a mining operation; and
  - (b) is in the prescribed form; and
  - (c) may set out suggested steps to deal with the hazard

**trained site health and safety representative** means a site health and safety representative who has achieved a level of competency in health and safety practice specified by the Minister by notice in the *Gazette* or who has completed an appropriate course approved under section 19G.
- (2) Subsection (3) applies if a trained site health and safety representative—

- (a) believes on reasonable grounds that there is a hazard in the mining operation; and
  - (b) has brought the hazard to the attention of the site senior executive; and
  - (c) has discussed or attempted to discuss with the site senior executive steps for dealing with the hazard.
- (3) The trained site health and safety representative may give the site senior executive on behalf of the mine operator a hazard notice if—
  - (a) the site senior executive refuses to discuss, or take steps to deal with, the hazard; or
  - (b) the site senior executive and representative do not agree on the steps that must be taken, or the time within which the steps must be taken, to deal with the hazard; or
  - (c) the representative believes on reasonable grounds that the mine operator or site senior executive has failed to meet the requirements of this Act or regulations made under this Act in relation to the hazard within a time agreed during the discussion.
- (4) If a hazard notice has been given by a trained site health and safety representative, the site senior executive must notify WorkSafe of that fact.

Section 19ZF: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZG Power of site health and safety representative to give notice requiring suspension of mining operation**

- (1) This section applies if a site health and safety representative—
  - (a) believes on reasonable grounds that the whole, or a part or an aspect, of a mining operation is likely to cause serious harm to any person; and
  - (b) has discussed or attempted to discuss the matter likely to cause serious harm with the site senior executive.
- (2) The site health and safety representative may give a written notice to the site senior executive ordering the suspension of the whole, or a part or an aspect, of the mining operation.
- (3) The notice must set out the reasons for the site health and safety representative's belief.
- (4) If the site senior executive receives a notice under subsection (2), the site senior executive must stop the mining operation, or the part or aspect of the mining operation, mentioned in the notice.
- (5) If a notice ordering the suspension of the whole, or a part or an aspect, of the mining operation has been given by a site health and safety representative, the site senior executive must notify WorkSafe of that fact.

Section 19ZG: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZH Power of site health and safety representative to require mining operation to stop in case of imminent serious harm**

- (1) This section applies if a site health and safety representative believes on reasonable grounds that serious harm to any person is likely to be caused imminently by the whole, or a part or an aspect, of a mining operation.
- (2) The site health and safety representative may—
  - (a) stop the whole, or a part or an aspect, of the mining operation and immediately advise the person in charge of the operation or part or aspect of the operation; or
  - (b) require the person in charge of the operation or part or aspect of the operation to stop the operation.
- (3) If a site health and safety representative requires a person to stop the whole, or a part or an aspect, of a mining operation, that person must do so.
- (4) The site health and safety representative must, as soon as practicable after exercising the power under subsection (2), advise the site senior executive of the action taken under that subsection and the reasons for the action taken.
- (5) If a site health and safety representative has advised the site senior executive of action taken under subsection (2), the site senior executive must notify WorkSafe of that fact.

Section 19ZH: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZI Inspector may cancel order to suspend mining operation**

An inspector may cancel the whole or part of a notice given under section 19ZG (whether or not mining operations have stopped pursuant to the notice) or an action taken by a site health and safety representative under section 19ZH(2) if the inspector does not consider that the operation or the part or aspect of the mining operation concerned is likely to cause serious harm to any person.

Section 19ZI: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZJ Workers must do other work**

If the whole or a part or an aspect of a mining operation is stopped under section 19ZG or 19ZH, a mine worker who is an employee and who was working in the operation or part or aspect of the operation must do any other work within the scope of the worker's employment agreement that the employee's employer reasonably requests.

Section 19ZJ: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZK Work not to restart until no likelihood of serious harm**

The site senior executive must ensure that the operation or part or aspect of the mining operation stopped because a notice is given under section 19ZG, or stopped or required to be stopped under section 19ZH, is not restarted until the site senior executive is satisfied that it is not likely to cause serious harm to any person.

Section 19ZK: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZL Protection of site health and safety representatives performing functions or exercising powers**

A mine operator or site senior executive must not—

- (a) prevent or attempt to prevent a site health and safety representative from performing his or her functions or exercising his or her powers; or
- (b) penalise a site health and safety representative for performing his or her functions or exercising his or her powers.

Section 19ZL: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZM Functions and powers for health and safety purposes only**

A site health and safety representative must not perform a function or exercise a power under this Part for a purpose other than a health and safety purpose.

Section 19ZM: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZN Information to be used for health and safety purposes only**

- (1) This section applies to any information obtained by a site health and safety representative in the performance of the site health and safety representative's functions or the exercise of the site health and safety representative's powers under this Act.
- (2) A site health and safety representative may—
  - (a) disclose or use the information,—
    - (i) if the information is about a person, only with the person's consent;
    - (ii) only to the extent necessary for the performance of the site health and safety representative's functions or the exercise of the site health and safety representative's powers under this Act;
  - (b) disclose the information—
    - (i) to WorkSafe or a person authorised by WorkSafe only if WorkSafe reasonably believes the disclosure is necessary for administering, monitoring, or enforcing compliance with this Act or any

relevant health and safety legislation (as defined in section 3 of the WorkSafe New Zealand Act 2013):

- (ii) only if the disclosure is authorised or required by law.
- (3) In subsection (2), **disclose** includes to give any person access to information.

Section 19ZN: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19ZO Health and safety representative not to unnecessarily impede production**

A site health and safety representative must not unnecessarily impede production at a mining operation when performing functions or exercising powers under this Part.

Section 19ZO: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19ZP Protection from civil and criminal liability**

A site health and safety representative is protected from civil and criminal liability for any act that he or she does or omits to do—

- (a) in the performance or intended performance of his or her functions or the exercise or intended exercise of his or her powers under this Act; and
- (b) in good faith.

Section 19ZP: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19ZQ Obligations of mine operators**

A mine operator must—

- (a) allow a site health and safety representative to spend such time as is reasonably necessary to perform his or her functions and exercise his or her powers; and
- (b) provide a site health and safety representative with such access to facilities that is reasonably necessary or prescribed in regulations made under this Act to enable the representative to perform his or her functions and exercise his or her powers.

Section 19ZQ: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### *Removal of site health and safety representative*

Heading: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19ZR WorkSafe may remove site health and safety representative**

- (1) WorkSafe may, by notice in writing, remove a site health and safety representative from office if WorkSafe considers that the site health and safety representative has failed to perform his or her functions or exercise his or her powers satisfactorily (for example, if the representative has exercised his or her powers



for an improper purpose in breach of section 19ZM or disclosed information in breach of section 19ZN).

- (2) The notice under subsection (1) must set out the reasons for WorkSafe's opinion.

Section 19ZR: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19ZS Election of another site health and safety representative**

- (1) If a site health and safety representative is removed from office by WorkSafe, another site health and safety representative may be elected.
- (2) Except as provided for in subsection (3), no election for a site health and safety representative to replace the representative who has been removed may be held until the expiry of the period for appeal under section 19ZT or, if an appeal is lodged, until a decision is made on the appeal.
- (3) One or more mine workers may initiate the election of a temporary site health and safety representative to replace the representative who has been removed.
- (4) The term of office of any temporary site health and safety representative ends on the expiry of the period for appeal under section 19ZT or, if an appeal is lodged, when a decision is made on the appeal.
- (5) A temporary health and safety representative has the functions and powers set out in sections 19W and 19Z to 19ZH, and those sections and sections 19X, 19Y, and 19ZI to 19ZQ apply with any necessary modifications.

Section 19ZS: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19ZT Site health and safety representative may appeal against removal**

- (1) A site health and safety representative may appeal to a District Court against a decision of WorkSafe to remove him or her.
- (2) The appeal must be brought within 28 days of the date of the notice under section 19ZR.

Section 19ZT: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### *Industry health and safety representatives*

Heading: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19ZU Appointment of industry health and safety representatives**

- (1) This section and sections 19ZV to 19ZZD apply only to—
  - (a) a mining operation associated with the extraction of coal and where any person works below ground (**underground coal mining operation**);
  - (b) mine workers who work in an underground coal mining operation:

- (c) any union that represents mine workers who work in an underground coal mining operation.
- (2) A union or group of mine workers may, in any manner determined by the union or group, appoint a person to be an industry health and safety representative.
- (3) The person appointed must meet the competency requirements for industry health and safety representatives prescribed in regulations made under this Act.
- (4) The union or group of mine workers that appoints an industry health and safety representative must meet the costs of the representative.

Section 19ZU: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19ZV Notice to WorkSafe of appointment or cessation of appointment of representative**

A union or group of mine workers that appoints an industry health and safety representative must—

- (a) give notice to WorkSafe of that appointment; and
- (b) provide the prescribed information in relation to that appointment, and a photograph of the representative authenticated in accordance with any prescribed requirements; and
- (c) give notice to WorkSafe within 14 days after the date on which the person ceases to be a representative.

Section 19ZV: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19ZW Functions and powers of industry health and safety representatives**

- (1) An industry health and safety representative has, in respect of any mining operation and any mine worker, the functions and powers set out in sections 19W and 19Z to 19ZH, and those sections and sections 19X and 19ZI to 19ZP apply with any necessary modifications.
- (2) In addition to the functions and powers referred to in subsection (1), an industry health and safety representative has the following functions:
  - (a) to participate in investigations into accidents in mining operations that resulted, or could have resulted, in serious harm:
  - (b) to assist with industry-wide initiatives to improve health and safety in mining operations.

Section 19ZW: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZX Further provision concerning scope of functions and powers of industry health and safety representatives**

An industry health and safety representative may perform his or her functions and exercise his or her powers in relation to any mining operation or mine worker whether or not,—

- (a) in the case of a representative appointed by a union, any worker in the mine, or the relevant mine worker, as the case may be, is a member of that union; or
- (b) in the case of a representative appointed by a group of mine workers, any worker in the mine, or relevant mine worker, as the case may be, is a member of that group.

Section 19ZX: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZY Identity cards**

- (1) WorkSafe must give each industry health and safety representative an identity card.
- (2) The identity card must be in the prescribed form.
- (3) A person who ceases to be an industry health and safety representative must return his or her identity card to WorkSafe as soon as possible, but within 14 days, after the date on which the person ceases to be a representative.

Section 19ZY: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**19ZZ Production or display of identity card**

- (1) Before an industry health and safety representative exercises a power under this Part in relation to any person, the representative must—
  - (a) produce his or her identity card to the person; or
  - (b) display the identity card so it is clearly visible to that person.
- (2) An industry health and safety representative who exercises a power under section 19ZA must—
  - (a) produce his or her identity card to the person apparently in charge of the part of the mining operation being entered; or
  - (b) display the identity card so it is clearly visible to that person.
- (3) If the representative is unable, despite reasonable efforts, to comply with subsection (2), the representative must, before leaving the mining operation, leave a written notice stating—
  - (a) the representative's identity; and
  - (b) the address of a place where the representative may be contacted; and
  - (c) the date and time of entry onto the mining operation; and

- (d) the representative's reasons for entering onto the mining operation.

Section 19ZZ: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19ZZA Removal of industry health and safety representative**

Sections 19ZR and 19ZT apply to an industry health and safety representative with any necessary modifications.

Section 19ZZA: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19ZZB Register of industry health and safety representatives**

- (1) WorkSafe must keep and maintain a register of industry health and safety representatives.
- (2) The purpose of the register is to enable members of the public to know the names and contact details of industry health and safety representatives.
- (3) The register may be kept in any manner that WorkSafe thinks fit.
- (4) The register must contain the prescribed information.

Section 19ZZB: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19ZZC Alterations to register**

WorkSafe may at any time make any amendments to the register that are necessary to reflect any changes in the information referred to in section 19ZZB(4).

Section 19ZZC: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **19ZZD Search of register**

- (1) A person may search the register for a purpose set out in section 19ZZB(2).
- (2) WorkSafe must—
  - (a) make the register available for public inspection, without fee, at reasonable hours at the head office of WorkSafe; and
  - (b) supply to any person, on request and on payment of a reasonable charge, a copy of the register or any extract from it.

Section 19ZZD: inserted, on 16 December 2013, by section 11 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

## Part 3 Standards

### *Codes of practice*

#### **20 Codes of practice**

- (1) WorkSafe may from time to time issue any instrument (a **code of practice**) that is—
  - (a) a statement of preferred work practices or arrangements; or
  - (b) a statement of preferred aims, arrangements, practices, or principles (or any 2 or more of those matters) for the design of plant, protective clothing, or protective equipment, of any kind or description; or
  - (c) a statement of preferred arrangements, characteristics, components, configurations, elements, or states (or any 2 or more of those matters) for manufactured plant, manufactured protective clothing, or manufactured protective equipment, of any kind or description; or
  - (d) a statement of preferred characteristics for any manufactured or processed substance used or capable of being used—
    - (i) in or in connection with any protective clothing or protective equipment; or
    - (ii) otherwise for or in connection with protecting people from hazards; or
  - (e) a statement of preferred practices or arrangements relating to employee participation in health and safety in the place of work; or
  - (f) a statement of preferred practices or arrangements relating to worker participation in a mining operation.
- (2) WorkSafe may issue any amendment or revocation of a code of practice.
- (3) Subject to subsection (4), a code of practice may incorporate, adopt, or apply, with or without modification, all or any part of any other document prepared or issued by any body or authority, including the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011.
- (4) WorkSafe must not issue or amend a code of practice in a way that adopts with modification any document previously approved by another Minister of the Crown or any compliance document (within the meaning of the Building Act 2004) without the consent of the other Minister or the chief executive of the department of State responsible for the administration of the Building Act 2004 (as relevant).

Section 20: replaced, on 16 December 2013, by section 12 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**20A Code to be approved by Minister**

- (1) A code of practice, an amendment to a code of practice, or a revocation of a code of practice has no force or effect until it has been approved by the Minister.
- (2) The Minister must not approve any code, amendment, or revocation, unless—
  - (a) at least 28 days have passed since the publication in the *Gazette* of a notice of the intention of WorkSafe to apply for approval; and
  - (b) the Minister has consulted any persons that will be affected by the code, amendment, or revocation (or representatives of those persons), and they have had the opportunity to consider its possible effects and to comment on the effects to the Minister; and
  - (c) the Minister has considered any comments made to the Minister concerning the effects.
- (3) However, the Minister may approve a code, amendment, or revocation without complying with the requirements of subsection (2)(a) or (b) if the Minister is satisfied that sufficient consultation has already taken place in respect of the matters in the code, amendment, or revocation.
- (4) When the Minister approves a code, amendment, or revocation, the Minister must—
  - (a) publish a notice of the approval in the *Gazette*; and
  - (b) show the date of the approval on the code, amendment, or revocation and publish it in any manner the Minister thinks fit.
- (5) The fact that the Minister has published a notice of approval in the *Gazette* under subsection (4)(a) is conclusive proof that the requirements of this section have been complied with in respect of the approval.

Section 20A: inserted, on 16 December 2013, by section 12 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

**20B Court may have regard to code**

- (1) A court may, in determining whether or not a person charged with failing to comply with any provision of this Act has complied with the provision, have regard to any approved code of practice that—
  - (a) was in force at the time of the alleged failure; and
  - (b) in the form in which it was then in force, related to matters of a kind to which the provision relates.
- (2) In any proceedings, a document purporting to be an approved code of practice, or an amendment of an approved code of practice, issued by WorkSafe is, in the absence of proof to the contrary, deemed to be an approved code of practice or an amendment of an approved code of practice.
- (3) Subsection (2) does not affect any other method of proof of an approved code of practice or an amendment of an approved code of practice.

Section 20B: inserted, on 16 December 2013, by section 12 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **20C Codes to be made available**

- (1) WorkSafe must ensure that every approved code of practice is, at all reasonable times, made available to the public for inspection free of charge—
  - (a) in hard copy at every office of WorkSafe; and
  - (b) on an Internet site maintained by, or on behalf of, WorkSafe.
- (2) WorkSafe may charge any person a reasonable fee for—
  - (a) providing the person with a hard copy of an approved code of practice; or
  - (b) allowing the person to use equipment under WorkSafe's control to copy all or any part of an approved code of practice.
- (3) Nothing in this section requires WorkSafe to allow any person to use equipment under WorkSafe's control to copy all or any part of an approved code of practice.

Section 20C: inserted, on 16 December 2013, by section 12 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### *Competencies in mining industry*

Heading: inserted, on 16 December 2013, by section 12 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **20D New Zealand Mining Board of Examiners**

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

Section 20D: inserted, on 16 December 2013, by section 12 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **20E Functions of Board**

The Board has the following functions:

- (a) to advise WorkSafe on competency requirements for mine workers:
- (b) to examine applicants, or have applicants examined, for certificates of competence:
- (c) to issue, renew, cancel, and suspend certificates of competence:
- (d) any other function relating to training and competency requirements for participants in the extractives industry conferred on the Board by regulations made under this Act.

Section 20E: inserted, on 16 December 2013, by section 12 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **20F Membership of Board**

- (1) WorkSafe may at any time appoint a member of the Board.

- (2) The appointment of a member of the board must be for a specified period.
- (3) WorkSafe must appoint one of the members of the Board as the chairperson of the board.
- (4) When appointing a member of the Board, WorkSafe must have regard to the need to ensure that the Board has among its members knowledge and experience of—
  - (a) mining operations:
  - (b) health and safety inspection in the mining industry:
  - (c) mining education:
  - (d) mining industry training.
- (5) Without limiting subsection (4), the Board may include 1 or more employees of WorkSafe.
- (6) A member of the board may resign by notice in writing to WorkSafe.
- (7) Clause 15 of Schedule 5 of the Crown Entities Act 2004 (**Schedule 5**) applies to the members of the Board as if they were members of a committee appointed under clause 14 of Schedule 5 by the board of a Crown entity.

Section 20F: inserted, on 16 December 2013, by section 12 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### **20G Proceedings of Board**

The Board may determine its own procedure.

Section 20G: inserted, on 16 December 2013, by section 12 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### **20H Board levy**

- (1) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, make regulations imposing a levy on mine operators to fund the direct and indirect costs incurred by the Board in performing the Board's functions to the extent they relate to mining operations.
- (2) The regulations must—
  - (a) specify how the levy rate or rates are calculated:
  - (b) specify the mine operators or classes of mine operators responsible for paying the levy:
  - (c) specify, if the levy is to be paid at different rates, the mine operators, mining operations, thing being extracted, or other things or the classes of mine operators, mining operations, thing being extracted, or other things to which the different rates apply:
  - (d) specify when and how the levy is to be paid:
  - (e) specify the persons or classes of persons, if any, exempt from paying the levy.



- (3) Without limiting subsections (1) and (2), the regulations may—
- (a) specify the returns to be made to WorkSafe or some other person or body for the purpose of enabling or assisting the determination of amounts of levy payable:
  - (b) specify the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for paying the levy:
  - (c) for the purpose of ascertaining whether the regulations are being complied with,—
    - (i) require the keeping of accounts, statements, and records of a specified class or description by either or both of WorkSafe and the persons responsible for paying the levy; and
    - (ii) require the retention of the accounts, statements, and records for a specified period:
  - (d) provide for the establishment of a dispute resolution process for disputes relating to levies, including—
    - (i) the appointment of persons to resolve the disputes; and
    - (ii) the procedures to be followed by the persons; and
    - (iii) the remuneration of the persons.
- (4) Before making a recommendation under this section, the Minister must—
- (a) receive advice from WorkSafe on the proposed levy; and
  - (b) consult the people responsible for paying the proposed levy.

Section 20H: inserted, on 16 December 2013, by section 12 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### *Regulations*

## **21 Regulations**

- (1) Subject to subsection (2), the Governor-General may from time to time, on the recommendation of the Minister, by Order in Council, make regulations—
- (a) imposing duties relating to the health or safety of employees or other people on all or any of the following:
    - (i) employers, and other persons who or that control places of work:
    - (ii) employees:
    - (iii) designers, manufacturers, sellers, and suppliers, of plant, substances, protective clothing, or protective equipment:
    - (iv) principals, or self-employed persons:
  - (b) without limiting paragraph (a), imposing duties relating to the health or safety of mine workers on—
    - (i) mine operators:

- (ii) mine workers:
  - (iii) site senior executives:
  - (c) the default worker participation system for the purpose of section 19U:
  - (d) the requirements for conducting elections of site health and safety representatives for the purpose of section 19V(1):
  - (e) the form of the identity card to be held by an industry health and safety representative:
  - (f) prescribing the information to be provided to WorkSafe for the purpose of section 19ZV(b) and any requirements concerning the authentication of any photograph provided under that section:
  - (g) prescribing the information to be contained in the register kept under section 19ZZB:
  - (h) prescribing functions of the New Zealand Mining Board of Examiners for the purpose of section 20E(d):
  - (i) providing for any other matters contemplated by this Act and necessary for its administration or necessary for giving it full effect.
- (2) The Minister shall not recommend the making of any regulations without first consulting all persons and organisations the Minister thinks appropriate, having regard to the regulations' content.
- (3) The Minister, before recommending the making of any regulations relating to hazardous substances or new organisms, must consult the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011 about the contents of such regulations, and shall take into account any submissions made by that Authority.

Section 21(1)(a)(iv): added, on 5 May 2003, by section 15 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 21(1)(b): replaced, on 16 December 2013, by section 13 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 21(1)(c): inserted, on 16 December 2013, by section 13 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 21(1)(d): inserted, on 16 December 2013, by section 13 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 21(1)(e): inserted, on 16 December 2013, by section 13 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 21(1)(f): inserted, on 16 December 2013, by section 13 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 21(1)(g): inserted, on 16 December 2013, by section 13 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 21(1)(h): inserted, on 16 December 2013, by section 13 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 21(1)(i): inserted, on 16 December 2013, by section 13 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 21(3): brought into force for all other purposes, on 2 July 2001, by clause 2 of the Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

Section 21(3): added for those items relating to new organisms, on 29 July 1998, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

Section 21(3): amended, on 1 July 2011, by section 53(1) of the Environmental Protection Authority Act 2011 (2011 No 14).

## **22 Application of regulations**

- (1) Regulations under section 21(1)(a) may impose duties—
  - (a) on all employers or other persons who or that control places of work:
  - (b) on employers, or other persons who or that control places of work, of a particular kind or description:
  - (c) on all employees:
  - (d) on employees of a particular kind or description:
  - (e) on all manufacturers, sellers, or suppliers of plant, substances, protective clothing, or protective equipment:
  - (f) on manufacturers, sellers, or suppliers of plant, substances, protective clothing, or protective equipment, of a particular kind or description:
  - (g) on manufacturers, sellers, or suppliers, of a particular kind or description, of plant, substances, protective clothing, or protective equipment:
  - (h) in respect of places of work, plant, processes, activities, or substances, of all kinds and descriptions:
  - (i) in respect of places of work, plant, processes, activities, or substances, of a particular kind or description.
- (2) Regulations under section 21(1)(b) may impose duties—
  - (a) on all mine operators:
  - (b) on mine operators of a particular kind or description:
  - (c) on all site senior executives:
  - (d) on site senior executives of a particular kind or description:
  - (e) on all mine workers:
  - (f) on mine workers of a particular kind or description:
  - (g) in relation to all mining operations:
  - (h) in relation to mining operations of a particular class or description.

Section 22(2): inserted, on 16 December 2013, by section 14 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

## **23 Other provisions relating to regulations**

- (1) Regulations made under section 21(1)(a) or (b) may provide for all or any of the following matters:
  - (a) the registration, licensing, or certification of plant, and places of work:

- (b) the recording, notification, and investigation of the occurrence in places of work of events that (whether or not any person was in fact harmed) might have caused any person serious harm:
  - (c) the notification of the use of plant, places of work, substances, or work, of a particular kind:
  - (d) the notification of the use of plant, places of work, or substances in a particular manner or for a particular purpose:
  - (e) persons engaged in particular work or activities to hold, or employ people holding, certificates of competence or registration:
  - (ea) the competency requirements to be met by site health and safety representatives and industry health and safety representatives:
  - (f) the issue, renewal, cancellation, and suspension of certificates of competence, and the examination of applicants for certificates of competence:
  - (fa) the prescribing by WorkSafe, by notice in the *Gazette*, of—
    - (i) requirements to be met for the granting of certificates of competence:
    - (ii) other competency requirements for mine workers, site senior executives, site health and safety representatives, and industry health and safety representatives:
  - (g) the recognition and withdrawal of recognition of organisations issuing certificates empowering other organisations, and individuals, to undertake functions and tasks:
  - (h) the issue, renewal, cancellation, and suspension by recognised organisations of certificates empowering other organisations, and individuals, to undertake functions and tasks:
  - (i) the undertaking of functions and tasks by the holders of certificates issued by recognised organisations:
  - (j) the payment of fees in respect of—
    - (i) matters provided for in this Act; and
    - (ii) acts performed and services provided under this Act:
  - (k) the granting of exemption from any obligation or requirement under the regulations:
  - (l) the approval, and withdrawal of approval, of testing institutions:
  - (m) the procedures of inquiries under section 27:
  - (n) the provision of accommodation for employees, contractors, subcontractors, or employees of contractors or subcontractors.
- (2) Regulations made under section 21(1)(a) or (b) may incorporate by reference all or any part of any—
- (a) New Zealand Standard:

- (b) standard, requirement, recommended practice, rule, statute, or regulation, of any foreign government or organisation:
  - (c) document published by or by the authority of the Government of New Zealand.
- (3) Any material incorporated in regulations by reference shall be deemed for all purposes to form part of the regulations; but any amendment made to the material after the commencement of the regulations shall not have effect until regulations have been made incorporating the amendment into the regulations.
- (4) A copy of all material incorporated in regulations by reference shall be made available at the Head Office of the department for inspection by the public free of charge.
- (5) Regulations made under section 21(1)(a) or (b) may impose prohibitions.
- (6) Regulations made under section 21(1)(a) or (b) may apply differently to people of a differing age or health status, and may apply only to people of a particular age or health status.
- (7) The fact that any provision of any regulations made under this Act contains an example does not limit or affect the generality of any other provision of those regulations.

Section 23(1): amended, on 16 December 2013, by section 15(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 23(1)(ea): inserted, on 16 December 2013, by section 15(2) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 23(1)(fa): inserted, on 16 December 2013, by section 15(3) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 23(2): amended, on 16 December 2013, by section 15(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 23(5): amended, on 16 December 2013, by section 15(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 23(6): amended, on 16 December 2013, by section 15(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

## **24 Saving of regulations made under certain repealed enactments**

Regulations that—

- (a) were made under an enactment repealed by this Act (whether alone or in conjunction with any other enactment or enactments); and
- (b) have not been revoked by this Act,—

may be amended or revoked by regulations made under this Act; but until so revoked shall continue in force as if that enactment had not been repealed.

## Part 4

### General provisions

#### *Accidents*

#### **25 Recording and notification of accidents and serious harm**

- (1) Every employer shall maintain (in the prescribed form) a register of accidents and serious harm; and shall record in the register the prescribed particulars relating to—
- (a) every accident that harmed (or, as the case may be, might have harmed)—
    - (i) any employee at work; or
    - (ii) any person in a place of work controlled by the employer; and
  - (b) every occurrence of serious harm to an employee at work, or as a result of any hazard to which the employee was exposed while at work, in the employment of the employer.
- (1A) Every self-employed person must maintain (in the prescribed form) a register of accidents and serious harm, and must record in the register the prescribed particulars relating to—
- (a) every accident that harmed (or, as the case may be, might have harmed) the self-employed person at work; and
  - (b) every accident resulting from the work of the self-employed person that harmed (or, as the case may be, might have harmed) any person; and
  - (c) every occurrence of serious harm to the self-employed person—
    - (i) while at work; or
    - (ii) as a result of any hazard to which the self-employed person was exposed while at work.
- (1B) Every principal must maintain (in the prescribed form) a register of accidents and serious harm, and must record in the register the prescribed particulars relating to—
- (a) every accident that the principal becomes aware of that harmed (or, as the case may be, might have harmed) a self-employed person while at work and contracted to the principal; and
  - (b) every accident that the principal becomes aware of—
    - (i) resulting from the work of a self-employed person while at work and contracted to the principal; and
    - (ii) that harmed (or, as the case may be, might have harmed) any person; and
  - (c) every occurrence of serious harm to a self-employed person—

- (i) while at work and contracted to the principal, or
  - (ii) as a result of any hazard to which the self-employed person was exposed while at work and contracted to the principal.
- (1C) Subsection (1B) does not require the occupier of a home to maintain a register or record accidents or serious harm that occur to self-employed persons at work in the home.
- (2) Subsection (3) applies to—
  - (a) serious harm in respect of which an employer, self-employed person, or principal is required by this section to record particulars; and
  - (b) accidents of a kind or description required by regulations made under section 21 to be notified to WorkSafe.
- (3) If there occurs any serious harm or accident to which this subsection applies, the employer, self-employed person, or principal concerned must,—
  - (a) as soon as possible after the occurrence becomes known to the employer, self-employed person, or principal, notify WorkSafe of the occurrence; and
  - (b) within 7 days after the occurrence, or, if the occurrence is not known to the employer, self-employed person, or principal within that period, as soon as possible after it becomes known, give WorkSafe written notice, in the prescribed manner, of the circumstances of the occurrence.
- (4) Notification of an accident in accordance with either or both of the following provisions is compliance with subsection (3)(a):
  - (a) section 17(3) of the Gas Act 1992:
  - (b) section 16(3) of the Electricity Act 1992.

Section 25(1A): inserted, on 5 May 2003, by section 16(1) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 25(1B): inserted, on 5 May 2003, by section 16(1) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 25(1C): inserted, on 5 May 2003, by section 16(1) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 25(2)(a): amended, on 5 May 2003, by section 16(2) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 25(2)(b): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 25(3): substituted, on 5 May 2003, by section 16(3) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 25(3)(a): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 25(3)(b): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 25(4): added, on 5 December 2006, by section 4 of the Health and Safety in Employment Amendment Act 2006 (2006 No 72).

**25A Transfer of accident information**

- (1) If WorkSafe is notified of an accident under section 25 and the accident relates to a specified matter, WorkSafe must provide the notice and any particulars that WorkSafe has received to the Secretary.
- (2) In this section, **specified matter** means a matter that is specified in a *Gazette* notice under section 5A(2) of the Electricity Act 1992 or section 6A(2) of the Gas Act 1992.

Section 25A: replaced, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

**26 No interference at accident scene**

- (1) Where a person is seriously harmed while at work, no person shall, unless authorised to do so by an inspector, remove or in any way interfere with or disturb any wreckage, article, or thing related to the incident except to the extent necessary—
  - (a) to save the life of, prevent harm to, or relieve the suffering of, any person; or
  - (b) to maintain the access of the general public to an essential service or utility; or
  - (c) to prevent serious damage to or serious loss of property.
- (2) Subsection (1) does not apply where a person is seriously harmed by—
  - (a) an accident involving a motor vehicle on a public highway; or
  - (b) an accident being investigated under Part 8 of the Shipping and Seamen Act 1952, the Armed Forces Discipline Act 1971, the Civil Aviation Act 1990, the Transport Accident Investigation Commission Act 1990, the Electricity Act 1992, or the Gas Act 1992; or
  - (c) an accident being investigated by a constable.

Section 26(2)(b): amended, on 1 April 1993, by section 173(2) of the Electricity Act 1992 (1992 No 122).

Section 26(2)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**27 Inquiry into cause of accident**

- (1) If an accident happens at any place of work, or if any person is seriously harmed while at work, the Minister may, after consultation with the Minister of the Crown who is responsible for the Ministry of Justice, direct an inquiry to be held before a District Court Judge.
- (2) To assist the Judge, the Minister may appoint 2 or more people with skills or knowledge relevant to the subject matter of the inquiry.
- (3) The Judge may hold the inquiry at any times and places the Judge appoints, and shall report on the cause of the accident to the Minister.



- (4) The Judge has all the powers of a Commission of Inquiry under the Commissions of Inquiry Act 1908; and subject to subsections (2) and (3), that Act shall apply accordingly.
- (5) Nothing in subsection (1) applies to an accident or occurrence that is being (or has been) investigated under the Armed Forces Discipline Act 1971.

Section 27(1): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 27(1): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

## **28 Coroner may call for report on fatal accident**

If so requested by a coroner, an inspector shall give the coroner a written report on the circumstances of any fatal accident that occurred at a place of work.

### *Right of employees to refuse to perform work likely to cause serious harm*

Heading: inserted, on 5 May 2003, by section 17 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

## **28A Employees may refuse to perform work likely to cause serious harm**

- (1) An employee may refuse to do work if the employee believes that the work that the employee is required to perform is likely to cause serious harm to him or her.
- (2) An employee who, under subsection (1), is refusing to do work may continue to refuse to do the work if—
  - (a) the employee attempts to resolve the matter with the employer as soon as practicable after first refusing to do the work; and
  - (b) the matter is not resolved; and
  - (c) the employee believes on reasonable grounds that the work is likely to cause serious harm to him or her.
- (3) Without limiting subsection (2)(c), reasonable grounds exist for the purpose of that paragraph if a health and safety representative has advised the employee that the work that the employee is required to perform is likely to cause serious harm to the employee.
- (4) A health and safety representative must not give advice under subsection (3) unless he or she has reasonable grounds for believing that the work that the employee is required to perform is likely to cause serious harm to the employee.
- (5) An employee may not refuse to do work that, because of its nature, inherently or usually carries an understood risk of serious harm unless the risk has materially increased beyond the understood risk.
- (6) An employee who refuses to do work must do any other work within the scope of the employee's employment agreement that the employer reasonably requests.

- (7) This section does not limit an employee's right to refuse to do work under another enactment or the general law.
- (8) To avoid doubt—
- (a) in situations to which this section applies, the employer, employee, and health and safety representative must deal with each other in good faith; and
  - (b) a question about the application of this section to a particular situation is an employment relationship problem for the purposes of the Employment Relations Act 2000.
- (9) Subsection (8)(b) does not apply to members of the Armed Forces.

Section 28A: inserted, on 5 May 2003, by section 17 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

#### *Enforcement by other agencies*

Heading: inserted, on 5 May 2003, by section 17 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

### **28B Enforcement by other agencies**

- (1) The Prime Minister may, having regard to the specialist knowledge of relevant agencies, by notice in the *Gazette*, designate an agency to administer this Act for a particular industry, sector, or type of work.
- (2) In carrying out functions under this Act, the chief executive of the agency must comply with policy directions on occupational safety and health given to him or her and signed by the Minister and the Minister responsible for that agency.
- (3) A copy of the policy direction must be presented to the House of Representatives within 10 working days after the date that it is given to the chief executive.
- (4) This Act applies as if references to WorkSafe were references to the chief executive of the agency.
- (5) In this section,—
 

**agency** means—

  - (a) a government department;
  - (b) a Crown entity within the meaning of section 2(1) of the Public Finance Act 1989;
  - (c) the New Zealand Police;
  - (d) the New Zealand Defence Force

**chief executive** includes the Commissioner of Police and the Chief of Defence Force.

Section 28B: inserted, on 5 May 2003, by section 17 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 28B(4): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

### *Inspectors*

#### **29 Inspectors**

- (1) WorkSafe may appoint any person who has passed the prescribed examinations or acquired the prescribed experience to be a health and safety inspector for the purposes of this Act.
- (2) An inspector shall perform and exercise the functions and powers of an inspector subject to the directions and conditions (if any) for the time being imposed by WorkSafe.
- (3) Every inspector shall have a certificate of appointment, in a form approved by WorkSafe.

Section 29(1): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 29(2): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 29(3): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

#### **30 Functions of inspectors**

The functions of an inspector are—

- (a) to help employers, employees, and other persons to improve safety at places of work, and the safety of people at work, by providing information and education; and
- (b) to ascertain whether or not this Act has been, is being, or is likely to be complied with; and
- (c) to take all reasonable steps to ensure that this Act is being complied with; and
- (d) all other functions conferred on inspectors by this Act or any other enactment.

Section 30(b): amended, on 5 May 2003, by section 18 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

#### **31 Powers of entry and inspection**

- (1) For the purpose of performing any function as an inspector, any inspector may at any reasonable time enter any place of work and—
  - (a) conduct examinations, tests, inquiries, and inspections, or direct the employer or any other person who or that controls the place of work, to conduct examinations, tests, inquiries, or inspections:

- (b) be accompanied and assisted by any other people and bring into the place of work any equipment necessary to carry out the inspector's functions:
  - (c) take photographs and measurements and make sketches and recordings:
  - (d) require the employer, or any other person who or that controls the place of work, to ensure that the place of work or any place or thing in the place of work specified by the inspector is not disturbed for a reasonable period pending any examination, test, inquiry, or inspection:
  - (e) require the employer, or any other person who or that controls the place of work, to produce documents or information relating to the place of work or the employees who work there and permit the inspector to examine and make copies or extracts of the documents and information:
  - (f) require the employer, or any other person who or that controls the place of work, to make or provide statements, in any form and manner the inspector specifies, about conditions, material, or equipment that affect the safety or health of employees who work there.
- (1A) An inspector may do any of the things referred to in subsection (1), whether or not—
- (a) the inspector or the person whom the inspector is dealing with is in the place of work; or
  - (b) the place of work is still a place of work; or
  - (c) the employer's employees work in the place of work; or
  - (d) the person who was in control of the place of work is still in control of it; or
  - (e) the employer's employees are still employed by the employer; or
  - (f) in respect of a document or information, the document or information is—
    - (i) in the place of work; or
    - (ii) in the place where the inspector is; or
    - (iii) in another place.
- (2) Notwithstanding subsection (1) or subsection (1A), an inspector shall not enter a place of work—
- (a) that is, or is within, a home; or
  - (b) through a home,—
- except with the consent of an occupier or pursuant to a warrant issued under subsection (3).
- (3) A District Court Judge who, on application made on oath, is satisfied that there is reasonable ground for believing that a home—
- (a) is a place of work or has a place of work inside it; or

- (b) is the only practicable means through which a place of work may be entered,—  
may issue to an inspector named in it a warrant to enter any part of the home that is, or is the only practicable means through which the inspector may enter, the place of work.
- (4) Notwithstanding subsection (1), an inspector shall not enter a defence area (within the meaning of section 2(1) of the Defence Act 1990) except in accordance with a written agreement between WorkSafe and the Chief of Defence Force entered into for the purposes of this section and for the time being in force.
- (5) Notwithstanding subsection (1)(e), if all or any part of a document, or of any information, relates to any person's health status and identifies the person, no inspector shall, without the person's consent,—
- (a) require any person to produce; or
  - (b) examine; or
  - (c) make any copy or extract from,—  
the document or information (or that part of the document or information).
- (6) No person is required on examination or inquiry under this section to give any answer or information tending to incriminate the person.
- (7) In this section, a reference to an employee includes any mine worker and a reference to an employer includes any mine operator.

Section 31(1A): inserted, on 5 May 2003, by section 19(1) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 31(2): amended, on 5 May 2003, by section 19(2) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 31(4): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 31(7): inserted, on 16 December 2013, by section 16 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

## **32 Inspectors to prove identity**

- (1) Every inspector who enters any place of work under the authority of this Act shall, on first entering and, if requested, at any later time, produce to the person apparently in charge the inspector's certificate of appointment.
- (2) Where an inspector enters any place of work under the authority of this Act and is unable, despite reasonable efforts, to find any person apparently in charge, the inspector shall before leaving the place of work leave a written notice stating—
- (a) the inspector's identity; and
  - (b) the address of a place where the inspector may be contacted; and
  - (c) the date and time of entry; and

- (d) the inspector's reasons for entering.

### **33 Powers to take samples and other objects and things**

- (1) An inspector who enters a place of work or a former place of work under section 31 may take or remove a sample of a substance or thing for analysis, or seize and retain any material, substance, or thing, for the purpose of—
  - (a) monitoring conditions in the place; or
  - (b) determining the nature of any material or substance in the place; or
  - (c) determining whether or not this Act has been, is being, or is likely to be complied with; or
  - (d) gathering evidence to support the taking of enforcement action.
- (2) Where an inspector removes or retains a sample, material, substance, or thing under subsection (1), the following provisions shall apply:
  - (a) as soon as it is reasonable after removing or retaining it, the inspector shall give the employer or other person apparently in charge of the place of work concerned written notice of—
    - (i) what has been (or is being) removed or retained; and
    - (ii) why it has been (or is being) removed or retained; and
    - (iii) where it will be kept in the meantime:
  - (b) subject to paragraph (c), within 7 days of removing or retaining it, the inspector shall give the employer or other person apparently in charge of the place of work concerned written notice of whether the inspector intends to return it or destroy it:
  - (c) where it is practicable to do so the sample, material, substance, or thing shall be returned to its owner—
    - (i) when it is no longer required for any purpose under this Act (or any other enactment); or
    - (ii) if a court earlier orders its return.
- (3) This section does not allow an inspector to take a sample from a person's body unless the inspector has that person's informed consent to the taking of the sample.
- (4) In this section, a reference to an employer includes any mine operator.

Section 33(1): substituted, on 5 May 2003, by section 20(1) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 33(3): added, on 5 May 2003, by section 20(2) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 33(4): inserted, on 16 December 2013, by section 17 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

*Health and safety medical practitioners*

Heading: replaced, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

**34 Appointment of health and safety medical practitioners**

- (1) WorkSafe may appoint any medical practitioner to be a health and safety medical practitioner.
- (2) A health and safety medical practitioner shall exercise the powers of a health and safety medical practitioner subject to the directions and conditions (if any) for the time being imposed by WorkSafe.
- (3) Every health and safety medical practitioner shall have a certificate of appointment, in a form approved by WorkSafe.
- (4) A health and safety medical practitioner ceases to be a health and safety medical practitioner on ceasing to be a medical practitioner.

Section 34 heading: amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 34(1): replaced, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 34(2): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 34(3): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 34(4): substituted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 34(4): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

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

For the purposes of this Act, any health and safety medical practitioner may at any reasonable time enter any place of work and do anything specified in any of paragraphs (a), (b), (c), and (e) of section 31(1) as if the health and safety medical practitioner is an inspector; and subsections (2) to (4), and (6) of section 31, and section 32 shall have effect accordingly.

Section 35 heading: amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 35: amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

**36 Health and safety medical practitioners may require medical examinations of employees**

If satisfied that—

- (a) any employee is, has been, or may have been, exposed to a significant hazard while at work; and

- (b) by examining the employee or causing a sample taken from the employee to be tested or analysed, it is likely to be possible to determine—
- (i) whether or not the employee is or has been exposed to the hazard; or
  - (ii) the extent to which the employee is or has been exposed to the hazard; or
  - (iii) the extent to which the employee's health has been or may have been affected by exposure to the hazard,—

a health and safety medical practitioner may, by notice in writing to the employee, require the employee—

- (c) to—
- (i) be examined by a medical practitioner; and
  - (ii) provide to the health and safety medical practitioner a certificate from the medical practitioner as to the employee's fitness for work; or
- (d) to—
- (i) allow a person (or person of a kind) specified in the notice to take from the employee a sample of a kind specified in the notice; and
  - (ii) have the sample tested or analysed by a person (or person of a kind) specified in the notice in a manner specified in the notice; and
  - (iii) provide the health and safety medical practitioner with a written report from the person who tests or analyses the sample on the results of the tests and analyses done; or
- (e) both.

Section 36 heading: amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 36: amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 36(c)(i): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 36(c)(ii): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 36(c)(ii): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 36(d)(iii): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

### **37 Health and safety medical practitioners may suspend employees in certain cases**

- (1) If satisfied on reasonable grounds that—
- (a) an employee—



- (i) is, has been, or may have been, exposed to a significant hazard while at work; and
- (ii) has failed or refused, without reasonable cause, to comply with a notice under section 36; or
- (b) an employee has been so harmed by exposure to a significant hazard while at work that the employee should not continue to be exposed to the hazard,—  
the health and safety medical practitioner may, by written notice to the employee (a copy of which the health and safety medical practitioner shall give to the employer),—
  - (c) require the employee to cease doing anything specified in the notice that, in the health and safety medical practitioner's opinion, constitutes, causes, or enhances the employee's exposure to the hazard; and
  - (d) require the employer to ensure that the employee ceases doing the thing or things specified in the notice.
- (2) Every employee and employer shall comply with a suspension notice.

Section 37 heading: amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 37(1): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 37(1)(c): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

### **38 Administrative provisions**

Sections 44 to 48, 57, and 58 shall have effect in relation to health and safety medical practitioners and suspension notices as if—

- (a) every reference to an inspector is a reference to a health and safety medical practitioner; and
- (b) every reference to a notice is a reference to a suspension notice.

Section 38: amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 38(a): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

#### *Improvement and prohibition notices*

### **39 Inspectors may issue improvement notices**

- (1) An inspector who believes on reasonable grounds that any person is failing to comply with any provision of this Act may give the person written notice to comply with the provision.
- (2) An inspector who believes that—
  - (a) any person has failed to comply with any provision of this Act; and

- (b) the failure (or a similar failure) is likely to occur again,—  
may give the person written notice to comply with the provision.
- (3) An improvement notice shall state that the inspector concerned believes that the person to whom or which it relates is failing, or has failed and is likely to fail again, to comply with a provision of this Act, and shall specify—
  - (a) the provision; and
  - (b) the inspector's reasons for believing that the person is failing, or has failed and is likely to fail again, to comply with it; and
  - (c) the nature of the failure or likely failure; and
  - (d) a day before which compliance is to be completed.
- (4) An improvement notice may specify steps that could be taken to ensure compliance with the provision concerned.
- (5) Every person to whom or to which an improvement notice is given or posted shall comply with it.

#### **39A Inspectors may issue improvement notices in relation to mining operation**

- (1) An inspector may, in relation to a mining operation, give a person written notice to comply with a provision of this Act or of regulations made under this Act, if the inspector believes on reasonable grounds that the person is failing to comply with that provision or is likely to fail to comply with that provision.
- (2) An improvement notice must state that the inspector concerned believes that the person to whom or which it relates is failing, or is likely to fail, to comply with the provision, and must specify—
  - (a) the provision; and
  - (b) the inspector's reasons for believing that the person is failing, or is likely to fail, to comply with the provision; and
  - (c) the nature of the failure or likely failure; and
  - (d) a day before which compliance is to be completed.
- (3) An improvement notice may specify steps that could be taken to ensure compliance with the provision concerned.
- (4) Every person to whom or to which an improvement notice is given or posted must comply with it.
- (5) Nothing in this section limits the power of an inspector under section 39.

Section 39A: inserted, on 16 December 2013, by section 18 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### **40 How improvement notices to be given**

- (1) An improvement notice may be—
  - (a) given to a person to whom or which it relates; or

- (b) given to a person apparently in charge of any activity, building, place of work, plant, process, situation, structure, or substance to which the provision of this Act that the inspector believes has not been complied with applies; or
  - (c) posted to any such person by registered letter.
- (2) An improvement notice posted under subsection (1)(c) shall be deemed to have been received on the seventh day after it was posted.

#### **41 Inspectors may issue prohibition notices**

- (1) An inspector who believes that, by virtue of a failure to comply with a provision of this Act, there is a likelihood of serious harm to any person may give written notice to stop the carrying on, continuing, operating, storing, transporting, or use of the activity, building, place of work, plant, process, situation, structure, or substance, that the inspector believes to constitute the hazard that is likely to cause the harm concerned until an inspector is satisfied that measures sufficient to eliminate the hazard, or minimise the likelihood that the hazard will be a source of harm, have been taken.
- (2) A prohibition notice shall specify—
- (a) the hazard to which it relates; and
  - (b) the inspector's reasons for believing that it is likely to cause the harm concerned.
- (3) A prohibition notice may require the withdrawal of all employees of a specified kind or description except such employees as may be necessary to deal with the hazard.
- (4) A prohibition notice may specify steps that could be taken to eliminate the hazard concerned or minimise the likelihood that the hazard will be a source of harm.

#### **41A Inspectors may issue prohibition notices in relation to mining operation**

- (1) This section applies if, in relation to a mining operation,—
- (a) an inspector believes that there is a likelihood of serious harm to any person because of a failure to comply with any provision of this Act or of regulations made under this Act; or
  - (b) an inspector believes on reasonable grounds that it is likely that a person will fail to comply with any provision of this Act or of regulations made under this Act and that failure would be likely to cause serious harm to any person.
- (2) The inspector may give written notice to stop, or not start, the carrying on, continuing, operating, storing, transporting, or use of the activity, building, place of work, plant, process, situation, structure, or substance, that the inspector believes to constitute the hazard that is likely to cause serious harm until an in-

spector is satisfied that measures sufficient to eliminate the hazard, or minimise the likelihood that the hazard will be a source of harm, have been taken.

- (3) A prohibition notice must specify—
  - (a) the hazard to which it relates; and
  - (b) the inspector's reasons for believing that the hazard is likely to cause serious harm.
- (4) A prohibition notice may require the withdrawal of all mine workers of a specified kind or description except such mine workers as may be necessary to deal with the hazard.
- (5) A prohibition notice may specify steps that could be taken to eliminate the hazard or minimise the likelihood that the hazard will be a source of harm.
- (6) Nothing in this section limits the power of an inspector under section 41.

Section 41A: inserted, on 16 December 2013, by section 19 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### **42 Service of prohibition notices**

- (1) The inspector who gives a prohibition notice under section 41 shall fix it to or near the part of the place of work or plant to which it relates; and no person shall remove it unless authorised by an inspector.
- (2) The inspector shall give a copy of the notice under section 41 to any person apparently in charge of the activity, building, place of work, plant, process, situation, structure, or substance, that the inspector believes to constitute the hazard that has caused or is likely to cause the harm concerned.
- (3) An inspector who gives a prohibition notice under section 41A may—
  - (a) fix the notice to or near the part of the place of work or plant to which it relates and give a copy of it to the site senior executive, or another representative of the mine operator, on behalf of the mine operator; or
  - (b) give the notice to the site senior executive, or another representative of the mine operator, on behalf of the mine operator.
- (4) No person may remove a notice under section 41A served in accordance with subsection (3)(a) unless authorised by an inspector.

Section 42(1): amended, on 16 December 2013, by section 20(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 42(2): amended, on 16 December 2013, by section 20(2) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 42(3): inserted, on 16 December 2013, by section 20(3) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 42(4): inserted, on 16 December 2013, by section 20(3) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### **43 Compliance with prohibition notices**

- (1) Every person to whom a prohibition notice under section 41 is given, and every person who controls a place of work or any plant to which a prohibition notice relates, shall ensure that no action is taken in contravention of it.
- (2) A mine operator to whom a prohibition notice under section 41A is given must ensure that no action is taken in contravention of it.

Section 43(1): amended, on 16 December 2013, by section 21(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 43(2): inserted, on 16 December 2013, by section 21(2) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

#### **44 How notices to be addressed**

An inspector's notice may be addressed to any person under the person's legal name or usual business name or style.

#### **45 Matters may be completed by different inspectors**

- (1) If an inspector has given any notice, authorisation, or consent under this Act (whether or not subject to conditions) any inspector may—
  - (a) take further steps on or in relation to it; or
  - (b) revoke or withdraw it; or
  - (c) from time to time vary it; or
  - (d) revoke, or from time to time vary, any condition on or subject to which it was given.
- (2) This section does not apply to an infringement notice.

Section 45(2): added, on 5 May 2003, by section 21 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

### *Appeals*

#### **46 Appeals against notices**

- (1) Any person affected by an inspector's notice or any variation of an inspector's notice may, within 14 days of its being given, appeal against it to a District Court on the grounds that it is unreasonable.
- (2) The court shall inquire into the circumstances of the notice or variation, and may vary, rescind, or confirm it.
- (3) An appeal against an inspector's notice or variation does not operate as a stay of the notice or variation.
- (4) Subsections (1) to (3) shall have effect in respect of—
  - (a) any notice given by an inspector under regulations made under this Act; and
  - (b) any failure or refusal by an inspector to give or allow an exemption, suspension, or variation provided for in regulations made under this Act,—

as if it is an inspector's notice.

### *Hazard notices*

Heading: inserted, on 5 May 2003, by section 22 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

#### **46A Trained health and safety representatives may issue hazard notices**

(1) In this section,—

**hazard notice** means a notice that—

- (a) describes a hazard identified in a place of work; and
- (b) is in the prescribed form; and
- (c) may set out suggested steps to deal with the hazard

**trained health and safety representative** means a health and safety representative who has achieved a level of competency in health and safety practice specified by the Minister by notice in the *Gazette* or who has completed an appropriate course approved under section 19G.

(2) Subsection (3) applies if a trained health and safety representative—

- (a) believes on reasonable grounds that there is a hazard in the place of work of the representative's employer; and
- (b) has brought the hazard to the attention of the employer; and
- (c) has discussed or attempted to discuss with the employer steps for dealing with the hazard.

(3) The trained health and safety representative may give the employer a hazard notice if—

- (a) the employer refuses to discuss, or take steps to deal with, the hazard; or
- (b) the employer and representative do not agree on the steps that must be taken or the time within which the steps must be taken to deal with the hazard; or
- (c) the representative believes on reasonable grounds that the employer has failed to meet the requirements of section 6 in relation to the hazard within a time agreed during the discussion.

(4) If a hazard notice has been given by a trained health and safety representative, the representative may notify an inspector of that fact.

(5) To avoid doubt, where this section applies, the employer and trained health and safety representative must deal with each other in good faith.

(6) In this section, **employer** includes a representative of the employer.

Section 46A: inserted, on 5 May 2003, by section 22 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

*Duties in respect of inspectors*

**47 Duty of assistance**

Every person on whom or which any duty is imposed by this Act—

- (a) shall at all reasonable times furnish; and
- (b) shall ensure that at all reasonable times the person's agents and employees furnish,—

the means required by any inspector for an entry, inspection, examination, inquiry, or the exercise of any other power, under this Act in relation to the duty.

**48 Obstruction, etc**

No person shall without reasonable cause—

- (a) obstruct, delay, hinder, or deceive; or
- (b) cause to be obstructed, delayed, hindered, or deceived,—

any inspector while the inspector is lawfully exercising or performing any power, function or duty under this Act.

*Offences and penalties*

**49 Offences likely to cause serious harm**

(1) Where—

- (a) a person who, knowing that any action is reasonably likely to cause serious harm to any person, takes the action; and
- (b) the action is contrary to a provision of this Act,—

the person commits an offence against this Act.

(2) Where—

- (a) a person who, knowing that failure to take any action is reasonably likely to cause serious harm to any person, fails to take the action; and
- (b) the person is required by this Act to take the action,—

the person commits an offence against this Act.

(3) Every person who commits an offence under this section is liable on conviction to—

- (a) imprisonment for a term of not more than 2 years; or
- (b) a fine of not more than \$500,000; or
- (c) both.

(4) A person charged with an offence under this section may be convicted of an offence against section 50 as if the person had been charged under that section.

Section 49(3)(a): substituted, on 5 May 2003, by section 23 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 49(3)(b): substituted, on 5 May 2003, by section 23 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

## **50 Other offences**

- (1) Every person commits an offence, and is liable on conviction to a fine not exceeding \$250,000, who fails to comply with the requirements of—
  - (a) a provision of Part 2 other than section 16(3); or
  - (b) section 19B, section 19Q(1), section 19ZN(2), section 19ZG(4), section 19ZH(3), section 19ZL, section 25, section 26, section 37(2), section 39(5), section 42(1), section 43, section 47, section 48, section 56I(2), section 58, or clause 6 of Schedule 1A; or
  - (c) a provision of any regulations made under this Act, or continued in force by section 24, declared by the regulations to be a provision to which this section applies.
- (2) Every person who fails to comply with section 16(3) commits an offence, and is liable on conviction to a fine not exceeding \$10,000.

Section 50(1): substituted, on 5 May 2003, by section 24 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 50(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 50(1)(b): amended, on 16 December 2013, by section 22 of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 50(2): added, on 18 March 1998, by section 4(2) of the Health and Safety in Employment Amendment Act 1998 (1998 No 3).

Section 50(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **51 Actions taken to prevent harm**

Notwithstanding sections 49 and 50, where any employee harms any person by taking any action necessary for the protection of that person or any other person from harm,—

- (a) the employee does not thereby commit an offence against section 19; and
- (b) the employee's employer does not thereby commit an offence against section 15.

## **51A Sentencing criteria**

- (1) This section applies when the court is determining how to sentence or otherwise deal with a person convicted of an offence under this Act.
- (2) The court must apply the Sentencing Act 2002 and must have particular regard to—
  - (a) sections 7 to 10 of that Act; and



- (b) the requirements of sections 35 and 40 of that Act relating to the financial capacity of the person to pay any fine or sentence of reparation imposed; and
  - (c) the degree of harm, if any, that has occurred; and
  - (d) the safety record of the person (which includes but is not limited to warnings and notices referred to in section 56C) to the extent that it shows whether any aggravating factor is absent; and
  - (e) whether the person has—
    - (i) pleaded guilty:
    - (ii) shown remorse for the offence and any harm caused by the offence:
    - (iii) co-operated with the authorities in relation to the investigation and prosecution of the offence:
    - (iv) taken remedial action to prevent circumstances of the kind that led to the commission of the offence occurring in the future.
- (3) This section does not limit the Sentencing Act 2002.

Section 51A: inserted, on 5 May 2003, by section 25 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

## **52 Failure to comply with section 14**

*[Repealed]*

Section 52: repealed, on 5 May 2003, by section 26 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

## **53 Proof of intention not required**

In a matter involving an infringement notice or in a prosecution for an offence against section 50, it is not necessary to prove that the defendant—

- (a) intended to take the action alleged to constitute the infringement offence or offence; or
- (b) intended not to take the action, the failure to take which is alleged to constitute the infringement offence or offence.

Section 53: substituted, on 5 May 2003, by section 27 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

## **54 Notification to WorkSafe of interest in knowing of enforcement action taken by inspector**

- (1) A person may notify WorkSafe in the prescribed manner that the person has an interest in knowing whether a particular matter has been, is, or is to be, subject to the taking of enforcement action by an inspector.
- (2) WorkSafe must ensure that the person who sent the notice is notified of—

- (a) any decision already made, or subsequently made, by an inspector as to whether or not to take enforcement action in respect of the matter, but not the reasons for the decision; and
  - (b) any information that WorkSafe is aware of relating to whether an enforcement authority has taken prosecution action as described in section 54A(2)(b).
- (3) In this section and section 54A, **enforcement authority** includes the New Zealand Police, the Civil Aviation Authority, the New Zealand Transport Agency, and Maritime New Zealand.

Section 54 heading: amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 54: substituted, on 5 May 2003, by section 27 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 54(1): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 54(2): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 54(2)(b): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 54(3): amended, on 1 August 2008, by section 50(1) of the Land Transport Management Amendment Act 2008 (2008 No 47).

Section 54(3): amended, on 1 July 2005, by section 11(3) of the Maritime Transport Amendment Act 2004 (2004 No 98).

#### **54A Filing charging document**

- (1) An inspector may file a charging document in respect of an offence under this Act unless an infringement notice has been issued to the same defendant in respect of the same matter.
- (2) A person other than an inspector may file a charging document in respect of an offence under this Act only if—
  - (a) an inspector or another person has not taken enforcement action against any possible defendant in respect of the same matter; and
  - (b) an enforcement authority has not taken prosecution action under any other Act against any possible defendant in respect of the same incident, situation, or set of circumstances; and
  - (c) any person has received notification from WorkSafe under section 54(2) that an inspector has not and will not take enforcement action against any possible defendant in respect of the same matter.
- (3) Despite subsection (2)(b), a person may file a charging document even though an enforcement authority has taken prosecution action if—
  - (a) the person has leave of the court to file the charging document; and
  - (b) subsection (2)(a) and (c) is complied with.

Section 54A: inserted, on 5 May 2003, by section 27 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 54A heading: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54A(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54A(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54A(2)(c): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 54A(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54A(3)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **54B Time limit for filing charging document**

- (1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Act ends on the date that is 6 months after the earlier of—
  - (a) the date when the incident, situation, or set of circumstances to which the offence relates first became known to an inspector; or
  - (b) the date when the incident, situation, or set of circumstances to which the offence relates should reasonably have become known to an inspector.
- (2) This section is subject to sections 54C and 54D.

Section 54B: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **54C Extension of time for person other than inspector to file charging document**

- (1) This section applies if—
  - (a) an inspector or another person has not taken enforcement action in respect of a matter; and
  - (b) WorkSafe has notified relevant persons under section 54(2)(a) that an inspector has not and will not take enforcement action against any possible defendant in respect of the matter.
- (2) On application, the District Court may extend the time for a person other than an inspector to file a charging document.
- (3) An application under subsection (2) must be made within 1 month after receiving notice from WorkSafe under subsection (1)(b).
- (4) The court must not grant an extension of time unless it is satisfied—
  - (a) that another person wishes to decide whether to file a charging document in respect of that matter; and

- (b) it is unreasonable, having regard to the time taken by an inspector to respond to the matter, to expect, or to have expected, the person to make that decision before the 6-month period referred to in section 54B expires; and
  - (c) an application under section 54D has not been made.
- (5) The court must give the following persons an opportunity to be heard:
- (a) the person seeking the extension:
  - (b) any proposed defendant:
  - (c) any other person who has an interest in whether or not a charging document should be filed, being a person described in section 54(1).

Section 54C: inserted, on 5 May 2003, by section 27 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 54C heading: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54C(1)(b): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 54C(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54C(3): amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 54C(4)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54C(5)(c): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **54D Extension of time if inspector needs longer to decide whether to file charging document**

- (1) This section applies if an inspector considers that he or she will not be able to file a charging document by the end of the 6-month period referred to in section 54B.
- (2) On application, the District Court may extend the time for filing a charging document.
- (3) An application under subsection (2) must be made within the 6-month period.
- (4) The court must not grant an extension unless it is satisfied that—
  - (a) an inspector reasonably requires longer than the 6-month period to decide whether to file a charging document; and
  - (b) the reason for requiring the longer period is that the investigation of the events and issues surrounding the alleged offence is complex or time consuming; and
  - (c) it is in the public interest in the circumstances that a charging document is able to be filed after the 6-month period expires; and

- (d) filing the charging document after the 6-month period expires will not unfairly prejudice the proposed defendant in defending the charge.
- (5) The court must give the following persons an opportunity to be heard:
  - (a) the person seeking the extension:
  - (b) the proposed defendant:
  - (c) any other person who has an interest in whether or not a charging document should be filed, being a person described in section 54(1).

Section 54D: inserted, on 5 May 2003, by section 27 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 54D heading: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54D(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54D(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54D(4)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54D(4)(c): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54D(4)(d): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 54D(5)(c): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **54E Continuing or repeated matters**

Nothing in this Act prevents the taking of enforcement action by an inspector or another person in respect of a matter, despite enforcement action having been taken in respect of the matter, if the matter is continuing or repeated.

Section 54E: inserted, on 5 May 2003, by section 27 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

#### **55 Other provisions relating to offences**

- (1) A proceeding commenced by an inspector in respect of any offence against this Act may be proceeded with and conducted by that inspector, any other inspector, or any other person permitted by the court to proceed with and conduct it.
- (2) For the purposes of subsection (1), no person shall be called on to prove that—
  - (a) the person is an inspector; or
  - (b) proceedings were commenced by an inspector.
- (3) In any proceedings for an offence against this Act in respect of a duty imposed by this Act on employers or persons who control places of work, it is enough to state the name or title under which a person who or that is ostensibly an employer or such a person is usually known or appears to carry on business; and

the court may from time to time amend the charge as to the actual name of the defendant.

- (3A) Subsection (3) is subject to section 3(2).
- (4) In addition to any penalty imposed, a court may require a person convicted of an offence against this Act to remedy any matter in respect of which the person was convicted.
- (5) An inspector may file a charging document for an offence against the Department of Labour, or any other agency designated under section 28B to administer this Act, only with the authority of the Solicitor-General.
- (6) If the Solicitor-General gives authority under subsection (5), the inspector must be represented in the proceedings by the Crown Solicitor.

Section 55(1): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 55(2)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 55(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 55(3A): inserted, on 18 October 2002, by section 26 of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Section 55(5): added, on 5 May 2003, by section 28(1) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 55(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 55(6): added, on 5 May 2003, by section 28(1) of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

## **56 Offences by bodies corporate or Crown organisations**

- (1) Where a body corporate fails to comply with a provision of this Act, any of its officers, directors, or agents who directed, authorised, assented to, acquiesced in, or participated in, the failure is a party to and guilty of the failure and is liable on conviction to the punishment provided for the offence, whether or not the body corporate has been prosecuted or convicted.
- (2) If a Crown organisation fails to comply with a provision of this Act, any of its officers, directors, agents, or employees concerned in the management of the organisation who directed, authorised, assented to, acquiesced in, or participated in the failure is a party to, and guilty of, the failure and is liable on conviction to the punishment provided for the offence, whether or not the Crown organisation has been prosecuted or convicted.

Section 56 heading: amended, on 18 October 2002, by section 27(1) of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Section 56(2): added, on 18 October 2002, by section 27(2) of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

### *Infringement offences*

Heading: inserted, on 5 May 2003, by section 29 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

#### **56A Infringement offences**

In sections 56B to 56H, an **infringement offence** means an offence described in section 50(1).

Section 56A: inserted, on 5 May 2003, by section 29 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

#### **56B Infringement notices**

- (1) An inspector may issue an infringement notice if—
  - (a) the inspector believes on reasonable grounds that the person is committing, or has committed, an infringement offence; and
  - (b) the person has had prior warning of the infringement offence under section 56C; and
  - (c) an inspector or another person has not taken enforcement action against the same defendant in respect of the same matter.
- (2) An inspector may revoke an infringement notice before the infringement fee is paid, or an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.

Section 56B: inserted, on 5 May 2003, by section 29 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

#### **56C Prior warning of infringement offence**

A person has had prior warning of an infringement offence if the person has been the subject of 1 or more of the following for an infringement offence arising out of, or relating to, the same or a similar matter:

- (a) a written warning from an inspector:
- (b) an improvement notice:
- (c) a prohibition notice:
- (d) an infringement notice:
- (e) a conviction for an offence under this Act:
- (f) a hazard notice:
- (g) a compliance order.

Section 56C: inserted, on 5 May 2003, by section 29 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

**56D Inspector may require information**

- (1) If an inspector is considering issuing to a natural person an infringement notice, the inspector may require the person to provide all or any of the following details:
  - (a) the person's full name:
  - (b) whether, in relation to the place of work, the person is 1 or more of the following:
    - (i) an employer:
    - (ii) an employee:
    - (iii) a self-employed person:
    - (iiia) a mine operator:
    - (iiib) a mine worker:
    - (iiic) a site senior executive:
    - (iv) a principal:
    - (v) a contractor:
    - (vi) a subcontractor:
    - (vii) a person who controls the place of work:
  - (c) the person's date of birth:
  - (d) the person's residential address and, if different, postal address.
- (2) If an inspector is considering issuing an infringement notice to a person that is a body corporate, the inspector may require a person who appears to represent the body corporate to provide all or any of the following details:
  - (a) the body corporate's legal name:
  - (b) whether, in relation to the place of work, the body corporate is 1 or more of the following:
    - (i) an employer:
    - (ia) a mine operator:
    - (ii) a principal:
    - (iii) a contractor:
    - (iv) a subcontractor:
    - (v) a person who controls the place of work:
  - (c) the postal address of the body corporate.

Section 56D: inserted, on 5 May 2003, by section 29 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 56D(1)(b)(iiia): inserted, on 16 December 2013, by section 23(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 56D(1)(b)(iiib): inserted, on 16 December 2013, by section 23(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).



Section 56D(1)(b)(iiic): inserted, on 16 December 2013, by section 23(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 56D(2)(b)(ia): inserted, on 16 December 2013, by section 23(2) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### **56E Procedural requirements for infringement notices**

- (1) An infringement notice may not be issued after the close of the 14th day after the inspector becomes aware of the alleged infringement offence.
- (2) An infringement notice may be served on a person—
  - (a) by delivering it personally to the person who appears to have committed the infringement offence; or
  - (b) by sending it by post, addressed to the person at the person's last known place of residence or business.
- (3) An infringement notice must be treated as having been served on the person on the date it was posted.
- (4) An infringement notice must be in the prescribed form and must contain—
  - (a) details of the alleged infringement offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged infringement offence; and
  - (b) the amount of the infringement fee; and
  - (c) an address at which the infringement fee may be paid; and
  - (d) the time within which the infringement fee must be paid; and
  - (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
  - (f) a statement that the person served with the notice has a right to request a hearing; and
  - (g) a statement of what will happen if the person served with the notice does not pay the fee and does not request a hearing; and
  - (h) any other prescribed matters.
- (5) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case,—
  - (a) reminder notices may be prescribed under regulations made under this Act; and
  - (b) in all other respects, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.

Section 56E: inserted, on 5 May 2003, by section 29 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 56E(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**56F Infringement fees**

- (1) The fee to be specified by an inspector in an infringement notice for any infringement offence except for a failure to comply with section 7(1) must be not less than \$100 and not more than \$3,000 (as a multiple of \$100).
- (2) In determining the amount of a fee under subsection (1), an inspector must take into account—
  - (a) whether or not harm resulted from the offence; and
  - (b) if harm resulted from the offence, the extent of the harm; and
  - (c) what potential harm could have resulted from the offence; and
  - (d) in the case of an employer, principal, or contractor, the size of the business of the employer, principal, or contractor; and
  - (e) the financial circumstances of the person; and
  - (f) the safety record of the person (which includes but is not limited to warnings and notices referred to in section 56C).
- (3) The fee to be specified by an inspector in an infringement notice for a failure to comply with section 7(1) must be not less than \$800 and not more than \$4,000 (as a multiple of \$100).
- (4) In determining the amount of a fee under subsection (3), an inspector must take into account—
  - (a) the size of the business of the employer; and
  - (b) the financial circumstances of the employer; and
  - (c) the safety record of the employer (which includes but is not limited to warnings and notices referred to in section 56C).

Section 56F: inserted, on 5 May 2003, by section 29 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

**56G Payment of infringement fee**

WorkSafe must pay all infringement fees received into a Crown Bank Account.

Section 56G: inserted, on 5 May 2003, by section 29 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

Section 56G: amended, on 16 December 2013, by section 22 of the WorkSafe New Zealand Act 2013 (2013 No 94).

Section 56G: amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

**56H Effect of infringement notice**

- (1) If an infringement notice is issued, a criminal record must not be created in respect of the infringement offence.
- (2) Subsection (1) does not prevent a court being told, for the purpose of sentencing a person convicted of an offence under this Act, that the person has paid, or is obliged to pay, an infringement fee for a particular infringement offence.

Section 56H: inserted, on 5 May 2003, by section 29 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

*Insurance against fines unlawful and of no effect*

Heading: inserted, on 5 May 2003, by section 29 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

**56I Insurance against fines unlawful and of no effect**

- (1) To the extent that an insurance policy or contract of insurance indemnifies or purports to indemnify a person for the person's liability to pay a fine or an infringement fee under this Act,—
  - (a) the policy or contract is of no effect; and
  - (b) no court or tribunal has jurisdiction to grant relief in respect of the policy or contract, whether under section 7 of the Illegal Contracts Act 1970 or otherwise.
- (2) A person must not—
  - (a) enter into, or offer to enter into, a policy or contract described in subsection (1); or
  - (b) indemnify, or offer to indemnify, another person for the other person's liability to pay a fine or an infringement fee under this Act; or
  - (c) be indemnified, or agree to be indemnified, by another person for that person's liability to pay a fine or an infringement fee under this Act; or
  - (d) pay to another person, or receive from another person, an indemnity for a fine or an infringement fee under this Act.
- (3) If an insurance policy or contract of insurance described in subsection (1) exists at the date of commencement of this section,—
  - (a) subsections (1) and (2)(c) and (d) apply to it from that date; and
  - (b) this section does not prevent the parties to it agreeing to the refund of an amount of the premium.

Section 56I: inserted, on 5 May 2003, by section 29 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

*Proof of notices*

**57 Proof of notices**

Every document purporting to be an inspector's notice shall be received in evidence and, in the absence of proof to the contrary, be deemed to be an inspector's notice; and in any proceedings the production of a document purporting to be certified by or on behalf of an inspector to be a true copy of an inspector's notice shall, in the absence of proof to the contrary, be sufficient evidence of the notice.

*Personation of inspectors***58 Personation of inspectors**

No person shall—

- (a) personate the inspector named in any certificate of appointment as an inspector; or
- (b) falsely pretend to be an inspector.

*Funding of administration***59 Funding**

(1) In this section,—

**the applicable Act** means the Accident Compensation Act 2001

**certain Crown costs** means the expected cost to the Crown of—

- (a) WorkSafe carrying out its functions under any enactment;
- (b) any agency designated under section 28B of this Act carrying out functions under this Act and enforcing the Hazardous Substances and New Organisms Act 1996 in places of work;
- (c) the Crown administering the relevant health and safety legislation (within the meaning of section 3 of the WorkSafe New Zealand Act 2013);
- (d) collecting the funding levy

**earner, earnings, earnings as a self-employed person, and Corporation** have the same meanings as in section 6 of the applicable Act

**funding levy** means the levy required to be paid by subsection (2)

**Work Account levy** means the levy payable under section 168, 168A, 168B, or 211 of the applicable Act.

(2) For the purpose of recovering certain Crown costs, there is payable—

- (a) by every employer, on the amount of earnings paid or deemed to have been paid by the employer to the employer's employees, a levy at a rate or rates prescribed by regulations made, on the recommendation of the Minister, under this Act; and
- (b) by every earner who has earnings as a self-employed person, on the amount of earnings as a self-employed person derived or deemed to have been derived by the earner, a levy at a rate or rates prescribed by regulations made, on the recommendation of the Minister, under this Act; and
- (c) by every shareholder-employee to whom section RD 3(2) to (4) of the Income Tax Act 2007 applies, on the amount of earnings derived or deemed to have been derived by the shareholder-employee, a levy at a rate or rates prescribed by regulations made, on the recommendation of the Minister, under this Act.

- (3) The funding levy must be added to, and is deemed part of, the Work Account levy; and—
  - (a) the funding levy is payable, collected, and remitted, and penalties are payable in respect of it, as if it were the Work Account levy; and
  - (b) the Corporation and the Commissioner of Inland Revenue have all the powers in respect of the funding levy that they have in respect of the Work Account levy; and
  - (c) the Commissioner of Inland Revenue is not required to refer separately to or account separately for, or identify, any funding levy in performing his or her functions in relation to the Work Account levy or the funding levy.
- (4) The Corporation must, by the 20th day of the month after the month in which the Corporation receives any funding levy from the Commissioner of Inland Revenue, pay that funding levy to the Secretary.
- (5) The Corporation may charge WorkSafe a fee for collecting the funding levy.
- (6) The Secretary must pay into a Crown Bank Account all of the funding levy the Corporation pays to the Secretary.
- (7) The Minister must not recommend the making of regulations for the purposes of subsection (2) without first consulting the Corporation.
- (8) Subsection (7) does not limit the generality of section 21(2).

Section 59: substituted, on 1 April 2002, by section 337(1) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49).

Section 59(1) **the applicable Act**: amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 59(1) **certain Crown costs**: inserted, on 16 December 2013, by section 24(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 59(1) **Residual Claims levy**: repealed, on 3 March 2010, by section 49 of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 59(1) **Work Account levy**: added, on 3 March 2010, by section 49 of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 59(2): amended, on 16 December 2013, by section 24(2) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 59(2)(c): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 59(3): amended, on 3 March 2010, by section 49 of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 59(3)(a): amended, on 3 March 2010, by section 49 of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 59(3)(b): amended, on 3 March 2010, by section 49 of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 59(3)(c): amended, on 3 March 2010, by section 49 of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 59(5): amended, on 16 December 2013, by section 24(3) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

Section 59(6): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

*Information provided by Accident Rehabilitation and Compensation Insurance Corporation*  
*[Repealed]*

Heading: repealed, on 1 July 1999, pursuant to section 415(1) of the Accident Insurance Act 1998 (1998 No 114).

**60 Accident Rehabilitation and Compensation Insurance Corporation may provide information**

*[Repealed]*

Section 60: repealed, on 1 July 1999, by section 415(1) of the Accident Insurance Act 1998 (1998 No 114).

*Non-compliance with other enactments*

**61 Inspectors to notify local authority**

An inspector who, in the course of the inspector's duties, discovers anything the inspector believes to be a failure to comply with any provision of any enactment relating to health or safety administered (in whole or in part) by territorial authorities shall give the appropriate territorial authority written notice of the apparent failure.

*Amendments, repeals, revocations, and savings*

**62 Consequential amendments, repeals, revocations, and savings**

- (1) The enactments specified in Schedule 3 are hereby repealed.
- (2) The enactments specified in Schedule 2 are hereby consequentially amended in the manner indicated in that schedule.
- (3) The Orders in Council and notices specified in Schedule 4 are hereby revoked.
- (4) Every reference in any enactment passed before the repeal of the Factories and Commercial Premises Act 1981 to a factory within the meaning of that Act shall have effect as if that Act is still in force.
- (5) *[Repealed]*

Section 62(5): repealed, on 2 July 2001, by section 150(1) of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

**63 Application, savings, and transitional provisions**

The application, savings, and transitional provisions set out in Schedule 1AA have effect for the purposes of this Act.

Section 63: inserted, on 16 December 2013, by section 25(1) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

## Schedule 1AA

s 63

Schedule 1AA: inserted, on 16 December 2013, by section 25(2) of the Health and Safety in Employment Amendment Act 2013 (2013 No 95).

### Part 1

## Transitional provisions relating to Health and Safety in Employment Amendment Act 2013

### 1 Existing mining operations

- (1) This clause applies to any mining operation that was in operation immediately before the date on which the Health and Safety in Employment Amendment Act 2013 came into force.
- (2) Nothing in sections 12A, 13AA, 39A, or 41A of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, applies in respect of the mining operation until 1 January 2015.
- (3) The mine operator may, but is not required to, comply with section 19Q(1) of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, before 1 January 2015.
- (4) Section 19J of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, applies in respect of the mining operation from the earlier of—
  - (a) the date on which the mine operator complies with section 19Q(1) of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013; and
  - (b) 1 January 2015.
- (5) If, on 1 January 2015, the mining operation does not have a documented worker participation system referred to in section 19Q(1) of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, the prescribed provisions referred to in section 19U(1) of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, apply.
- (6) Nothing in subclause (3) limits the application of sections 19ZU to 19ZZ of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, in respect of the mining operation.

### 2 Notices, etc, before site senior executive appointed for existing mining operation

- (1) This clause applies to any mining operation to which clause 1 applies before the mine operator has appointed a site senior executive for the first time in accordance with regulations made under section 21 of the principal Act.

- (2) Any notice required or enabled by the Act to be given to the site senior executive of the mining operation may be given to the mine operator or a representative of the mine operator.
- (3) Sections 19ZF, 19ZG, 19ZH, and 19ZK of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, apply, with any necessary modifications, as if references to the site senior executive were references to the mine operator or a representative of the mine operator.

### **3 Exemptions of mining operations from regulations for limited period**

- (1) Regulations made under section 21(1)(b) of the principal Act may provide for the granting by WorkSafe of an exemption (unconditionally or subject to conditions) in respect of any particular mining operation (whether or not it is one to which clause 1 applies) from 1 or more obligations or requirements under the regulations for any specified period, or periods, of up to a total of 36 months and ending not later than 31 December 2017.
- (2) The regulations must—
  - (a) specify the reasons for which exemptions may be granted; and
  - (b) require WorkSafe to specify in an exemption the reasons for which the exemption is granted.
- (3) An exemption granted under the regulations is not a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.
- (4) Nothing in this clause limits section 23(1)(k) of the principal Act.



## Schedule 1 Serious harm

s 2(4)

- 1 Any of the following conditions that amounts to or results in permanent loss of bodily function, or temporary severe loss of bodily function: respiratory disease, noise-induced hearing loss, neurological disease, cancer, dermatological disease, communicable disease, musculoskeletal disease, illness caused by exposure to infected material, decompression sickness, poisoning, vision impairment, chemical or hot-metal burn of eye, penetrating wound of eye, bone fracture, laceration, crushing.
- 2 Amputation of body part.
- 3 Burns requiring referral to a specialist medical practitioner or specialist outpatient clinic.  
Schedule 1 clause 3: amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).
- 4 Loss of consciousness from lack of oxygen.
- 5 Loss of consciousness, or acute illness requiring treatment by a medical practitioner, from absorption, inhalation, or ingestion, of any substance.  
Schedule 1 clause 5: amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).
- 6 Any harm that causes the person harmed to be hospitalised for a period of 48 hours or more commencing within 7 days of the harm's occurrence.

## Schedule 1A

### Employee participation system

ss 19C(3), 19D

Schedule 1A: inserted, on 5 May 2003, by section 30 of the Health and Safety in Employment Amendment Act 2002 (2002 No 86).

#### Part 1

### Examples of matters that may be included in agreed system for employee participation

#### 1 Examples of matters that may be included in agreed system for employee participation

The following matters are examples of matters that the parties may wish to consider including in an employee participation system developed under section 19C:

- (a) electing health and safety representatives, whether to act independently or as members of a health and safety committee:
- (b) processes for ensuring regular and co-operative interaction between representatives of the employer and employees on health and safety issues generally or on particular issues.

#### Part 2

### Functions of health and safety representatives

#### 2 Functions of health and safety representatives

The following functions of health and safety representatives are examples of functions that the parties may wish to consider including in an agreed employee participation system developed under section 19C but are mandatory functions for a health and safety representative elected under Part 3 of this schedule:

- (a) to foster positive health and safety management practices in the place of work:
- (b) to identify and bring to the employer's attention hazards in the place of work and discuss with the employer ways that the hazards may be dealt with:
- (c) to consult with inspectors on health and safety issues:
- (d) to promote the interests of employees in a health and safety context generally and in particular those employees who have been harmed at work, including in relation to arrangements for rehabilitation and return to work:
- (e) to carry out any functions conferred on the representative by—

- (i) a system of employee participation (if a system is developed under section 19C); or
- (ii) the employer with the agreement of the representative or a union representing the representative, including any functions referred to in a code of practice.

### **Part 3**

#### **Provisions that apply if failure to develop system for employee participation**

##### **3 Effect of failure to develop system if fewer than 30 employees**

- (1) This clause applies if—
  - (a) 1 or more employees, or a union representing them, requires the development of a system for employee participation under section 19C(1)(a); and
  - (b) a system is not agreed and implemented within 6 months after the employees request it to be developed.
- (2) The employees, together with any unions representing them, must hold an election for at least 1 health and safety representative to carry out the functions in Part 2 of this schedule.
- (3) This clause is subject to clauses 6 and 7.

##### **4 Effect of failure to develop system if 30 employees or more**

- (1) This clause applies if—
  - (a) the development of a system for employee participation is required under section 19C(1)(b); and
  - (b) a system is not agreed and implemented within 6 months after the later of—
    - (i) the date of the commencement of this schedule; or
    - (ii) the date when the employer first employs 30 or more employees.
- (2) The employees, together with any unions representing them, must hold an election for—
  - (a) at least 1 health and safety representative (which may include 1 or more health and safety representatives elected for each particular type of work, or place of work of the employer, or other grouping referred to in section 19C(5)) to carry out the functions in Part 2 of this schedule independently; or
  - (b) up to a maximum of 5 health and safety representatives to be members of a health and safety committee (and the representatives must comprise at least half of the committee).

- (3) This clause is subject to clauses 6 and 7.

**5 Filling vacancy for health and safety representative**

- (1) The employees, together with any unions representing them, must hold an election if a vacancy arises in a position of health and safety representative.
- (2) This clause is subject to clauses 6 and 7.

**6 Employees or union may require employer to hold election for health and safety representative**

- (1) Instead of holding an election as required by clause 3, clause 4, or clause 5, the employees, together with any unions representing them, may notify the employer that they require the employer to hold the election.
- (2) The employer must hold the election within 2 months of receiving notification.
- (3) This clause is subject to clause 7.

**7 Method of electing health and safety representative**

- (1) An election for a health and safety representative must—
- (a) involve candidates who—
    - (i) work sufficiently regularly and for a sufficient duration to enable them to carry out their functions effectively; and
    - (ii) are willing to take on the position; and
  - (b) be conducted through a secret ballot; and
  - (c) give all employees, or all employees in a relevant grouping for the purposes of section 19C(5), a reasonable opportunity to vote; and
  - (d) be determined by the wishes of the majority of those who vote.
- (2) An election is not required if—
- (a) there is only 1 candidate for a position, in which case the candidate automatically fills the position; or
  - (b) there are no candidates for a position, in which case the position is not filled.

## Schedule 2 Consequential amendments

s 62(2)

**Boilers, Lifts, and Cranes Act 1950 (1950 No 53) (RS Vol 1, p 377)**

*Amendment(s) incorporated in the Act(s).*

**Disabled Persons Community Welfare Act 1975 (1975 No 122) (RS Vol 26, p 143)**

*Amendment(s) incorporated in the Act(s).*

**Machinery Act 1950 (1950 No 52) (RS Vol 18, p 409)**

*Amendment(s) incorporated in the Act(s).*

**Marine Pollution Act 1974 (1974 No 14) (RS Vol 24, p 499)**

*Amendment(s) incorporated in the Act(s).*

**Wages Protection Act 1983 (1983 No 143)**

*Amendment(s) incorporated in the Act(s).*

### Schedule 3

#### Enactments repealed

s 62(1)

**Accident Rehabilitation and Compensation Insurance Act 1992 (1992 No 13)***Amendment(s) incorporated in the Act(s).***Age of Majority Act 1970 (1970 No 137) (RS Vol 21, p 1)***Amendment(s) incorporated in the Act(s).***Agricultural Workers Act 1977 (1977 No 43) (RS Vol 22, p 1)****Agricultural Workers Amendment Act 1977 (1977 No 106) (RS Vol 22, p 14)****Agricultural Workers Amendment Act 1981 (1981 No 8) (RS Vol 22, p 15)****Agricultural Workers Amendment Act 1983 (1983 No 61) (RS Vol 22, p 15)****Boilers, Lifts, and Cranes Act 1950 (1950 No 53) (RS Vol 1, p 377)***Amendment(s) incorporated in the Act(s).***Boilers, Lifts, and Cranes Amendment Act 1966 (1966 No 100) (RS Vol 1, p 406)***Amendment(s) incorporated in the Act(s).***Boilers, Lifts, and Cranes Amendment Act 1971 (1971 No 84) (RS Vol 1, p 409)****Boilers, Lifts, and Cranes Amendment Act 1980 (1980 No 101)****Boilers, Lifts, and Cranes Amendment Act 1988 (1988 No 177)****Building Act 1991 (1991 No 150)***Amendment(s) incorporated in the Act(s).***Bush Workers Act 1945 (1945 No 27) (Reprinted 1976, Vol 3, p 2365)****Bush Workers Amendment Act 1967 (1967 No 27) (Reprinted 1976, Vol 3, p 2376)****Bush Workers Amendment Act 1978 (1978 No 89)****Bush Workers Amendment Act 1979 (1979 No 79)****Bush Workers Amendment Act 1981 (1981 No 9)****Bush Workers Amendment Act 1983 (1983 No 64)****Coal Mines Act 1979 (1979 No 21)**

**Coal Mines Amendment Act 1980 (1980 No 104)**

**Coal Mines Amendment Act 1982 (1982 No 63)**

**Coal Mines Amendment Act 1983 (1983 No 45)**

**Coal Mines Amendment Act 1986 (1986 No 52)**

**Coal Mines Amendment Act 1988 (1988 No 57)**

**Conservation Act 1987 (1987 No 65)**

*Amendment(s) incorporated in the Act(s).*

**Conservation Law Reform Act 1990 (1990 No 31)**

*Amendment(s) incorporated in the Act(s).*

**Construction Act 1959 (1959 No 32) (RS Vol 23, p 227)**

**Construction Amendment Act 1966 (1966 No 40) (RS Vol 23, p 255)**

**Construction Amendment Act 1967 (1967 No 64) (RS Vol 23, p 256)**

**Construction Amendment Act 1968 (1968 No 74) (RS Vol 23, p 256)**

**Construction Amendment Act 1969 (1969 No 11) (RS Vol 23, p 256)**

**Construction Amendment Act 1970 (1970 No 32) (RS Vol 23, p 257)**

**Construction Amendment Act 1971 (1971 No 90) (RS Vol 23, p 257)**

**Construction Amendment Act 1972 (1972 No 51) (RS Vol 23, p 258)**

**Construction Amendment Act 1975 (1975 No 64) (RS Vol 23, p 259)**

**Construction Amendment Act 1976 (1976 No 81) (RS Vol 23, p 259)**

**Construction Amendment Act 1977 (1977 No 147) (RS Vol 23, p 260)**

**Construction Amendment Act 1978 (1978 No 90) (RS Vol 23, p 260)**

**Construction Amendment Act 1981 (1981 No 11) (RS Vol 23, p 261)**

**Construction Amendment Act 1983 (1983 No 124) (RS Vol 23, p 261)**

**Construction Amendment Act 1989 (1989 No 83)**

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

*Amendment(s) incorporated in the Act(s).*

**Electricity Operators Act 1987 (1987 No 109)***Amendment(s) incorporated in the Act(s).***Employment Contracts Act 1991 (1991 No 22)***Amendment(s) incorporated in the Act(s).***Factories and Commercial Premises Act 1981 (1981 No 25)****Factories and Commercial Premises Amendment Act 1983 (1983 No 72)****Factories and Commercial Premises Amendment Act 1989 (1989 No 86)****Fair Trading Act 1986 (1986 No 121)***Amendment(s) incorporated in the Act(s).***Family Proceedings Act 1980 (1980 No 94)***Amendment(s) incorporated in the Act(s).***Finance Act (No 2) 1988 (1988 No 128)***Amendment(s) incorporated in the Act(s).***Geothermal Energy Act 1953 (1953 No 102) (Reprinted 1975, Vol 3, p 2019)****Geothermal Energy Amendment Act 1957 (1957 No 51) (Reprinted 1975, Vol 3, p 2035)****Geothermal Energy Amendment Act 1966 (1966 No 50) (Reprinted 1975, Vol 3, p 2035)****Geothermal Energy Amendment Act 1969 (1969 No 79) (Reprinted 1975, Vol 3, p 2036)****Geothermal Energy Amendment Act 1973 (1973 No 64) (Reprinted 1975, Vol 3, p 2035)****Geothermal Energy Amendment Act 1977 (1977 No 89)****Geothermal Energy Amendment Act 1980 (1980 No 113)****Geothermal Energy Amendment Act 1988 (1988 No 62)****Health Act 1956 (1956 No 65) (RS Vol 19, p 493)***Amendment(s) incorporated in the Act(s).***Judicature Amendment Act 1991 (1991 No 60)***Amendment(s) incorporated in the Act(s).*



**Local Government Act 1979 (1979 No 59) (RS Vol 25, p 609)**

*Amendment(s) incorporated in the Act(s).*

**Machinery Act 1950 (1950 No 52) (RS Vol 18, p 309)**

*Amendment(s) incorporated in the Act(s).*

**Machinery Amendment Act 1956 (1956 No 17) (RS Vol 18, p 441)**

**Machinery Amendment Act 1965 (1965 No 52)**

**Machinery Amendment Act 1968 (1968 No 28)**

**Machinery Amendment Act 1969 (1969 No 33) (RS Vol 18, p 443)**

*Amendment(s) incorporated in the Act(s).*

**Machinery Amendment Act 1970 (1970 No 128) (RS Vol 18, p 444)**

**Machinery Amendment Act 1976 (1976 No 37)**

**Machinery Amendment Act 1981 (1981 No 10) (RS Vol 18, p 448)**

**Machinery Amendment Act 1986 (1986 No 15) (RS Vol 18, p 448)**

*Amendment(s) incorporated in the Act(s).*

**Mining Act 1971 (1971 No 25) (RS Vol 17, p 355)**

**Mining Amendment Act 1972 (1972 No 83) (RS Vol 17, p 508)**

*Amendment(s) incorporated in the Act(s).*

**Mining Amendment Act 1973 (1973 No 76) (RS Vol 17, p 508)**

**Mining Amendment Act 1975 (1975 No 91) (RS Vol 17, p 509)**

*Amendment(s) incorporated in the Act(s).*

**Mining Amendment Act 1981 (1981 No 128) (RS Vol 17, p 510)**

**Mining Amendment Act 1987 (1987 No 99)**

*Amendment(s) incorporated in the Act(s).*

**Ministry of Energy (Abolition) Act 1989 (1989 No 140)**

*Amendment(s) incorporated in the Act(s).*

**National Development Act Repeal Act 1986 (1986 No 122)**

*Amendment(s) incorporated in the Act(s).*

**National Parks Act 1980 (1980 No 66)**

*Amendment(s) incorporated in the Act(s).*

**Official Information Amendment Act 1987 (1987 No 8)**

*Amendment(s) incorporated in the Act(s).*

**Petroleum Act 1937 (1937 No 27) (RS Vol 7, p 647)****Petroleum Amendment Act 1975 (1975 No 43) (RS Vol 7, p 726)****Petroleum Amendment Act (No 2) 1980 (1980 No 72) (RS Vol 7, p 728)****Petroleum Amendment Act 1982 (1982 No 153)****Petroleum Amendment Act 1985 (1985 No 35)****Petroleum Amendment Act 1988 (1988 No 78)****Public Finance Act 1989 (1989 No 44)**

*Amendment(s) incorporated in the Act(s).*

**Quarries and Tunnels Act 1982 (1982 No 18)****Reserves and Other Lands Disposal Act 1982 (1982 No 133)**

*Amendment(s) incorporated in the Act(s).*

**Resource Management Act 1991 (1991 No 69)**

*Amendment(s) incorporated in the Act(s).*

**Sale of Liquor Act 1989 (1989 No 63)**

*Amendment(s) incorporated in the Act(s).*

**Shearers Act 1962 (1962 No 136) (RS Vol 9, p 575)****Shearers Amendment Act 1983 (1983 No 93)****State-Owned Enterprises Act 1986 (1986 No 124)**

*Amendment(s) incorporated in the Act(s).*

**State-Owned Enterprises Amendment Act 1987 (1987 No 117)**

*Amendment(s) incorporated in the Act(s).*

**State Sector Act 1988 (1988 No 20)**

*Amendment(s) incorporated in the Act(s).*

**Survey Act 1986 (1986 No 123)**

*Amendment(s) incorporated in the Act(s).*

**Territorial Sea and Exclusive Economic Zone Act 1977 (1977 No 28)**

*Amendment(s) incorporated in the Act(s).*

**Transit New Zealand Act 1989 (1989 No 75)**

*Amendment(s) incorporated in the Act(s).*

**Weights and Measures Act 1987 (1987 No 15)**

*Amendment(s) incorporated in the Act(s).*

## Schedule 4

### Orders in Council and notices revoked

s 62(3)

- Agricultural Workers Accommodation Regulations 1963 (SR 1963/79)**
- Agricultural Workers Accommodation Regulations 1963, Amendment No 1 (SR 1975/246)**
- Agricultural Workers Act Commencement Order 1963 (SR 1963/78)**
- Agricultural Workers Act Commencement Order 1978 (SR 1978/100)**
- Agricultural Workers (Dairy Farms) Order 1977 (SR 1977/32)**
- Agricultural Workers (Farms and Stations) Wages Order 1977 (SR 1977/33)**
- Agricultural Workers (Market Gardens) Order 1976 (SR 1976/201)**
- Agricultural Workers (Orchards and Vineyards) Order 1977 (SR 1977/218)**
- Agricultural Workers Regulations 1978 (SR 1978/233)**
- Agricultural Workers (Tobacco Growers) Order 1976 (SR 1976/302)**
- Boilers and Machinery Exemption Order 1971 (SR 1971/13)**
- Boilers (Gas Pipelines) Exemption Order 1969 (SR 1969/6)**
- Boilers, Lifts, and Cranes Exemption Notice 1968 (SR 1968/1)**
- Boilers, Lifts, and Cranes Exemption Notice 1983 (SR 1983/90)**
- Boilers, Lifts, and Cranes Exemption Notice 1990 (SR 1990/174)**
- Boilers, Lifts, and Cranes Exemption Order 1983 (SR 1983/89)**
- Boilers, Lifts, and Cranes (Fees) Regulations 1990 (SR 1990/321)**
- Coal Mines (Electrical) Regulations 1980 (SR 1980/51)**
- Coal Mines (Mine Management and Safety) Regulations 1980 (SR 1980/116)**
- Coal Mines (Mine Management and Safety) Regulations 1980, Amendment No 1 (SR 1986/276)**
- Coal Mines (Opencast Coal Mines) Regulations 1986 (SR 1986/277)**
- Construction Regulations 1961 (SR 1961/5)**

- Construction Regulations 1961, Amendment No 1 (SR 1965/117)**
- Construction Regulations 1961, Amendment No 2 (SR 1965/186)**
- Construction Regulations 1961, Amendment No 3 (SR 1967/269)**
- Construction Regulations 1961, Amendment No 4 (SR 1969/45)**
- Construction Regulations 1961, Amendment No 5 (SR 1970/317)**
- Construction Regulations 1961, Amendment No 6 (SR 1971/187)**
- Construction Regulations 1961, Amendment No 7 (SR 1974/215)**
- Construction Regulations 1961, Amendment No 8 (SR 1975/209)**
- Construction Regulations 1961, Amendment No 9 (SR 1977/312)**
- Construction Regulations 1961, Amendment No 10 (SR 1980/148)**
- Construction Regulations 1961, Amendment No 13 (SR 1986/337)**
- Cranes Exemption Order 1966 (SR 1966/207)**
- Factories and Commercial Premises Act Commencement Order 1981 (SR 1981/277)**
- Factories and Commercial Premises Regulations 1981 (SR 1981/323)**
- Factories and Commercial Premises Regulations 1981, Amendment No 1 (SR 1986/231)**
- Mining (Safety) Regulations 1973 (SR 1973/82)**
- Mining (Safety) Regulations 1973, Amendment No 1 (SR 1983/41)**
- Mining (Safety) Regulations 1973, Amendment No 2 (SR 1987/187)**
- Petroleum Regulations 1978 (SR 1978/255)**
- Quarries Regulations 1983 (SR 1983/39)**
- Quarries Regulations 1983, Amendment No 1 (SR 1984/258)**
- Quarries Regulations 1983, Amendment No 2 (SR 1987/188)**
- Shearers Act Commencement Order 1963 (SR 1963/82)**
- Shearers Regulations 1963 (SR 1963/83)**
- Shearers Regulations 1963, Amendment No 1 (SR 1975/220)**

**Tractor Safety Frame Regulations 1986 (SR 1986/229)**

**Tunnels Regulations 1983 (SR 1983/40)**

**Tunnels Regulations 1983, Amendment No 1 (SR 1987/189)**

**Woodworking Machinery Regulations 1973 (SR 1973/85)**

**Woodworking Machinery Regulations 1973, Amendment No 1 (SR 1982/74)**

## Health and Safety in Employment Amendment Act 2002

Public Act	2002 No 86
Date of assent	24 December 2002
Commencement	see section 2

### 1 Title

- (1) This Act is the Health and Safety in Employment Amendment Act 2002.
- (2) In this Act, the Health and Safety in Employment Act 1992 is called “the principal Act”.

## Part 1 Preliminary provisions

### 2 Commencement

This Act comes into force on 5 May 2003.

### 3 Purpose

The purpose of this Act is to—

- (a) make the principal Act more comprehensive in its coverage, in particular by—
  - (i) including the maritime, rail, and air industries; and
  - (ii) confirming that persons who are mobile while they work are covered; and
  - (iii) providing protection to volunteers, persons receiving on the job training or gaining work experience, and employees on loan; and
  - (iv) confirming that harm can be caused by work-related stress; and
  - (v) confirming that certain temporary conditions may cause a person’s behaviour to be hazardous; and
- (b) include provisions in the principal Act requiring good faith co-operation between employers and employees in relation to health and safety; and
- (c) provide for more effective enforcement of the principal Act; and
- (d) prohibit persons from being indemnified and from indemnifying others against the cost of fines and infringement fees for failing to comply with the principal Act; and
- (e) promote compliance with International Labour Convention 155 concerning Occupational Safety and Health and the Working Environment.

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## **Part 2**

### **Amendments to principal Act**

#### **31 General transitional provision**

The principal Act continues to apply as if this Act had not been passed in respect of an incident, situation, or set of circumstances occurring before the commencement of this section.

#### **32 Transitional provision for ships at sea**

- (1) The Director of the Maritime Safety Authority is responsible for administering the principal Act for ships at sea until any designation regarding the maritime industry is made under section 28B of the principal Act.
- (2) While subsection (1) applies, the Director must be treated as if he or she were an inspector appointed under section 29(1) of the principal Act.
- (3) This section is subject to section 31.



## Reprints notes

### 1 *General*

This is a reprint of the Health and Safety in Employment Act 1992 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

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

### 3 *Editorial and format changes*

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

### 4 *Amendments incorporated in this reprint*

Health and Safety at Work Act 2015 (2015 No 70): section 231(1)

Health and Safety in Employment Amendment Act 2013 (2013 No 95)

WorkSafe New Zealand Act 2013 (2013 No 94): section 22

Criminal Procedure Act 2011 (2011 No 81): section 413

Environmental Protection Authority Act 2011 (2011 No 14): section 53(1)

Health and Safety in Employment Amendment Act 2010 (2010 No 135)

Accident Compensation Amendment Act 2010 (2010 No 1): sections 5(1)(b), 49

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Land Transport Management Amendment Act 2008 (2008 No 47): section 50(1)

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Health and Safety in Employment Amendment Act 2006 (2006 No 72)

Maritime Transport Amendment Act 2004 (2004 No 98): section 11(3)

Health and Safety in Employment Amendment Act 2004 (2004 No 87)

Building Act 2004 (2004 No 72): section 414

Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)

State Sector Amendment Act 2003 (2003 No 41): section 14(1)

Health and Safety in Employment Amendment Act 2002 (2002 No 86)

Crown Organisations (Criminal Liability) Act 2002 (2002 No 37): sections 23, 24, 26, 27

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49): section 337(1)

Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171): clause 2

Accident Insurance Act 1998 (1998 No 114): section 415(1)

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Health and Safety in Employment Amendment Act 1998 (1998 No 3)  
Hazardous Substances and New Organisms Act 1996 (1996 No 30): sections 149, 150(1)  
Department of Justice (Restructuring) Act 1995 (1995 No 39): section 10(1)  
Maritime Transport Act 1994 (1994 No 104): section 203  
Electricity Act 1992 (1992 No 122): section 173(2)  
Public Finance Act 1989 (1989 No 44): section 65R(3)