

**OCCUPATIONAL HEALTH AND SAFETY LEGISLATION  
(AMENDMENT) ACT 1990 No. 121**

NEW SOUTH WALES



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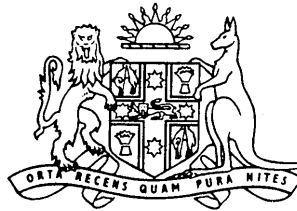
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**OCCUPATIONAL HEALTH AND SAFETY LEGISLATION  
(AMENDMENT) ACT 1990 No. 121**

NEW SOUTH WALES



**Act No. 121,1990**

An Act to amend the Occupational Health and Safety Act 1983 and associated occupational health and safety legislation to increase penalties, and for other purposes. [Assented to 20 December 1990]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Occupational Health and Safety Legislation (Amendment) Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Occupational Health and Safety Act 1983 No. 20**

3. The Occupational Health and Safety Act 1983 is amended as set out in Schedule 1.

**Amendment of Construction Safety Act 1912 No. 38**

4. The Construction Safety Act 1912 is amended as set out in Schedule 2.

**Amendment of Dangerous Goods Act 1975 No. 68**

5. The Dangerous Goods Act 1975 is amended as set out in Schedule 3.

**Amendment of Factories, Shops and Industries Act 1962 No. 43**

6. The Factories, Shops and Industries Act 1962 is amended as set out in Schedule 4.

**Amendment of Justices Act 1902 No. 27**

7. The Justices Act 1902 is amended as set out in Schedule 5.

**Validation provision - fees paid into WorkCover Authority Fund**

8. (1) The payment (on or after 1 July 1989) into the WorkCover Authority Fund of fees that would have been validly paid into that Fund if the relevant statutory provisions had been in force at that time is validated.

(2) The relevant statutory provisions are section 4C of the Construction Safety Act 1912, section 5B of the Dangerous Goods Act 1975 and section 9A of the Factories, Shops and Industries Act 1962

(being provisions inserted by the WorkCover Legislation (Amendment) Act 1989).

**Explanatory note**

The proposed section validates the payment into the WorkCover Authority Fund of certain fees before the commencement of the relevant statutory provisions. The WorkCover Authority took over (from the Department of Industrial Relations and Employment) on 1 July 1989 the responsibility for occupational health and safety matters and the administration of regulatory functions under the Occupational Health and Safety Act 1983 and the associated health and safety legislation.

**Explanatory notes**

9. Matter appearing under the heading "Explanatory note" in this Act does not form part of this Act.

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**SCHEDULE 1 - AMENDMENT OF OCCUPATIONAL HEALTH  
AND SAFETY ACT 1983**

(Sec. 3)

**Part 1 - Amendments relating to penalties**

- (1) Sections 15, 16, 17, 18, 21, 21A (**General duties relating to health, safety and welfare at work**):

Omit "Penalty \$100,000 in the case of a corporation and \$10,000 in any other case" wherever occurring, insert instead "Maximum penalty 2,500 penalty units in the case of a corporation or 250 penalty units in any other case".

- (2) Sections 19 (**Employees at work to take care of others and to co-operate with employer**), 20 (**Person not to interfere with or misuse things provided for health, safety and welfare**):

Omit "Penalty \$2,000" wherever occurring, insert instead "Maximum penalty: 25 penalty units".

SCHEDULE 1 - AMENDMENT OF OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983 - *continued*

- (3) Sections 23 (**Establishment of occupational health and safety committees in workplaces**), 26 (**Unlawful dismissal etc. of employee**), 27 (**Notification of accidents and other matters**), 52 (**Obstruction etc.**):

Omit "Penalty \$10,000" wherever occurring, insert instead "Maximum penalty 150 penalty units in the case of a corporation or 100 penalty units in any other case".

- (4) Section 25 (**Powers of members of occupational health and safety committees**):

From section 25 (3), omit "Penalty \$4,000", insert instead "Maximum penalty 50 penalty units".

- (5) Section 26 (**Unlawful dismissal etc. of employee**):

From section 26 (4), omit the matter relating to the penalty, insert instead:

Maximum penalty For each day the order is not given effect to, 5 penalty units.

- (6) Section 45 (**Regulations**):

From section 45 (4), omit "\$4,000", insert instead "100 penalty units".

**Part 2 - Miscellaneous amendments**

- (7) Section 27A:

After section 27, insert:

**Notification of certain proposed work**

27A. (1) A person must not commence to carry out work of a kind prescribed by the regulations at a place of work unless the person has given notice of the proposed work in accordance with this section.

Maximum penalty: 100 penalty units.

SCHEDULE 1 - AMENDMENT OF OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983 - *continued*

(2) The regulations may prescribe the following kinds of work for the purposes of subsection (1):

- (a) construction work;
- (b) demolition work;
- (c) the setting up or erection of cranes, hoists, scaffolding, conveyors, escalators, lifts or moving walks;
- (d) any other work (whether or not of the same kind).

(3) Any notice under this section:

- (a) is to be in the form approved by the WorkCover Authority; and
- (b) is to be given at least 7 days before the commencement of the proposed work; and
- (c) is to be given to the WorkCover Authority by leaving it at, or by sending it by post or by facsimile transmission to, an office of the WorkCover Authority.

(4) The regulations may:

- (a) require a notice to be given in a different manner, or within a different time, from that prescribed by subsection (3); and
- (b) require a notice to be given by a person other than the person proposing to carry out the work

(5) Until the regulations otherwise provide, anything required to be notified under Part 2 of the Construction Safety Act 1912 (as in force immediately before the repeal of that Part by the Occupational Health and Safety Legislation (Amendment) Act 1990) is to be regarded as being work of a kind that is required to be notified under this section.

**Explanatory note**

The proposed section provides that work prescribed by the regulations (such as construction work, demolition work, the setting up of scaffolding etc.) must be notified to the WorkCover Authority before the work is commenced. The proposed section replaces the

**SCHEDULE 1 - AMENDMENT OF OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983** *continued*

requirement for notification of the commencement of similar kinds of work at present contained in Part 2 of the Construction Safety Act 1912. The proposed section also provides that anything required to be notified under that Part is to be regarded as work to which the proposed section applies until the regulations otherwise provide.

**(8) Section 50 (Offences by corporations):**

After section 50 (3), insert:

(4) In the case of a corporation which is a council of a local government area, a member of the council (in his or her capacity as such a member) is not to be regarded as a director or person concerned in the management of the council for the purposes of this section.

**Explanatory note**

Section 50 at present makes a director or a person concerned in the management of a corporation guilty of the same offence committed by the corporation if the director or person knowingly authorised or permitted the offence. The amendment makes it clear that the section does not apply to make elected members of a council guilty of an offence because the members might be considered to be persons concerned in the management of the corporation (namely, the council) and therefore liable to be prosecuted for offences committed by the council.

**(9) Section 51B:**

After section 51A, insert:

**Penalty notices for certain offences**

51B. (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act (or the regulations under this Act) or a provision of the associated occupational health and safety legislation, being an offence prescribed by the regulations.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty

SCHEDULE 1 - AMENDMENT OF OCCUPATIONAL  
HEALTH AND SAFETY ACT 1983 - *continued*

prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice may be served personally or by post.

(4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way as affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence.

(6) The regulations may:

- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
- (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
- (c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

(9) In this section:

**"authorised officer"** means a person declared by the regulations to be an authorised officer for the purposes of this section.

**Explanatory note**

The proposed section provides for the issue and service of penalty notices for certain offences under the Occupational Health and Safety Act 1983 and the associated occupational health and safety legislation.



SCHEDULE 2 - AMENDMENT OF CONSTRUCTION SAFETY  
ACT 1912 - *continued*

(Sec. 4)

**Part 1 - Amendments relating to penalties**

(1) Section 16 (**Obstruction of inspectors**):

Omit "\$4,000", insert instead "50 penalty units".

(2) Section 17B (**Endorsement of certificates**):

From section 17B (2), omit "\$1,000", insert instead "15 penalty units".

(3) Section 21 (**Penalties and proceedings for offences**):

(a) From section 21 (1), omit "\$10,000", insert instead "250 penalty units in the case of a corporation or 100 penalty units in any other case".

(b) After "summary manner" in section 21 (1), insert "before the Supreme Court in its summary jurisdiction or".

(c) Omit section 21 (3), insert instead:

(3) The maximum penalty that may be imposed in proceedings for an offence against this Act or the regulations by a Local Court or an industrial magistrate is 100 penalty units or the maximum penalty provided in respect of the offence, whichever is less.

(3A) The maximum penalty that may be imposed in any such proceedings by the Supreme Court in its summary jurisdiction is the maximum penalty provided in respect of the offence.

(4) Section 22 (**Regulations**):

From section 22 (4), omit "\$4,000", insert instead "100 penalty units".

**Part 2 - Miscellaneous amendments**

(5) Part 2 (**Notification of certain work**):

Omit the Part.

**SCHEDULE 2 - AMENDMENT OF CONSTRUCTION SAFETY  
ACT 1912 - *continued***

**(6) Section 18A (Exemptions):**

Omit "6, 6A, 10".

**(7) Section 22 (Regulations):**

(a) Omit section 22 (2) (a), (f) (v) and (vii) and (3A).

(b) After "prescribing" in section 22 (2) (f), insert "or providing for the determination of".

**Explanatory note**

Item (5) omits Part 2 to remove the requirement for notification to be given to the Chief Inspector of Construction Safety of the commencement of certain work as proposed section 27A of the Occupational Health and Safety Act 1983 (see Schedule 1 (7)) will cover this. The amendments in items (6) and (7) are consequential.

**SCHEDULE 3 - AMENDMENT OF DANGEROUS GOODS  
ACT 1975**

(Sec. 5)

**(1) Section 9 (Keeping generally):**

(a) From section 9 (2), omit "\$2,000" wherever occurring, insert instead "50 penalty units".

(b) From section 9 (2), omit "\$10,000", insert instead "250 penalty units".

**(2) Sections 11 (Offence of unlicensed conveyance), 12 (Conveyance generally), 13 (Offence of sale in public place):**

Omit "Penalty \$2,000 or, if a corporation, \$10,000" wherever occurring, insert instead "Maximum penalty 250 penalty units in the case of a corporation or 50 penalty units in any other case".

**(3) Sections 14 (Negligent or careless use etc.), 25 (Receipt to be authorised):**

Omit "Penalty \$2,000" wherever occurring, insert instead "Maximum penalty 50 penalty units".

SCHEDULE 3 - AMENDMENT OF DANGEROUS GOODS  
ACT 1975 - *continued*

(4) Section 20 (**Offence of unlicensed manufacture**):

From section 20 (1), omit the matter relating to the penalty, insert instead:

Maximum penalty 250 penalty units in the case of a corporation or 50 penalty units in any other case, and (in any case) if the offence continues, 50 penalty units for each day the offence continues.

(5) Section 24 (**Supply to minors**):

From section 24 (1), omit "Penalty \$400.", insert instead "Maximum penalty 10 penalty units".

(6) Section 26 (**Possession of explosives**):

(a) From section 26 (1), omit "\$2,000", insert instead "50 penalty units".

(b) From section 26 (1), omit "10,000", insert instead "250 penalty units".

(7) Section 32 (**Obstruction of inspectors etc.**):

From section 32 (1), omit "Penalty \$2,000", insert instead "Maximum penalty: 50 penalty units".

(8) Section 33 (**Proceedings for offences**):

(a) After "Magistrate" in section 33 (1) (b), insert "or before the Supreme Court in its, summary jurisdiction".

(b) After section 33 (1), insert

(1A) The maximum penalty that may be imposed in any such proceedings by a Local Court is 100 penalty units or the maximum penalty provided in respect of the offence, whichever is less.

(1B) The maximum penalty that may be imposed in any such proceedings by the Supreme Court in its summary jurisdiction is the maximum penalty provided in respect of the offence.

**SCHEDULE 3 - AMENDMENT OF DANGEROUS GOODS  
ACT 1975 - *continued***

**(9) Section 41 (Regulations):**

- (a) From section 41 (3) (g), omit "\$4,000", insert instead "100 penalty units".
- (b) From section 41 (3) (g), omit "\$200", insert instead "5 penalty units".

**SCHEDULE 4 - AMENDMENT OF FACTORIES, SHOPS AND  
INDUSTRIES ACT 1962**

(Sec. 6)

**(1) Section 7 (Inspectors):**

From section 7 (5), omit "\$4,000", insert instead "100 penalty units".

**(2) Section 45 (Means of escape from and extinguishing fires):**

From section 45 (2), omit "to a penalty not exceeding \$10,000 and to a further penalty not exceeding \$100 for each day during which such default continues", insert instead ". in the case of a corporation, to a penalty not exceeding 250 penalty units or, in any other case, to a penalty not exceeding 100 penalty units, and (in any case) to a further penalty not exceeding 2.5 penalty units for each day the offence continues".

**(3) Section 100 (Powers of inspectors):**

From section 100 (4), omit "\$400", insert instead "50 penalty units".

**(4) Section 144 (Regulations):**

- (a) From section 144 (1) (e) (i), omit "\$4,000", insert instead "100 penalty units".
- (b) From section 144 (1) (e) (ii), omit "\$1,000", insert instead "25 penalty units".

**SCHEDULE 4 - AMENDMENT OF FACTORIES, SHOPS AND INDUSTRIES ACT 1962 - *continued***

**(5) Section 147 (Penalties):**

- (a) From section 147 (1) (a), omit "\$10,000", insert instead "250 penalty units in the case of a corporation or 100 penalty units in any other case".
- (b) Omit section 147 (1) (b), insert instead:
  - (b) in the case of any other offence under this Act - to a penalty not exceeding 25 penalty units.

**SCHEDULE 5 - AMENDMENT OF JUSTICES ACT 1902**

(Sec. 7)

**Section 100I (Definitions):**

Insert, in alphabetical order, in paragraph (a) of the definition of "penalty notice" in section 100I (1) the following:

Occupational Health and Safety Act 1983, section 51B;

**Explanatory note**

The amendment extends the definition of "penalty notice" to cover penalty notices issued under proposed section 51B of the Occupational Health and Safety Act 1983. The result will be to bring such notices within the self-enforcing infringement notices scheme.

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*[Minister's second reading speech made in -  
Legislative Assembly on 17 October 1990  
Legislative Council on 26 November 1990]*