

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

NEW SOUTH WALES



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

NEW SOUTH WALES



Act No. 80, 1987

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

Occupational Health and Safety (Workers Compensation) Amendment 1987

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

Short title

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

Commencement

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

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

Amendment of Act No. 20, 1983

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

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

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

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

Transitional provision

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

Occupational Health and Safety (Workers Compensation) Amendment 1987

SCHEDULE 1

(Sec. 3)

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

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

After the definition of “employer”, insert:

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

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

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

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

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

Section 25 (3)—

After section 25 (2), insert:

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

Penalty: \$4,000.

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

Section 26 (4)—

Omit “\$100”, insert instead “\$200”.

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

Section 45 (4)—

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

Occupational Health and Safety (Workers Compensation) Amendment 1987

SCHEDULE 1—*continued*

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

(8) Section 47—

Omit the section, insert instead:

Summary procedure for offences

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

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

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

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

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

Section 48 (1)—

Omit the subsection, insert instead:

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

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

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

(10) Section 51A—

After section 51, insert:

Repetition of certain offences—additional penalty

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

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

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

 SCHEDULE 2

(Sec. 3)

MISCELLANEOUS AMENDMENTS TO THE OCCUPATIONAL
HEALTH AND SAFETY ACT 1983(1) Section 15 (**Employers to ensure health, safety and welfare of their employees**)—

(a) Section 15 (2) (d) (ii)—

Omit “or” where lastly occurring.

Occupational Health and Safety (Workers Compensation) Amendment 1987

SCHEDULE 2—*continued*

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

(b) Section 15 (2) (e), (f)—

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

; or

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

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

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

(c) Section 15 (3)—

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

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

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

Section 17 (1)—

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

Occupational Health and Safety (Workers Compensation) Amendment 1987

SCHEDULE 2—*continued*

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

(3) Sections 30, 30A—

Omit section 30, insert instead:

Powers of inspectors to inspect workplaces

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

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

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

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

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

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

30A. (1) In this section—

“authorised justice” means—

(a) a Magistrate; or

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

(2) An inspector who is appointed under the Factories, Shops and Industries Act 1962 may apply to an authorised justice for a search warrant if the inspector has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened in or on any premises.

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

(a) to enter the premises; and

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

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

(4) Part IV_A—

After Part IV, insert:

PART IV_A

INDUSTRY CODES OF PRACTICE

Industry codes of practice

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

Occupational Health and Safety (Workers Compensation) Amendment 1987

SCHEDULE 2—*continued*

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

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

(3) An industry code of practice may—

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

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

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

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

(a) an approved industry code of practice;

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

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

(6) The Minister shall cause—

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

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

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

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

Occupational Health and Safety (Workers Compensation) Amendment 1987

SCHEDULE 2—*continued*

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

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

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

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

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

Use of industry codes of practice

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

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

Occupational Health and Safety (Workers Compensation) Amendment 1987

SCHEDULE 2—*continued*

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

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

(a) Section 45 (1A)—

After section 45 (1), insert:

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

- (a) regulating or prohibiting—
 - (i) the manufacture, supply or use of any plant;
 - (ii) the manufacture, supply, storage, transport or use of any substance; and
 - (iii) the carrying on of any process or the carrying out of any operation;
- (b) requiring any person to hold a permit, or any business, plant, substance or workplace to be licensed or registered, in any circumstances or as a condition of the carrying on of any activity or the doing of any thing;
- (c) the granting, renewal, cancellation or suspension of a permit, licence or certificate of registration;
- (d) prohibiting the carrying out of any activity by a person unless the person holds a permit or the use of any plant, substance or workplace unless it is licensed or registered;
- (e) the establishment, terms and conditions of membership, functions and procedure of a body which grants, renews, cancels or suspends permits, licences or certificates of registration;
- (f) the circumstances in which permits, licences or certificates of registration may be cancelled or suspended;
- (g) the manner of application for granting or renewal of permits, licences or certificates of registration;
- (h) the terms and conditions upon which permits, licences or certificates of registration may be granted;

Occupational Health and Safety (Workers Compensation) Amendment 1987

SCHEDULE 2—*continued*

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

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

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

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

Occupational Health and Safety (Workers Compensation) Amendment 1987

SCHEDULE 2—*continued*

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

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

and certifying that the contents of the statement are in accordance with the particulars contained in the document or record, is admissible in any proceedings and is evidence of the matters contained in the statement without proof of the signature of the person by whom the statement purports to have been signed.