



New South Wales

Occupational Health and Safety Amendment Act 1997 No 51

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New South Wales

Occupational Health and Safety Amendment Act 1997 No 51

Act No 51, 1997

An Act to amend the *Occupational Health and Safety Act 1983* to extend the operation of that Act; to repeal the *Construction Safety Act 1912* and other associated occupational health and safety legislation; and for other purposes.
[Assented to 2 July 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Occupational Health and Safety Amendment Act 1997*.

2 Commencement

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

3 Amendment of Occupational Health and Safety Act 1983 No 20

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

4 Repeal and consequential amendment of associated occupational health and safety legislation

- (1) Each Act or regulation specified in Schedule 2 is repealed or amended as set out in that Schedule.
- (2) Different days may be appointed for the commencement of an item in Schedule 2 for the purpose of repealing or amending different provisions of an Act or regulation specified in Schedule 2 on different days.

5 Consequential amendment of other Acts

Each Act specified in Schedule 3 is amended as set out in that Schedule.

Schedule 1 Amendment of Occupational Health and Safety Act 1983

(Section 3)

[1] Section 5 Objects

Omit section 5 (1) (d). Insert instead:

- (d) to protect persons (whether or not at a place of work) against risks to health or safety arising from the use of plant that affects public safety.

[2] Section 5 (2)

Omit the subsection.

[3] Section 18

Omit the section. Insert instead:

18 Designers, manufacturers and suppliers to ensure health and safety as regards plant and substances for use at work

- (1) A person who designs, manufactures or supplies any plant or substance for use by persons at work must:
 - (a) ensure that the plant or substance is safe and without risks to health when properly used, and
 - (b) provide, or arrange for the provision of, adequate information about the plant or substance to the persons to whom it is supplied to ensure its safe use.
- (2) The obligations under this section:
 - (a) apply only if the plant or substance is designed, manufactured or supplied in the course of a trade, business or other undertaking (whether for profit or not), and

- (b) apply whether or not the plant or substance is exclusively designed, manufactured or supplied for use by persons at work, and
 - (c) extend to the design, manufacture or supply of components for, or accessories to, any plant for use by persons at work, and
 - (d) extend to the supply of the plant or substance by way of sale, transfer, lease or hire and whether as principal or agent, and
 - (e) extend to the supply of the plant or substance to a person for the purpose of supply to others, and
 - (f) do not apply to a person merely because the person supplies the plant or substance in the course of a business of financing the acquisition of the plant or substance by a customer from another person.
- (3) In this section, *manufacture* plant includes assemble, install or erect plant.

Maximum penalty: 5,000 penalty units in the case of a corporation or 500 penalty units in any other case.

[4] Section 28 Notification under associated occupational health and safety legislation

Omit the section.

[5] Section 29 Definitions

Omit the definition of *relevant legislation*. Insert instead:

relevant legislation means the provisions of this Act and of the regulations made under this Act.

[6] Part 4, Division 2 Factories, shops and industries legislation (sections 35 and 36)

Omit the Division.

[7] Part 4, Division 3 Construction safety legislation (sections 37 and 38)

Omit the Division.

[8] Section 45 Regulations

Insert after section 45 (1A) (a):

- (a1) requiring persons to identify hazards arising from work (including those arising from any premises or other place of work or from any plant or substance for use at work),
- (a2) requiring persons to assess the risks to the health and safety of persons associated with any such hazards and to deal with those risks,
- (a3) designating the persons (whether employers, self-employed persons, principal contractors or other persons) who are to be responsible for compliance with the obligations imposed by the regulations,

[9] Section 45 (1B)

Insert after section 45 (1A):

- (1B) A reference in subsection (1A) to a permit includes a reference to a certificate of competency.

[10] Section 46 Relationship with Part 3

Insert at the end of the section:

- (2) Compliance with the regulations is not in itself a defence in any proceedings for an offence against Part 3, subject to any regulations under subsection (1). However, a relevant contravention of the regulations is admissible in evidence in any proceedings for an offence against Part 3.

[11] Section 49A

Insert after section 49:

49A Multiple contraventions of Part 3

- (1) More than one contravention of section 15, 16, 17 or 18 by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.
- (2) This section does not authorise contraventions of 2 or more of those sections to be charged as a single offence.
- (3) A single penalty only may be imposed in respect of more than one contravention of any such section that is charged as a single offence.

[12] Section 54 Evidentiary statements

Omit section 54 (a) (iii).

[13] Part 7

Insert after section 54:

Part 7 Miscellaneous

54A Plant affecting public safety—extension of Act

- (1) In this section:
plant affecting public safety means any plant (including but not limited to plant of the following kinds) that is prescribed by the regulations as plant affecting public safety, whether or not the plant is at a place of work or for use at work:
 - (a) boilers and pressure vessels,
 - (b) escalators, lifts and moving walks,
 - (c) scaffolding.
- (2) The following provisions of this Act extend to plant affecting public safety even though the plant is not at a place of work or is not for use at work:
 - (a) sections 21B–21D,

- (b) Divisions 3, 4 and 6 of Part 3,
 - (c) Parts 4A, 5 and 6.
- (3) For the purposes of the application of those provisions:
- (a) a reference to work includes a reference to operating any plant affecting public safety, and
 - (b) a reference to premises or a place of work includes a reference to any plant affecting public safety and the premises or other place at or in which the plant is situated or used, and
 - (c) a reference to occupational health and safety includes a reference to public health and safety.
- (4) This section does not affect the application of this Act to plant affecting public safety apart from the operation of this section.

[14] Schedules 2 and 3

Omit the Schedules.

[15] Schedule 8 Savings and transitional provisions

Insert at the end of clause 1 (1) of Part 1:

Occupational Health and Safety Amendment Act 1997

[16] Schedule 8, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Occupational Health and Safety Amendment
Act 1997**

16 Definition

In this Part, *amending Act* means the *Occupational Health and Safety Amendment Act 1997*.

17 Temporary preservation of regulation-making powers under repealed associated legislation

Until the end of the period of 3 years after the repeal of the provisions of the former associated occupational health and safety legislation referred to in Schedule 2 to the amending Act, regulations may be made under this Act for or with respect to any matter contained in that legislation or any matter that could have been prescribed by regulation under that legislation (but for its repeal).

18 Staged repeal under Subordinate Legislation Act 1989 of regulations to be repealed by amending Act

A regulation that is to be repealed by the amending Act is taken not to be repealed by section 10 of the *Subordinate Legislation Act 1989*.

19 Saving of existing certificates of competency

- (1) This clause applies to any certificate of competency or other permit that is required to be held under the regulations made under this Act.
- (2) A certificate of competency or other permit under an Act or regulation (or a provision of an Act or regulation) repealed by the amending Act that:
 - (a) was held immediately before that repeal, and
 - (b) is of a similar kind to a certificate of competency or other permit to which this clause applies,is taken to be a certificate of competency or other permit to which this clause applies.
- (3) This clause is subject to the provisions of the regulations under this Act.

20 Application of amendments to section 18

The amendments made to section 18 by the amending Act:

- (a) apply to any plant or substance designed or manufactured after (but not before) the commencement of those amendments, and

- (b) apply to any plant or substance supplied after (but not before) the commencement of those amendments, irrespective of when it was designed or manufactured.

21 Application of section 46 (2) (relationship of regulations with Part 3)

Section 46 (2) (as inserted by the amending Act) does not apply to proceedings instituted before the commencement of section 46 (2).

22 Application of section 49A (Multiple contraventions of Part 3)

Section 49A (as inserted by the amending Act) applies to charges made after the commencement of that section, whether the offence to which the charge relates was committed before or after that commencement.

Schedule 2 Repeal and consequential amendment of associated occupational health and safety legislation

(Section 4)

2.1 Construction Safety Act 1912 No 38

The Act is repealed.

2.2 Construction Safety Regulations 1950

The Regulations are repealed.

2.3 Factories, Shops and Industries Act 1962 No 43

[1] Section 1 Name of Act and commencement

Omit “Factories,” from section 1 (1).

[2] Section 4 Definitions

Omit the definitions of *Authority, Factory, Furniture, General Manager, Harbour, Inspector, Maintained, Manufacturing process, Mechanical power, Motor spirit, Prescribed* and *Ship* from section 4 (1).

[3] Section 4 (2)

Omit the subsection.

[4] Section 5 Extension of this Act and exemptions therefrom

Omit the section.

[5] Section 6 Construction and application

Omit the section.

- [6] Section 6A Part 3 to bind the Crown**
Omit the section.
- [7] Part 3 Health, safety and welfare in factories, shops and other industries (sections 9–73)**
Omit the Part.
- [8] Section 74 Definitions**
Omit the definition of *Furniture factory* in section 74 (1).
- [9] Section 100 Powers of inspectors**
Omit section 100 (1) (b).
- [10] Section 100 (1) (f)**
Omit “, or furniture factory”.
- [11] Section 100 (2)**
Omit “any furniture factory, or”.
- [12] Section 144 Regulations**
Omit section 144 (1) (e) (i).
- [13] Section 144 (2)**
Omit the subsection.
- [14] Section 145 Proceedings**
Omit section 145 (1) (a).
- [15] Section 145 (5)**
Omit “or, in a case where the informant is an inspector, by an officer of the Workcover Authority”.
- [16] Section 145 (6)**
Omit the subsection.

[17] Section 146 Service of order, notice or summons

Omit “factory,” wherever occurring.

[18] Section 147 Penalties

Omit section 147 (1) (a).

[19] Section 147 (2)

Omit the subsection.

[20] Section 147 (4)

Omit “factory,”.

[21] Section 148 Evidentiary provisions

Omit section 148 (1) (c).

[22] Section 148 (2)

Omit the subsection.

[23] Section 149 Contracting out

Omit “factory or”.

[24] Section 151 Penalty for forging certificates etc and false declaration

Omit “for the registration under this Act of any premises as a factory or”.

[25] Section 152 Penalty for destroying notices etc

Omit “factory,”.

[26] Schedule 2 Savings, transitional and other provisions

Omit Part 2.

2.4 Regulations under Factories, Shops and Industries Act 1962

The following regulations under that Act are repealed:

Abrasive Blasting Regulations

Boiler and Pressure Vessel Regulations

Chaff-cutting Machines (Safety) Regulation 1980

Engine Drivers and Boiler Attendants Certification Regulations

Explosive-powered Tool Regulations

Factories (Health and Safety—Asbestos Processes) Regulation 1984

Factories (Health and Safety—Circular Saws) Regulations 1943

Factories (Health and Safety—Dipping in Flammable Solutions) Regulation 1976

Factories (Health and Safety) Electroplating Regulation 1988

Factories (Health and Safety—Furnaces) Regulation 1983

Factories (Health and Safety) General Regulations 1913

Factories (Health and Safety—Hearing Conservation) Regulation 1979

Factories (Health and Safety—Spray Painting) Regulation 1977

Foundry Regulations

Lead Regulations

Local Government Industries (Machine Safety) Regulation

Locomotive Regulations

Rural Industries (Machine Safety) Regulations

Timber Industry (Health and Safety) Regulation 1982

Welding Regulations

Schedule 3 Consequential amendment of other Acts

(Section 5)

3.1 Dangerous Goods Act 1975 No 68

[1] Section 5 Savings and relationship to other laws

Omit “, the *Construction Safety Act 1912*” from section 5 (3).

[2] Section 41 Regulations

Insert after section 41 (1) (a):

- (a1) regulating or prohibiting the use of explosives in connection with the carrying out of any construction or other work, including requiring any person using or in charge of explosives for that purpose to hold a permit under the regulations,

[3] Section 41 (2)

Omit “, the *Construction Safety Act 1912*”.

3.2 Electricity (Pacific Power) Act 1950 No 22

Section 8E Application of certain provisions to subsidiary companies

Omit section 8E (2) (a).

3.3 Electricity Transmission Authority Act 1994 No 64

Section 25 Application of certain provisions to subsidiary companies

Omit section 25 (2) (a).

3.4 Justices Act 1902 No 27

Section 145B Short description of certain offences

Insert “, or under any Act authorising the issue of a penalty notice for the offence concerned” after “the offence concerned” in section 145B (3).

3.5 Local Government Act 1993 No 30

[1] Section 68 What activities, generally, require the approval of the council?

Omit item 5 of Part F of the Table to section 68. Insert instead:

- | | |
|---|---|
| 5 | Install or operate amusement devices that are plant affecting public safety within the meaning of section 54A of the <i>Occupational Health and Safety Act 1983</i> . |
|---|---|

[2] Dictionary

Omit the definition of *amusement device* and the note to that definition.

3.6 Subordinate Legislation Act 1989 No 146

Section 10 Staged repeal of statutory rules

Omit section 10 (3).

[Minister's second reading speech made in—
Legislative Council on 14 May 1997
Legislative Assembly on 27 June 1997 p.m.]