

# HEALTH AND SAFETY IN EMPLOYMENT ACT 1992

Including amendments made by the Health and Safety in Employment Amendment Act 2002 and the Crown Organisations (Criminal Liability) Act 2002.

New text inserted by the Health and Safety in Employment Amendment Act 2002 shown in brackets in **[red]**

Text deleted by the Health and Safety in Employment Amendment Act 2002 struck through and shown in **blue**

Crown Organisations (Criminal Liability) Act 2002 amendments shown in brackets in **[green]**

Public Act 1992 No 96

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# Health and Safety in Employment Act 1992

Public Act 1992 No 96

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

[27 October 1992

BE IT ENACTED by the Parliament of New Zealand as follows:

## 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 the 1st day of April 1993.

## Part I

### 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:

~~"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; and~~
- ~~(e) The availability and cost of each of those means;~~

"Approved code of practice" means a statement [ ], for the time being approved under section 20 of this Act; but where any amendment of the statement has been approved under that section, means the statement as amended:

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

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1990]

"At work", in relation to any person, means present, for gain or reward, in the person's place of work:

["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:

~~"Crew", in relation to an aircraft or ship, includes its pilot in command, captain, or master, but does not include any person employed or engaged solely--  
(a) To maintain it while it is not in flight or at sea; or  
(b) To load it, unload it, or both:~~

["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:

"Departmental medical practitioner" means a person for the time being appointed under section 34(1) of this Act:

~~"Employee", subject to subsection[s] (3) [to (3C)] of this section, means a person employed by any other person to do any work (other than residential work) for hire or reward; and, in relation to any employer, means an employee of the employer:~~

["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" 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:]~~

["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

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- (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 laying of an information 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 laying of an information 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" means illness, injury, or both; and "to harm", "harmed", and "unharm" have corresponding meanings:~~

~~"Hazard" 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 "hazardous" has a corresponding meaning:~~

["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 set out in section 46A(1)

"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 representative" means an employee elected, as an individual or as a member of a health and safety committee or both, to represent the views

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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 subsection (1) or subsection (2) of section 39 of this Act:

["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) of this Act:

"Inspector's notice" means an improvement notice or a prohibition notice:

"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]

"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]

"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:]

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"Phenomenon" includes radiation:

"Place of work" means a place (whether or not within or forming part of a building ~~or structure~~[, 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) of this Act:

"Registered medical practitioner" means a person registered as a medical practitioner under the Medical Practitioners Act 1968:

"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) of this section, 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]**

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"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:

"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) of this Act.

["Trained health and safety representative" has the meaning set out in section 46A(1)

"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.]

(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) While any member of the crew of an aircraft or ship [(other than a ship carrying out petroleum operations in New Zealand continental waters as defined in section 222(1) of the Maritime Transport Act 1994)] is on board the aircraft or ship, this Act shall have effect as if--~~

~~(a) The person--~~

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- ~~(i) — Is not an employee of the person's employer; and~~
- ~~(ii) — Is not a contractor in relation to the person's employer; and~~
- ~~(iii) — Is not a self-employed person; and~~
- ~~(b) — The person is not in a place of work.~~

~~[(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 the First Schedule to this Act shall be deemed to be serious harm.

## **[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.]

## **3 Application of Act to the Crown--**

(1) Except as expressly provided in ~~subsection (2)~~ [subsections (2) and (3)] of this section, this Act binds the Crown.

~~[(2) — Where it is alleged that the Crown has contravened a provision of this Act whose contravention constitutes an offence,—~~

- ~~(a) — The Secretary, or any person directly affected by the action or failure or refusal to act alleged to constitute the contravention, may apply to the High Court for a declaration that the Crown has contravened that provision; and~~
- ~~(b) — If satisfied beyond reasonable doubt that the Crown has contravened that provision, the Court may make a declaration to that effect.~~

(2) An instrument of the Crown may be prosecuted for an offence against this

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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).]

### **[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.

### **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

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- 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.

### **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 a 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 IV 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 education 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.

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### **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.

### **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).

### **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

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- 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.]

#### **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 ~~Objects--~~**

- ~~(1) This Act's principal object is to provide for the prevention of harm to employees at work.~~
- ~~(2) For the purpose of attaining its principal object, this Act--~~
  - ~~(a) Promotes excellence in health and safety management by employers:~~
  - ~~(b) Prescribes, and imposes on employers and others, duties in relation to the prevention of harm to employees:~~
  - ~~(c) Provides for the making of regulations, and the development and approval of codes of practice, relating to hazards to employees, and in particular (but without limiting the generality of the foregoing) to significant hazards.~~

#### **[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-

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- 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.]

## Part II

### 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.

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*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) of this Act to record particulars, the employer shall take all practicable 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--

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- (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) of this section.
- (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 ensure that there is provided for, accessible to, and used by the employees~~ [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 pre-condition 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).]

*Duties of employers in relation to information*

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

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- (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) of this section, 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.

## **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, ~~in such a form and manner that the employee is reasonably likely to understand it, information~~ [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

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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.]

#### *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.

### ~~14 — Employers to involve employees in development of health and safety procedures--~~

~~Every employer shall ensure that all employees have the opportunity to be fully involved in the development of procedures developed for the purpose of--~~

- ~~(a) — Complying with sections 7 to 10 of this Act; or~~  
~~(b) — Dealing with or reacting to emergencies or imminent dangers.~~

#### *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

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- 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

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(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.]

#### **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) of this section shall be read subject to section 2(2) of this Act.

#### **[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

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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.]

## **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.

## **[Part 2A**

### **Employee participation**

#### **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.

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

- (1) Every employer must provide reasonable opportunities for the employer's

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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.

### **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

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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.

#### **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.

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

- (1) An employer must allow a health and safety representative 2 days' paid leave each year to attend health and safety training approved under

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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).

**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:

Employees as at the specified date in a year	Maximum total number of days' paid leave that employer is required to allow to be taken
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).

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

- (1) The Minister may approve, by notice in the *Gazette*, courses of
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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.

#### **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 the Secretary when developing the system.

#### **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.]

## **Part III**

### **Standards**

#### *Codes of practice*

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

[(1AA) The Minister may direct the Secretary to prepare, and submit for the Minister's approval in accordance with this section, a statement, amendment, or revocation referred to in subsection (1) that relates to a particular health and safety issue.]

- (1) The Secretary may from time to time publish in the *Gazette* notice that the Secretary has asked the Minister to approve--

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- (a) A statement of preferred work practices or arrangements; or
  - [(aa) 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
  - (ab) 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
  - (ac) 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
  - [(ad) A statement of preferred practices or arrangements relating to employee participation in health and safety in the place of work; or]**
  - (b) The amendment or revocation of an approved code of practice.
- (2) A notice that the Secretary has asked the Minister to approve a statement [under subsection (1)] shall include a description of the general purport of the statement; and a notice that the Secretary has asked the Minister to approve the amendment of an approved code of practice shall include a description of the general purport of the amendment.
- (3) Subject to subsection (13) of this section, if--
- (a) At least a month has passed since the publication of a notice under subsection (1) of this section; and
  - (b) The Minister has--
    - (i) Consulted all persons affected, or reasonably likely to be affected, by the statement, amendment, or revocation concerned (or representatives of those persons); and
    - (ii) Given them a reasonable time within which to comment; and--
    - (iii) Considered all written comments (from any person) received within that time,--
- the Minister may, by notice in the *Gazette*, approve the statement, amendment, or revocation.
- (4) A notice under subsection (3) of this section shall come into force on the later of the following days:
- (a) The 28th day after the date of its publication in the *Gazette*;
  - (b) A day specified in the notice.
- (5) The publication by the Minister of a notice in the *Gazette* approving a

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- statement, amendment, or revocation is conclusive proof that subsection (3)(b) of this section has been complied with in respect of the notice.
- (6) The Secretary shall ensure that at all reasonable times copies of approved codes of practice are available at every office of the Department that deals with matters relating to health and safety in employment for inspection and copying by the public.
  - (7) The Secretary may charge any person a reasonable fee for--
    - (a) Providing the person with a copy of an approved code of practice; or
    - (b) Allowing the person to use equipment under the Secretary's control to copy all or any part of an approved code of practice.
  - (8) Nothing in subsection (6) or subsection (7) of this section requires the Secretary to allow any person to use equipment under the Secretary's control to copy all or any part of an approved code of practice.
  - (9) 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.
  - (10) In the absence of proof to the contrary, a document purporting to be an approved code of practice, or an amendment of an approved code of practice, issued by the Secretary shall in any proceedings be deemed to be an approved code of practice or an amendment of an approved code of practice.
  - (11) Nothing in subsection (10) of this section limits any method of proof of an approved code of practice or an amendment of an approved code of practice.
  - (12) Subject to subsection (13) of this section, an approved 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 Risk Management Authority established under the Hazardous Substances and New Organisms Act 1996].
  - (13) The Minister shall not--
    - (a) Adopt with modification any document previously approved by another Minister of the Crown (or by the Building Industry Authority established by section 10(1) of the Building Act 1991); or
    - (b) Approve any amendment of any part of a code of practice that comprises a document approved by another Minister of the Crown (or by the authority) and later adopted by the Minister,--  
without the consent of the other Minister (or the authority).

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## *Regulations*

### **21 Regulations--**

- (1) Subject to subsection (2) of this section, 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) Providing for any other matters contemplated by, or necessary for giving full effect to, this Act.
- (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, shall consult with the Environmental Risk Management Authority established under the Hazardous Substances and New Organisms Act 1996 about the contents of such regulations, and shall take into account any submissions made by that Authority.]

### **22 Application of regulations--**

Regulations under section 21(1)(a) of this Act 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:

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- (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.

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

- (1) Regulations made under section 21(1)(a) of this Act 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:
  - (f) The issue, renewal, cancellation, and suspension of certificates of competence, and the examination of applicants for certificates of competence:
  - (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 of this Act:
  - (n) The provision of accommodation for employees, contractors, subcontractors, or employees of contractors or subcontractors.
- (2) Regulations made under section 21(1)(a) of this Act may incorporate by reference all or any part of any--
  - (a) New Zealand Standard:
  - (b) Standard, requirement, recommended practice, rule, statute, or

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- 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) of this Act may impose prohibitions.
  - (6) Regulations made under section 21(1)(a) of this Act 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.

#### **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 IV**

### **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--

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- (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) of this section applies to--
- (a) Serious harm in respect of which an employer ~~is required by subsection (1)(b) of this section~~ [, self-employed person, or principal is required by this section] to record particulars; and

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- (b) Accidents of a kind or description required by regulations made under section 21 of this Act to be notified to the Secretary.

~~(3) Where there occurs any serious harm or accident to which this subsection applies, the employer concerned shall--~~

~~(a) As soon as is possible after its occurrence, notify the Secretary of the occurrence; and~~

~~(b) Within 7 days of the occurrence, give the Secretary written notice, in the prescribed form, of the circumstances of the occurrence.~~

[(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 the Secretary 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 the Secretary written notice, in the prescribed manner, of the circumstances of the occurrence.]

## **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) of this section 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 VIII 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 member of the Police.

## **27 Inquiry into cause of accident--**

(1) If an accident happens at any place of work, or if any person is seriously

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harmed while at work, the Minister may, after consultation with the [Minister of the Crown who is responsible for the Department for Courts], 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) of this section, that Act shall apply accordingly.
- (5) Nothing in subsection (1) of this section applies to an accident or occurrence that is being (or has been) investigated under the Armed Forces Discipline Act 1971.

## **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*

## **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.

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- (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.

#### *Enforcement by other agencies*

### **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 the Secretary 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

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

### *Inspectors*

#### **29 Inspectors --**

- (1) The Secretary 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 the Secretary.
- (3) Every inspector shall have a certificate of appointment, in a form approved by the Secretary.

#### **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 ~~is being and will~~ [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.

#### **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

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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)] of this section, 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) of this section.

(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) of this section, 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 the

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Secretary 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) of this section, 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.

### **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 under section 31 of this Act may, for the purpose of--~~
- ~~(a) Monitoring conditions in the place of work; or~~
  - ~~(b) Determining the nature of any material or substance in the place of work; or~~
  - ~~(c) Determining whether or not this Act is being complied with; or~~
  - ~~(d) Gathering evidence for a prosecution for an offence against this Act,--~~
- ~~take or remove a sample of any substance or thing for analysis, or seize and retain any material, substance, or thing.~~

- [(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

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- (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) of this section, 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) of this subsection, 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.]

#### *Departmental medical practitioners*

### **34 Appointment of departmental medical practitioners--**

- (1) The Secretary may appoint any registered medical practitioner to be a departmental medical practitioner.
- (2) A departmental medical practitioner shall exercise the powers of a departmental medical practitioner subject to the directions and conditions (if any) for the time being imposed by the Secretary.
- (3) Every departmental medical practitioner shall have a certificate of appointment, in a form approved by the Secretary.
- (4) Upon ceasing to be registered as a medical practitioner under the Medical Practitioners Act 1968, a departmental medical practitioner shall cease to be a departmental medical practitioner.

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### **35 Powers of entry and inspection of departmental medical practitioners--**

For the purposes of this Act, any departmental 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) of this Act as if the departmental medical practitioner is an inspector; and subsections (2) to (4), and (6) of section 31, and section 32 of this Act shall have effect accordingly.

### **36 Departmental 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 departmental medical practitioner may, by notice in writing to the employee, require the employee--
- (c) To--
    - (i) Be examined by a registered medical practitioner; and
    - (ii) Provide to the departmental medical practitioner a certificate from the registered 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 departmental 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.

### **37 Departmental medical practitioners may suspend employees in**

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### **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 of this Act; 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 departmental medical practitioner may, by written notice to the employee (a copy of which the departmental medical practitioner shall give to the employer),--
  - (c) Require the employee to cease doing anything specified in the notice that, in the departmental 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.

### **38 Administrative provisions--**

Sections 44 to 48, 57, and 58 of this Act shall have effect in relation to departmental medical practitioners and suspension notices as if--

- (a) Every reference to an inspector is a reference to a departmental medical practitioner; and
- (b) Every reference to a notice is a reference to a suspension notice.

### *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

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- 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.

#### **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) of this section shall be deemed to have been received on the 7th 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.

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

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- (1) The inspector who gives a prohibition notice 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 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.

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

Every person to whom a prohibition notice 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.

#### **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.]

### *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) of this section 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,

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suspension, or variation provided for in regulations made under this Act,--  
as if it is an inspector's notice.

*[Hazard notices*

**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.]

*Duties in respect of inspectors*

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#### **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 to a term of not more than 1 year; or~~
- ~~(b) A fine of not more than \$100,000; or~~
- [(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 of this Act as if the person had been charged under that section.

#### **50 Other offences--**

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- ~~(1) Every person who fails to comply with--~~
- ~~(a) Any provision of Part II of this Act other than section 14 [or section 16(3)]; or~~
  - ~~(b) Section 25, section 26, section 37(2), section 39(5), section 42(1), section 43, section 47, section 48, or section 58 of this Act; or~~
  - ~~(c) Any provision of any regulations made under this Act, or continued in force by section 24 of this Act, declared by those regulations to be a provision to which this section applies,--~~
- ~~commits an offence, and is liable on summary conviction to--~~
- ~~(d) A fine not exceeding \$50,000, if the failure caused any person serious harm;~~
  - ~~(e) A fine not exceeding \$25,000, in any other case.~~
- [(1) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$250,000, who fails to comply with the requirements of—
- (a) a provision of Part II other than section 16(3); or
  - (b) section 19B, section 25, section 26, section 37(2), section 39(5), section 42(1), section 43, section 47, section 48, section 56(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 summary conviction to a fine not exceeding \$10,000.]

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

Notwithstanding sections 49 and 50 of this Act, 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 of this Act; and
- (b) The employee's employer does not thereby commit an offence against section 15 of this Act.

### **[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 section 35 and 40 of that Act relating to the financial capacity of the person to pay any fine or sentence of reparation imposed; and

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- (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.]

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

~~Where—~~

- (a) ~~Any employer is convicted of failing to comply with any provision of sections 7 to 10 of this Act; and~~
- (b) ~~The Court is satisfied that the employer has also failed to ensure that employees had the opportunity to be fully involved in the development of procedures developed for the purpose of complying with the provision,—~~

~~the Court may take the failure referred to in paragraph (b) of this section into account in determining the penalty to be imposed.~~

**53 — Strict liability—**

~~In any prosecution for an offence against section 50 of this Act, it is not necessary to prove that the defendant—~~

- (a) ~~Intended to take the action alleged to constitute the offence; or (as the case may be)~~
- (b) ~~Intended not to take the action, the failure or refusal to take which is alleged to constitute the offence.~~

**54 — Only inspectors to institute prosecutions—**

~~(1) No proceedings for an offence against this Act shall be brought except by an inspector.~~

~~(2) [Despite subsection (1), proceedings against the Department of Labour for an offence against this Act may be brought only with the authority of the Solicitor General, and the informant must be represented in those proceedings by a Crown Solicitor.]~~

**[53 Proof of intention not required**

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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.

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

- (1) A person may notify the Secretary 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) The Secretary 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 the Secretary 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 Land Transport Safety Authority, and the Maritime Safety Authority.

#### **54A Laying information**

- (1) An inspector may lay an information 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 lay an information 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 the Secretary 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 lay an information even though an enforcement authority has taken prosecution action if—

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- (a) the person has leave of the Court to lay the information; and
- (b) subsection (2)(a) and (c) is complied with.

**54B Time limit for laying information**

- (1) An information in respect of an offence against this Act may be laid at any time within 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.

**54C Extension of time for person other than inspector to lay information**

- (1) This section applies if—
  - (a) an inspector or another person has not taken enforcement action in respect of a matter; and
  - (b) the Secretary has notified relevant persons under section 54(2)(a) that an inspector has not and will not take enforcement action against a 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 lay an information.
- (3) An application under subsection (2) must be made within 1 month after receiving notice from the Secretary 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 lay an information 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 an information should be laid, being a person described in section 54(1).

**54D Extension of time if inspector needs longer to decide whether to lay information**

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- (1) This section applies if an inspector considers that he or she will not be able to lay an information by the end of the 6-month period referred to in section 54B.
- (2) On application, the District Court may extend the time for laying an information.
- (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 lay an information; 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 an information is able to be laid after the 6-month period expires; and
  - (d) laying the information 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 an information should be laid, being a person described in section 54(1).

#### **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.]

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

- (1) An information laid by an inspector in respect of any offence against this Act may be proceeded with and conducted by the informant, any other inspector, or any other person permitted by the Court to proceed with and conduct it.
- (2) For the purposes of subsection (1) of this section, no person shall be called on to prove that--
  - (a) The person is an inspector; or
  - (b) An information was laid 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,

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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 indictment or information 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 lay an information 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.]

## **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.]

### *[Infringement offences]*

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

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

#### **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

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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.

#### **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.

#### **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:
    - (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:

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- (i) an employer:
- (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.

### **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) For the purposes of the Summary Proceedings Act 1957, 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.

### **56F Infringement fees**

**Note:** This document has been developed by the Department of Labour as an information resource only and is not an official version of the Act. Amendments made by the Health and Safety in Employment Amendment Act 2002 apply in relation to any matter occurring after 5 May 2003.

- (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).

**56G Payment of infringement fee**

The Secretary must pay all infringement fees received into the Crown Bank Account.

**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.

*Insurance against fines unlawful and of no effect*

**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,—

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- (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.]

#### *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.

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## *Funding of administration*

### **[[59 Funding--**

(1) In this section,--

"The applicable Act" means the Injury Prevention Rehabilitation and Compensation Act 2001:

"Earner", "earnings", "earnings as a self-employed person", "employer", 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):

"Residual Claims levy" means the levy payable under section 193 of the applicable Act.

- (2) For the purpose of recovering the expected cost to the Crown of the administration of this Act, 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.
  - (c) By every shareholder-employee to whom section OB 2(2) of the Income Tax Act 1994 applies, on the amount of earnings 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 Residual Claims levy; and--
- (a) The funding levy is payable, collected, and remitted, and penalties are payable in respect of it, as if it were the Residual Claims 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 Residual Claims 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 Residual Claims levy or the funding levy.
- (4) The Corporation must, by the 20th day of the month after the month in
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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 the Secretary a fee for collecting the funding levy.
- (6) The Secretary must pay into the 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) of this Act.]

*Information provided by Accident Rehabilitation and Compensation Insurance Corporation*

**60 Accident Rehabilitation and Compensation Insurance Corporation may provide information--**  
*Repealed.*

*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 the Third Schedule to this Act are hereby repealed.
- (2) The enactments specified in the Second Schedule to this Act are hereby consequentially amended in the manner indicated in that Schedule.
- (3) The Orders in Council and notices specified in the Fourth Schedule to this Act 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) The repeal by subsection (1) of this section of section 73 of the Factories

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and Commercial Premises Act 1981 does not affect section 32A of the Dangerous Goods Act 1974.

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# Health and Safety in Employment Amendment Act 2002

Public Act 2002 No 86

The Parliament of New Zealand enacts as follows:

## 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<sup>1</sup> is called “the principal Act”.

<sup>1</sup> 1992 No 96

## 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

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- 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.

***Sections 4 to 29 made amendments to the principal Act, which have been incorporated into the text of the Act in this information sheet.***

**30 New Schedule 1A inserted**

The principal Act is amended by inserting, after the First Schedule, the Schedule 1A set out in the Schedule.

**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.

*Consequential amendments*

**33 Employment Relations Act 2000 amended**

- (1) Section 104 of the Employment Relations Act 2000 is amended by inserting, after the words “indirectly of that employee’s”, the words “refusal to do work under section 28A of the Health and Safety in Employment Act 1992, or”.
- (2) Section 107 of the Employment Relations Act 2000 is amended by adding, as subsection (2), the following subsection:
- “(2) An employee who is representing employees under the Health and Safety in Employment Act 1992, whether as a health and safety representative (as the term is defined in that Act) or otherwise, is to

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be treated as if he or she were a delegate of other employees for the purposes of subsection (1)(g).”

- (3) Section 137(1)(a) of the Employment Relations Act 2000 is amended by adding the following subparagraph:
- “(xi) Part 2A (other than section 19K[sic]) and Schedule 1A of the Health and Safety in Employment Act 1992; or”
- (4) Section 137 of the Employment Relations Act 2000 is amended by repealing subsection (4), and substituting the following subsection:
- “(4) The following persons may take action against another person by applying to the Authority for an order of the kind described in subsection (2):
- “(a) any person (being an employee, employer, union, or employer organisation) who alleges that that person has been affected by non-observance or non-compliance of the kind described in subsection (1):
- “(b) a health and safety inspector appointed under section 29 of the Health and Safety in Employment Act 1992 who alleges that there has been non-observance or non-compliance of the kind described in subsection (1)(a)(xi).”
- (5) Section 138(1) of the Employment Relations Act 2000 is amended by repealing paragraph (b), and substituting the following paragraph:
- “(b) on the application of—
- “(i) any party to the matter; or
- “(ii) in the case of section 137(4)(b), a health and safety inspector.’

- 34 Hazardous Substances and New Organisms Act 1996 amended**  
Section 2(1) of the Hazardous Substances and New Organisms Act 1996 is amended by inserting in the definition of the term **place of work**, after the expression “2(1)”, the words “and (2A)”.

**35 Maritime Transport Act 1994 amended**

- (1) The Maritime Transport Act 1994 is amended by—
- (a) repealing paragraph (e) of the Long Title:
- (b) repealing, from section 2(1), the definitions of the terms **all practicable steps** and **significant hazard**:
- (c) repealing Part II:
- (d) repealing sections 61 to 63:
- (e) repealing section 72:
- (f) repealing sections 80 and 81.

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- (2) Section 198(2) of the Maritime Transport Act 1994 is amended by inserting, after the word "appropriate", the words "(including any conditions relating to occupational safety and health)".
  - (3) Section 431(1)(h) of the Maritime Transport Act 1994 is repealed.
- 36 Transport Services Licensing Act 1989 amended**  
Section 6H of the Transport Services Licensing Act 1989 is repealed.

## **Schedule**

***The Schedule inserted Schedule 1A into the principal Act, which has been incorporated into the text of the Act in this information sheet.***

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## **First Schedule**

### Section 2(4)

#### **Serious harm**

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 registered medical practitioner or specialist outpatient clinic.
4. Loss of consciousness from lack of oxygen.
5. Loss of consciousness, or acute illness requiring treatment by a registered medical practitioner, from absorption, inhalation, or ingestion, of any substance.
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.

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## [Schedule 1A

### Employee participation system

ss19C(3), 19D

#### 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

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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

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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.]
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## Second Schedule

Section 62(2)

### Consequential amendments

Enactment	Amendment
1950 No 52-- The Machinery Act 1950 (RS Vol 18, p 409)	By repealing the definitions in section 2 of the terms "boiler", "crane", "hoist", "lift", "lifting machine", "lifting tackle", "lifting vehicle", "noise", and "winding engine."
1950 No 53-- The Boilers, Lifts, and Cranes Act 1950 (RS Vol 1, p 377)	By repealing the definitions in section 2(1) of the terms "crane" and "lift".
1974 No 14-- The Marine Pollution Act 1974 (RS Vol 24, p 499)	Item repealed.
1975 No 122-- The Disabled Persons Community Welfare Act 1975 (RS Vol 26, p 143)	By repealing paragraphs (z) and (za) of section 25(4) (as substituted by section 92(1) of the Building Act 1991), and substituting the following paragraphs: "(z) Other buildings, premises, or facilities where 10 or more people work, whether for gain or reward or otherwise: "(za) Other building, premises, or facilities to which the public are admitted, whether on payment or

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| otherwise:".

1983 No 145-- The Wages | By inserting, after section  
Protection Act 1983 No 143 | 12, the following section:

| "12A. NO PREMIUM TO BE CHARGED  
| FOR EMPLOYMENT--

| "(1) No employer shall seek or  
| receive any premium in respect of  
| the employment of any person,  
| whether the premium is sought  
| or received from the person  
| employed or proposed to be  
| employed or from any other  
| person.

| "(2) Where an employer  
| receives any amount of money  
| in contravention of subsection  
| (1) of this section, whether  
| by way of deduction from wages  
| or otherwise, then,  
| irrespective of any penalty to  
| which the employer thereby  
| becomes liable, the person by  
| whom the money was paid or, as  
| the case may be, from whose  
| wages it was deducted, may  
| recover that amount from the  
| employer as a debt due to the  
| person; and civil proceedings  
| for the recovery of the amount  
| may be instituted in the  
| Employment Tribunal by the  
| person or, notwithstanding any  
| disability to which the person  
| is subject, by a Labour  
| Inspector designated under  
| section 143(1) of the  
| Employment Contracts Act 1991  
| on behalf of the person.

| "(3) Any such proceedings  
| instituted by any Labour  
| Inspector may be continued or

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| conducted by the same or any  
| other Labour Inspector".

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## Third Schedule

Section 62(1)

### Enactments repealed

1937 No 27--	The Petroleum Act 1937. (RS Vol 7, p 647.)
1945 No 27--	The Bush Workers Act 1945. (Reprinted 1976, Vol 3, p 2365.)
1950 No 52--	The Machinery Act 1950: Paragraphs (a) to (f) of section 3(1), and sections 4, 12, 17E, 19, 19A, 21B, 21C, 22, 24(2), 30, 31, 39, and 40. (RS Vol 18, p 309.)
1950 No 53--	The Boilers, Lifts, and Cranes Act 1950: Sections 3, 4, 10 to 35, 54, 56, 59, and 60. (RS Vol 1, p 377.)
1953 No 102--	The Geothermal Energy Act 1953. (Reprinted 1975, Vol 3, p 2019.)
1956 No 17--	The Machinery Amendment Act 1956. (RS Vol 18, p 441.)
1956 No 65--	The Health Act 1956: Sections 7(da) and 22A. (RS Vol 19, p 493.)
1957 No 51--	The Geothermal Energy Amendment Act 1957. (Reprinted 1975, Vol 3, p 2035.)
1959 No 32--	The Construction Act 1959. (RS Vol 23, p 227.)
1962 No 136--	The Shearers Act 1962. (RS Vol 9, p 575.)
1965 No 52--	The Machinery Amendment Act 1965.
1966 No 40--	The Construction Amendment Act 1966. (RS Vol 23, p 255.)
1966 No 50--	The Geothermal Energy Amendment Act 1966. (Reprinted 1975, Vol 3, p 2035.)
1966 No 100--	The Boilers, Lifts, and Cranes Amendment Act 1966: Sections 3, and 4 to 9. (RS Vol 1, p 406.)
1967 No 27 { sic ? 125 }--	The Bush Workers Amendment Act 1967. (Reprinted 1976, Vol 3, p 2376.)
1967 No 64--	The Construction Amendment Act 1967. (RS Vol 23, p 256.)
1968 No 28--	The Machinery Amendment Act 1968.
1968 No 74--	The Construction Amendment Act 1968. (RS Vol 23, p 256.)
1969 No 11--	The Construction Amendment Act 1969. (RS Vol 23, p 256.)
1969 No 33--	The Machinery Amendment Act 1969: Sections 2 to 6, and 8. (RS Vol 18, p 443.)
1969 No 79--	The Geothermal Energy Amendment Act 1969. (Reprinted 1975, Vol 3, p 2036.)
1970 No 32--	The Construction Amendment Act 1970. (RS Vol 23, p 257.)
1970 No 128--	The Machinery Amendment Act 1970. (RS Vol 18, p 444.)
1970 No 137--	The Age of Majority Act 1970: So much of the First Schedule

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	as relates to the Bush Workers Act 1945. (RS Vol 21, p 1.)
1971 No 25--	The Mining Act 1971. (RS Vol 17, p 355.)
1971 No 84--	The Boilers, Lifts, and Cranes Amendment Act 1971. (RS Vol 1, p 409.)
1971 No 90--	The Construction Amendment Act 1971. (RS Vol 23, p 257.)
1972 No 51--	The Construction Amendment Act 1972. (RS Vol 23, p 258.)
1972 No 83--	The Mining Amendment Act 1972: Section 3. (RS Vol 17, p 508.)
1973 No 64--	The Geothermal Energy Amendment Act 1973: (Reprinted 1975, Vol 3, p 2035.)
1973 No 76--	The Mining Amendment Act 1978. (RS Vol 17, p 508.)
1975 No 43--	The Petroleum Amendment Act 1975. (RS Vol 7, p 726.)
1975 No 64--	The Construction Amendment Act 1975. (RS Vol 23, p 259.)
1975 No 91--	The Mining Amendment Act 1975: Section 2(2), and so much of the Schedule as relates to any of sections 191 to 215 of the Mining Act 1971. (RS Vol 17, p 509.)
1976 No 37--	The Machinery Amendment Act 1976.
1976 No 81--	The Construction Amendment Act 1976. (RS Vol 23, p 259.)
1977 No 28--	The Territorial Sea and Exclusive Economic Zone Act 1977: So much of the Schedule as relates to the Petroleum Act 1937.
1977 No 43--	The Agricultural Workers Act 1977. (RS Vol 22, p 1.)
1977 No 89--	The Geothermal Energy Amendment Act 1977.
1977 No 106--	The Agricultural Workers Amendment Act 1977. (RS Vol 22, p 14.)
1977 No 147--	The Construction Amendment Act 1977. (RS Vol 23, p 260.)
1978 No 89--	The Bush Workers Amendment Act 1978.
1978 No 90--	The Construction Amendment Act 1978. (RS Vol 23, p 260.)
1979 No 21--	The Coal Mines Act 1979.
1979 No 59--	The Local Government Act 1979: So much of Part III of the Third Schedule as relates to the Geothermal Energy Act 1953 or the Mining Act 1979. (RS Vol 25, p 609.)
1979 No 79--	The Bush Workers Amendment Act 1979.
1980 No 66--	The National Parks Act 1980: So much of the First Schedule as relates to the Coal Mines Act 1979.
1980 No 72--	The Petroleum Amendment Act (No 2) 1980. (RS Vol 7, p 728.)
1980 No 94--	The Family Proceedings Act 1980: So much of the First Schedule as relates to the Coal Mines Act 1979.
1980 No 101--	The Boilers, Lifts, and Cranes Amendment Act 1980.
1980 No 104--	The Coal Mines Amendment Act 1980.
1980 No 113--	The Geothermal Energy Amendment Act 1980.
1981 No 8--	The Agricultural Workers Amendment Act 1981. (RS Vol 22, p 15.)

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1981 No 9--	The Bush Workers Amendment Act 1981.
1981 No 10--	The Machinery Amendment Act 1981. (RS Vol 18, p 448.)
1981 No 11--	The Construction Amendment Act 1981. (RS Vol 23, p 261.)
1981 No 25--	The Factories and Commercial Premises Act 1981.
1981 No 128--	The Mining Amendment Act 1981. (RS Vol 17, p 510.)
1982 No 18--	The Quarries and Tunnels Act 1982.
1982 No 63--	The Coal Mines Amendment Act 1982.
1982 No 133--	The Reserves and Other Lands Disposal Act 1982: Section 13(14).
1982 No 153--	The Petroleum Amendment Act 1982.
1983 No 45--	The Coal Mines Amendment Act 1983.
1983 No 61--	The Agricultural Workers Amendment Act 1983. (RS Vol 22, p 15.)
1983 No 64--	The Bush Workers Amendment Act 1983.
1983 No 72--	The Factories and Commercial Premises Amendment Act 1983.
1983 No 93--	The Shearers Amendment Act 1983.
1983 No 124--	The Construction Amendment Act 1983. (RS Vol 23, p 261.)
1985 No 35--	The Petroleum Amendment Act 1985.
1986 No 15--	The Machinery Amendment Act 1986: Sections 2 to 6, 9, and 10. (RS Vol 18, p 448.)
1986 No 52--	The Coal Mines Amendment Act 1986.
1986 No 121--	The Fair Trading Act 1986: The First Schedule.
1986 No 122--	The National Development Act Repeal Act 1986: Section 2(1)(d).
1986 No 123--	The Survey Act 1986: So much of the First Schedule as relates to the Coal Mines Act 1979.
1986 No 124--	The State-Owned Enterprises Act 1986: Paragraphs (a), (b), (c), and (e) of section 24(5).
1987 No 8--	The Official Information Amendment Act 1987: So much of the Third Schedule as relates to the Petroleum Act 1937, the Bush Workers Act 1945, the Construction Act 1959, the Shearers Act 1962, the Mining Act 1971, the Agricultural Workers Act 1977, the Coal Mines Act 1979, or the Factories and Commercial Premises Act 1981.
1987 No 15--	The Weights and Measures Act 1987: Section 43(7).
1987 No 65--	The Conservation Act 1987: So much of the Second Schedule as relates to the Petroleum Act 1937, the Mining Act 1971, or the Coal Mines Act 1979.
1987 No 99--	The Mining Amendment Act 1987: Section 6.
1987 No 109--	The Electricity Operators Act 1987: Section 3(2).
1987 No 117--	The State-Owned Enterprises Amendment Act 1987: So much of the First Schedule as relates to the Petroleum Act 1937, the Geothermal Energy Act 1953, the Mining Act

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	1971, or the Coal Mines Act 1979.
1988 No 20--	The State Sector Act 1988: So much of the Fifth Schedule as relates to the Mining Act 1971.
1988 No 57--	The Coal Mines Amendment Act 1988.
1988 No 62--	The Geothermal Energy Amendment Act 1988.
1988 No 78--	The Petroleum Amendment Act 1988.
1988 No 128--	The Finance Act (No 2) 1988: Section 12.
1988 No 177--	The Boilers, Lifts, and Cranes Amendment Act 1988.
1989 No 44--	The Public Finance Act 1989: So much of the First Schedule as relates to the Petroleum Act 1937, the Coal Mines Act 1979, or the Quarries and Tunnels Act 1982.
1989 No 63--	The Sale of Liquor Act 1989: So much of the First Schedule as relates to the Factories and Commercial Premises Act 1981.
1989 No 75--	The Transit New Zealand Act 1989: So much of the Fourth Schedule as relates to the Petroleum Act 1937.
1989 No 83--	The Construction Amendment Act 1989.
1989 No 86--	The Factories and Commercial Premises Amendment Act 1989.
1989 No 140--	The Ministry of Energy (Abolition) Act 1989: So much of the First Schedule as relates to the Petroleum Act 1937, the Geothermal Energy Act 1953, the Mining Act 1971, the Coal Mines Act 1979, or the Quarries and Tunnels Act 1982, and so much of the Third Schedule as relates to the Mining (Safety) Regulations 1973, the Coal Mines (Electrical) Regulations 1980, or the Coal Mines (Opencast Coal Mines) Regulations 1986.
1990 No 31--	The Conservation Law Reform Act 1990: So much of the Schedule as relates to the Petroleum Act 1937.
1991 No 22--	The Employment Contracts Act 1991: Section 164.
1991 No 60--	The Judicature Amendment Act 1991: So much of the Schedule as relates to the Petroleum Act 1937 or the Coal Mines Act 1979.
1991 No 69--	The Resource Management Act 1991: So much of the Eighth Schedule as relates to the Geothermal Energy Act 1953.
1991 No 70--	The Crown Minerals Act 1991: The First Schedule.
1991 No 150--	The Building Act 1991: So much of the Fourth Schedule as relates to section 4 of the Boilers, Lifts, and Cranes Act 1950.
1992 No 13--	The Accident Rehabilitation and Compensation Insurance Act 1992: Section 36.

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## Fourth Schedule

Section 62(3)

### Orders in Council and notices revoked

Title	Statutory   Regulations   Serial Number
The Construction Regulations 1961	1961/5
The Agricultural Workers Act Commencement Order 1963	1963/78
The Agricultural Workers Accommodation Regulations 1963	1963/79
The Shearers Act Commencement Order 1963	1963/82
The Shearers Regulations 1963	1963/83
The Construction Regulations 1961, Amendment No 1	1965/117
The Construction Regulations 1961, Amendment No 2	1965/186
The Cranes Exemption Order 1966	1966/207
The Construction Regulations 1961, Amendment No 3	1967/269
The Boilers, Lifts, and Cranes Exemption Notice 1968	1968/1
The Boilers (Gas Pipelines) Exemption Order 1969	1969/6
The Construction Regulations 1961, Amendment No 4	1969/45
The Construction Regulations 1961, Amendment No 5	1970/317
The Boilers and Machinery Exemption Order 1971	1971/13
The Construction Regulations 1961, Amendment No 6	1971/187
The Mining (Safety) Regulations 1973	1973/82
The Woodworking Machinery Regulations 1973	1973/85
The Construction Regulations 1961, Amendment No 7	1974/215
The Construction Regulations 1961, Amendment No 8	1975/209
The Shearers Regulations 1963, Amendment No 1	1975/220
The Agricultural Workers Accommodation Regulations 1963, Amendment No 1	1975/246
The Agricultural Workers (Market Gardens) Order 1976	1976/201
The Agricultural Workers (Tobacco Growers) Order 1976	1976/302
The Agricultural Workers (Dairy Farms) Order 1977	1977/32
The Agricultural Workers (Farms and Stations) Wages Order 1977	1977/33
The Agricultural Workers (Orchards and Vineyards) Order 1977	1977/218
The Construction Regulations 1961, Amendment No 9	1977/312

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The Agricultural Workers Act Commencement Order 1978		1978/100
The Agricultural Workers Regulations 1978		1978/233
The Petroleum Regulations 1978		1978/255
The Coal Mines (Electrical) Regulations 1980		1980/51
The Coal Mines (Mine Management and Safety) Regulations 1980		1980/116
The Construction Regulations 1961, Amendment No 10		1980/148
The Factories and Commercial Premises Act Commencement Order 1981		1981/277
The Factories and Commercial Premises Regulations 1981		1981/323
The Woodworking Machinery Regulations 1973, Amendment No 1		1982/74
The Quarries Regulations 1983		1983/39
The Tunnels Regulations 1983		1983/40
The Mining (Safety) Regulations 1973, Amendment No 1		1983/41
The Boilers, Lifts, and Cranes Exemption Order 1983		1983/89
The Boilers, Lifts, and Cranes Exemption Notice 1983		1983/90
The Quarries Regulations 1983, Amendment No 1		1984/258
The Tractor Safety Frame Regulations 1986		1986/229
The Factories and Commercial Premises Regulations 1981, Amendment No 1		1986/231
The Coal Mines (Mine Management and Safety) Regulations 1980, Amendment No 1		1986/276
The Coal Mines (Opencast Coal Mines) Regulations 1986		1986/277
The Construction Regulations 1961, Amendment No 13		1986/337
The Mining (Safety) Regulations 1973, Amendment No 2		1987/187
The Quarries Regulations 1983, Amendment No 2		1987/188
The Tunnels Regulations 1983, Amendment No 1		1987/189
The Boilers, Lifts, and Cranes Exemption Notice 1990		1990/174
The Boilers, Lifts, and Cranes (Fees) Regulations 1990		1990/321

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Note: This document has been developed by the Department of Labour as an information resource only and is not an official version of the Act. Amendments made by the Health and Safety in Employment Amendment Act 2002 apply in relation to any matter occurring after 5 May 2003.