



New South Wales

Work Health and Safety Legislation Amendment Act 2011 No 67

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New South Wales

Work Health and Safety Legislation Amendment Act 2011 No 67

Act No 67, 2011

An Act to amend the *Work Health and Safety Act 2011* to make further provision for the commencement, administration and operation of that Act; and to make consequential and other amendments to certain other Acts. [Assented to 28 November 2011]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Work Health and Safety Legislation Amendment Act 2011*.

2 Commencement

- (1) Except as otherwise provided by this section, this Act commences on 1 January 2012 or on such later day as may be appointed by proclamation before 1 January 2012.
- (2) Schedules 1 [1] and 2 [14] and [15] commence on the date of assent to this Act.
- (3) Schedules 2 (except Schedule 2 [14] and [15]) and 3 commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Work Health and Safety Act 2011 No 10

[1] Section 2

Omit the section. Insert instead:

2 Commencement

This Act commences on 1 January 2012 or on such later day as may be appointed by proclamation before 1 January 2012.

[2] Section 4 Definitions

Omit the definition of *inspector*. Insert instead:

inspector means an inspector appointed under Part 9 or deemed to be an inspector under that Part.

[3] Section 4, definition of “member of staff”

Insert in alphabetical order:

member of staff of a regulator means, in the case of the head of the Department of Trade and Investment, Regional Infrastructure and Services, a member of staff of that Department.

[4] Section 4, definition of “regulator”

Omit the definition. Insert instead:

regulator means:

- (a) the WorkCover Authority constituted under the *Workplace Injury Management and Workers Compensation Act 1998*, unless paragraph (b) applies, or
- (b) in relation to matters or the exercise of a power or function concerning a mining workplace or a coal workplace—the head of the Department of Trade and Investment, Regional Infrastructure and Services.

[5] Section 38 Duty to notify of notifiable incidents

Omit section 38 (8). Insert instead:

- (8) Despite subsection (1), a person is not required to give notice under this section of an incident that occurs at a mine to which the *Mine Health and Safety Act 2004* applies or at a coal workplace.

[6] Section 154

Insert after section 153:

154 Delegation by regulator

- (1) The regulator may, by instrument in writing, delegate to an authorised person a power or function under this Act other than this power of delegation.
- (2) A delegation under this section:
 - (a) may be made subject to such conditions as the regulator thinks fit, and
 - (b) is revocable at will, and
 - (c) does not derogate from the power of the regulator to act.
- (3) In this section:

authorised person means:

 - (a) a member of staff of the regulator, or
 - (b) a person of a class prescribed by the regulations or of a class approved by the regulator.

[7] Section 156A Special provision for mining and coal workplace inspectors

Omit “is an inspector” from section 156A (2) and (3) wherever occurring.

Insert instead “is deemed to be an inspector”.

[8] Section 162A Exercise of inspector functions outside area of jurisdiction

Omit “regulator” from paragraph (a) of the definition of *appropriate authority* in section 162A (7).

Insert instead “WorkCover Authority”.

[9] Section 165A Special powers of entry for coal and mining workplaces

Insert after section 165A (2):

- (3) In this section:

authorised representative of an industrial organisation of employees, means a person who is an authorised industrial officer within the meaning of Part 7 (Entry and inspection by officers of industrial organisations) of Chapter 5 of the *Industrial Relations Act 1996* in respect of that industrial organisation of employees.

[10] Section 229A Part extends to mines and coal workplaces

Omit section 229A (2). Insert instead:

- (2) For the purposes of those proceedings, a reference in this Part to this Act or the regulations includes a reference to those Acts or those regulations.

[11] Section 229B Procedure for offences

Omit section 229B (5).

[12] Section 252 Officer of public authority

Insert at the end of the section:

- (2) A Minister of a State or the Commonwealth is not in that capacity an officer for the purposes of this Act.

[13] Section 271A

Insert after section 271:

271A Information sharing between regulators

- (1) A regulator or a member of staff of a regulator is authorised to disclose information or give access to a document to the other regulator or a member of staff of the other regulator if the disclosure or giving of access is for the purpose of assisting the other regulator to exercise the powers or functions of the other regulator under this Act, the *Mine Health and Safety Act 2004* or the *Coal Mine Health and Safety Act 2002*.
- (2) Section 271 applies to the use of information or a document that a person obtains or gains access to as a result of the disclosure of the information or the giving of access to the document as authorised by this section, as if the person had obtained the information or gained access to the document in exercising a power or function under this Act.
- (3) Section 271 (2) does not apply to the disclosure of information or giving of access to a document as authorised by this section.

[14] Section 276A Application of Act to mining workplaces and coal workplaces—references to regulator

Omit the section.

[15] Schedule 4 Savings, transitional and other provisions

Insert after clause 1 (3):

- (4) A provision referred to in subclause (1) has effect, if the regulations so provide, despite any other clause of this Schedule.
- (5) The power to make regulations under subclause (1) extends to authorise the making of regulations whereby the provisions of this Act are deemed to be amended in a specified manner, but any regulation made pursuant to this clause:
 - (a) may only be made for or with respect to matters for or with respect to which this Act makes provision, and
 - (b) may not be made so as to have effect after 31 December 2012, and
 - (c) ceases to have effect, unless sooner revoked or otherwise ceasing to have effect, on 31 December 2012.

[16] Schedule 4, clause 5

Omit clause 5 (2). Insert instead:

- (2) An identification card issued to the inspector under the OHS Act (or to a person taken to have been appointed as an inspector under section 47A or 47B of the OHS Act) is taken to be an identity card issued under this Act until its replacement under this Act, and may be used by an inspector under this Act even though it refers to provisions of the OHS Act.

[17] Schedule 4, clause 7

Omit the clause. Insert instead:

7 Continuation of repealed Regulations

Without limiting clause 1, the regulations under that clause may make provision for or with respect to:

- (a) the continued operation after the commencement of this Act of a regulation or provision of a regulation made or continued in operation by or under the OHS Act or by or under an Act repealed by the OHS Act, or
- (b) anything done under any such regulation or provision and having any force or effect immediately before the commencement of this Act.

[18] **Schedule 4, clause 8**

Omit “or exemption”. Insert instead “, exemption or other instrument”.

[19] **Schedule 4, Part 3**

Insert after clause 9:

**Part 3 Provisions consequent on enactment of
Work Health and Safety Legislation
Amendment Act 2011**

10 Definitions

In this Part:

amending Act means the *Work Health and Safety Legislation Amendment Act 2011*.

OHS Act means the *Occupational Health and Safety Act 2000*.

11 Amendment of Coal Mine Health and Safety Act 2002

- (1) Section 8B of the *Coal Mine Health and Safety Act 2002* (*the CMHS Act*) extends to matters arising before the commencement of this Act as if a reference in that section to this Act included a reference to the OHS Act.
- (2) A reference to this Act in section 14, 15 or 16 of the CMHS Act includes a reference to the OHS Act in relation to an offence committed before the commencement of this Act.
- (3) A site-specific occupational health and safety management plan prepared for the purposes of section 75 of the CMHS Act that is in force immediately before the commencement of this Act is taken to have been prepared as a site-specific work health and safety management plan.
- (4) A reference to this Act in section 175 of the CMHS Act includes a reference to the OHS Act in relation to a failure that occurs before the commencement of this Act.
- (5) A reference to this Act in section 191 of the CMHS Act includes a reference to the OHS Act in relation to an offence committed before the commencement of this Act.
- (6) A reference to this Act in section 220 of the CMHS Act includes a reference to the OHS Act in relation to a matter or thing done or omitted before the commencement of this Act.

- (7) A reference to the OHS Act in clause 27 (Validation) of Schedule 3 to the CMHS Act includes a reference to this Act if the relevant date under that clause is after the commencement of this Act.

12 Amendment of Crimes (Sentencing Procedure) Act 1999

Section 27 of the *Crimes (Sentencing Procedure) Act 1999* continues to apply as it was in force before the commencement of this Act to and in relation to an offence against Division 1 of Part 2 of the OHS Act committed before the commencement of this Act.

13 Amendment of Criminal Procedure Act 1986

Sections 215 and 257D of the *Criminal Procedure Act 1986* continue to apply as it was in force before the commencement of this Act to and in respect of proceedings for an offence committed before that commencement.

14 Amendment of Industrial Relations Act 1996

- (1) There is no right of appeal under section 197A (Appeals against acquittals in proceedings for offences against occupational health and safety legislation) of the *Industrial Relations Act 1996* (**the IR Act**) after the repeal of that section, except as provided by subclause (2).
- (2) Section 197A of the IR Act continues to apply (despite its repeal) to and in relation to an appeal commenced under that section before its repeal.
- (3) Section 210 (1) (j) of the IR Act continues to apply as it was in force before the commencement of this Act to and in relation to:
 - (a) any complaint made about a workplace matter (as referred to in that provision) before the repeal of that provision, and
 - (b) the exercise before the repeal of that provision of any function conferred under Division 2 of Part 2 of the OHS Act.
- (4) Section 383A (a) of the IR Act continues to apply (despite its repeal) to and in relation to the recovery of any amount ordered to be paid under section 114 of the OHS Act by the Local Court constituted by an Industrial Magistrate before the repeal of that provision.

15 Amendment of Mine Health and Safety Act 2004

- (1) Section 8 of the *Mine Health and Safety Act 2004 (the MHS Act)* extends to matters arising before the commencement of this Act as if a reference in that section to this Act included a reference to the OHS Act.
- (2) A reference to this Act in sections 18, 19 and 20 of the MHS Act includes a reference to the OHS Act in relation to an offence committed before the commencement of this Act.
- (3) A reference to this Act in section 100 of the MHS Act includes a reference to the OHS Act in relation to a serious breach of a provision of the OHS Act or the regulations under that Act that occurs before the commencement of this Act.
- (4) A reference to this Act in section 164 of the MHS Act includes a reference to the OHS Act in relation to a failure that occurs before the commencement of this Act.
- (5) A reference to this Act in section 189 of the MHS Act includes a reference to the OHS Act in relation to a matter or thing done or omitted before the commencement of this Act.

16 Amendment of Mining Act 1992

A reference to this Act in section 378E of the *Mining Act 1992* includes a reference to the OHS Act in relation to an order or direction given before the commencement of this Act.

17 Amendment of Rail Safety Act 2008

- (1) Section 138 (1) of the *Rail Safety Act 2008 (the Act)* continues to apply as it was in force before the commencement of this Act to and in respect of offences committed before the commencement of this Act.
- (2) Section 138 (2) of the Act continues to apply as it was in force before the commencement of this Act to and in respect of improvement or prohibition notices issued before the commencement of this Act.
- (3) Except as otherwise provided by this clause, an amendment made to the Act by the amending Act does not apply to an act or omission that occurs before the commencement of the amendment.

18 Amendment of Road Transport (General) Act 2005

For the purposes of section 244A of the *Road Transport (General) Act 2005*, a person who commits an act or omission that constitutes an offence under an applicable road law and under the OHS Act is not liable to be punished twice in relation to that offence if it was committed before the commencement of this Act.

19 Amendment of Rural Workers Accommodation Act 1969

For the purposes of section 20 of the *Rural Workers Accommodation Act 1969 (the Act)*, a person who commits an act or omission that constitutes an offence under the Act (or any regulations made under the Act) and under the OHS Act is not liable to be punished twice in relation to that offence if it was committed before the commencement of this Act.

20 Amendment of Workplace Injury Management and Workers Compensation Act 1998

- (1) A reference in section 245A (Evidence—criminal proceedings under WHS legislation) of the *Workplace Injury Management and Workers Compensation Act 1998* to work health and safety legislation includes (in relation to an offence committed before the commencement of this Act) a reference to occupational health and safety legislation within the meaning of that Act as in force before that commencement.
- (2) For the purposes of the operation of section 254 of the *Workplace Injury Management and Workers Compensation Act 1998* after the commencement of this Act, an injury reported before that commencement by or on behalf of an employer to an inspector under the OHS Act is taken to have been reported to an inspector under this Act.
- (3) The Workers Compensation and Work Health and Safety Council of New South Wales is a continuation of the Workers Compensation and Workplace Occupational Health and Safety Council of New South Wales as constituted under the *Workplace Injury Management and Workers Compensation Act 1998* before the commencement of this Act.

Schedule 2 Amendment of Mine Health and Safety Act 2004 No 74

[1] Section 3 Definitions

Omit the definition of *Board* from section 3 (1). Insert instead:

Board means the Mining Competence Board constituted by section 112.

[2] Section 3 (1), definition of “coal operation”

Insert in alphabetical order:

coal operation has the same meaning as in the *Coal Mine Health and Safety Act 2002*.

[3] Section 9 Act does not apply to coal operations

Insert “, except as provided by Part 9 (Competence standards)” after “applies”.

[4] Part 9, Division 2, heading

Omit the heading. Insert instead:

Division 2 Mining Competence Board

[5] Section 112 Mining Competence Board

Omit section 112 (1). Insert instead:

- (1) There is constituted by this Act a body corporate with the corporate name of the Mining Competence Board.

[6] Section 114 Membership of Board

Omit section 114 (1). Insert instead:

- (1) The Board is made up of the following persons appointed by the Minister:
 - (a) the Chairperson of the Board (who is not to be an officer of the Department), and
 - (b) such number of persons as the Minister determines, selected in accordance with the regulations, to represent the interests of employers in the mining and coal mining industries, and
 - (c) such number of persons as the Minister determines, selected in accordance with the regulations, to represent the interests of employees in the mining and coal mining industries, and

- (d) between 2 and 4 persons who have expertise in the development and assessment of competence of persons performing functions at mines or coal operations, and
- (e) 2 officers of the Department.

[7] Section 116 Functions of Board

Insert “or the *Coal Mine Health and Safety Act 2002*” after “this Act” in section 116 (1).

[8] Section 116

Insert “or coal operations” after “mines” wherever occurring.

[9] Section 120 Power to make orders

Omit “The Minister may make orders” from section 120 (1).

Insert instead “The Minister or the Board may make orders”.

[10] Section 120 (1) (f)

Omit “rules”. Insert instead “orders”.

[11] Section 120 (1) (h)

Omit the paragraph. Insert instead:

- (h) the declaration by the Minister that a person’s competence is not recognised (but this is not a matter for which an order of the Board can make provision),

[12] Section 120 (1A)

Insert after section 120 (1):

- (1A) An order made by the Board has no effect to the extent that it is inconsistent with an order of the Minister under this section.

[13] Section 120 (2)

Insert “by the Minister” after “orders”.

[14] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Work Health and Safety Legislation Amendment Act 2011

[15] **Schedule 5**

Insert at the end of the Schedule:

**Part 3 Provisions consequent on the enactment
of Work Health and Safety Legislation
Amendment Act 2011**

19 Definitions

In this Part:

amending Act means the *Work Health and Safety Legislation Amendment Act 2011*.

former Board means the Metalliferous Mines and Extractive Industries Competence Board constituted by section 112 immediately before the new Board commencement.

new Board means the Mining Competence Board constituted by section 112 after the new Board commencement.

new Board commencement means the commencement of the amendment made by the amending Act to section 112.

20 Dissolution of former Board

- (1) On the new Board commencement, the former Board is dissolved.
- (2) On the dissolution of the former Board, a person who held office as a member of the former Board immediately before its dissolution ceases to hold office as such but is eligible (if otherwise qualified) to be appointed as a member of the new Board.
- (3) A person who ceases to hold office as a member of the former Board because of the operation of this clause is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

21 Appointment of new Board

For the purpose of facilitating the appointment of members of the new Board to take effect on the new Board commencement, action may be taken under section 114 as amended by the amending Act after the date of assent to that Act and before the new Board commencement.

22 Actions of former Board

- (1) Anything done by the former Board before the new Board commencement that has any force or effect immediately before the new Board commencement is taken to have been done by the new Board.
- (2) This clause extends to but is not limited to the following things done by the former Board:
 - (a) an assessment of competence,
 - (b) the conduct of an examination,
 - (c) the grant, suspension or cancellation of, or the imposition of conditions on, a certificate of competence or exemption,
 - (d) any approval given or appointment or recommendation made by the former Board.

23 Delegations to former Board

Any delegation to the former Board by the Minister that is in force under section 182 immediately before the new Board commencement is taken to be a delegation to the new Board.

24 Annual report of former Board

The first annual report of the new Board under section 117 after the new Board commencement is to include a report of the activities of the former Board during the preceding year.

25 Protection from liability

A reference in section 189 to a member of the Board includes a reference to a member of the former Board in relation to a matter or thing done or omitted to be done before the new Board commencement.

Schedule 3 Amendment of Coal Mine Health and Safety Act 2002 No 129

[1] Section 3 Definitions

Omit the definition of *Board*. Insert instead:

Board means the Mining Competence Board constituted by section 112 of the *Mine Health and Safety Act 2004*.

[2] Part 9, Division 2 Coal Competence Board

Omit the Division.

[3] Section 135 Annual report

Omit the section.

[4] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Work Health and Safety Legislation Amendment Act 2011, but only to the extent that it amends this Act

[5] Schedule 3

Insert at the end of the Schedule:

Part 4 Provisions consequent on the enactment of Work Health and Safety Legislation Amendment Act 2011

28 Definitions

In this Part:

amending Act means the *Work Health and Safety Legislation Amendment Act 2011*.

former Board means the Coal Competence Board constituted by section 130 immediately before the repeal of that section by the amending Act.

new Board means the Mining Competence Board constituted by section 112 of the *Mine Health and Safety Act 2004* after the commencement of the amendment made by the amending Act to section 112 of the *Mine Health and Safety Act 2004*.

29 Dissolution of former Board

- (1) The former Board is dissolved on the repeal of section 130 by the amending Act.
- (2) On the dissolution of the former Board, a person who held office as a member of the former Board immediately before its dissolution ceases to hold office as such but is eligible (if otherwise qualified) to be appointed as a member of the new Board.
- (3) A person who ceases to hold office as a member of the former Board because of the operation of this clause is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

30 Actions of former Board

- (1) Anything done by the former Board before its dissolution that has any force or effect immediately before the former Board's dissolution is taken to have been done by the new Board.
- (2) This clause extends to but is not limited to the following things done by the former Board:
 - (a) an assessment of competence,
 - (b) the conduct of an examination,
 - (c) the grant, suspension or cancellation of, or the imposition of conditions on, a certificate of competence or exemption,
 - (d) any approval given or appointment or recommendation made by the former Board.

31 Delegations to former Board

Any delegation to the former Board by the Minister that is in force under section 212 immediately before the dissolution of the former Board is taken to be a delegation to the new Board.

32 Annual report of former Board

The first annual report of the new Board under section 117 of the *Mine Health and Safety Act 2004* after the dissolution of the former Board is to include a report of the activities of the former Board during the preceding year.

33 Protection from liability

A reference in section 220 to a member of the Board includes a reference to a member of the former Board in relation to a matter or thing done or omitted to be done before the dissolution of the former Board.

Schedule 4 Consequential amendment of Acts

4.1 Coal Industry Act 2001 No 107

[1] Section 10 General functions

Omit “occupational” from section 10 (1) (a). Insert instead “work”.

[2] Section 17 Discretionary functions—non-rescue services for mines and others

Omit “occupational” from section 17 (a). Insert instead “work”.

[3] Section 24 Workers compensation funds

Omit “occupational” from section 24 (1) (c). Insert instead “work”.

4.2 Coal Mine Health and Safety Act 2002 No 129

[1] Section 3 Definitions

Insert after paragraph (b) of the definition of *previous offender*:

(b1) the *Work Health and Safety Act 2011*, or

[2] Section 8 Application of Act

Omit “*Occupational Health and Safety Act 2000*” from section 8 (4).

Insert instead “*Work Health and Safety Act 2011*”.

[3] Section 8A Act does not apply to certain mines or places (as inserted by Schedule 1 [11] to the Coal Mine Health and Safety Amendment Act 2010)

Omit “*Occupational Health and Safety Act 2000*” from section 8A (2).

Insert instead “*Work Health and Safety Act 2011*”.

[4] Section 8B Decisions on jurisdictional questions (as inserted by Schedule 1 [11] to the Coal Mine Health and Safety Amendment Act 2010)

Omit “*Occupational Health and Safety Act 2000*” wherever occurring in section 8B (3) and (7).

Insert instead “*Work Health and Safety Act 2011*”.

[5] Section 10 Objects of Act

Omit “*Occupational Health and Safety Act 2000*” from section 10 (a).

Insert instead “*Work Health and Safety Act 2011*”.

[6] **Part 4**

Omit the Part. Insert instead:

Part 4 Application of Work Health and Safety Act 2011

Note. The *Work Health and Safety Act 2011* is the main Act that deals with the health, safety and welfare of persons at work. This Part explains how this Act fits in with the *Work Health and Safety Act 2011*. Basically, this Act creates additional protections, rights and obligations necessary because of the special risks associated with coal operations. This Part makes it clear that this Act provides for an increase in the standard of protection of persons at work at coal operations and does not result in less protection than the *Work Health and Safety Act 2011* would otherwise provide.

11 Act to be read in conjunction with WHS Act

This Act is to be read in conjunction with the *Work Health and Safety Act 2011*.

12 Act adds to protection provided by WHS Act

- (1) If a provision of the *Work Health and Safety Act 2011* or the regulations made under that Act applies to coal operations, that provision continues to apply, and must be observed, in addition to this Act or the regulations made under this Act.

Note. For example, Part 2 of the *Work Health and Safety Act 2011* imposes duties relating to health, safety and welfare at coal operations. So does Part 5 of this Act. The provisions of this Act apply in addition to those of the WHS Act and do not remove any WHS protections, rights or obligations.

- (2) Without limiting subsection (1) or any other provision of this Act, the failure by an operator to comply with a provision of this Act or the regulations does not affect any liability of any other person under this Act or the regulations or under the *Work Health and Safety Act 2011* or the regulations under that Act.

13 WHS Act prevails

- (1) The provisions of the *Work Health and Safety Act 2011* and the regulations under that Act prevail, to the extent of any inconsistency, over the provisions of this Act and the regulations under this Act.

Note. For example, if a provision of this Act deals with a certain matter and a provision of the *Work Health and Safety Act 2011* deals with the same matter and it is not possible to comply with both provisions, then a person must comply with the *Work Health and Safety Act 2011* and not

with this Act. If provisions of both Acts deal with the same matter but it is possible to comply with both provisions, then a person must comply with both Acts.

(2) This section is subject to section 122.

14 Compliance with this Act is no defence to prosecution under WHS Act

Compliance with this Act or the regulations, or with any requirement imposed under this Act or the regulations, is not in itself a defence in any proceedings for an offence against the *Work Health and Safety Act 2011* or the regulations under that Act.

15 Evidence of contraventions of this Act and WHS Act

Evidence of a relevant contravention of this Act or the regulations is admissible in any proceedings for an offence against the *Work Health and Safety Act 2011* or the regulations under that Act.

16 No double jeopardy

Where an act or omission constitutes an offence:

- (a) under this Act or the regulations, and
- (b) under the *Work Health and Safety Act 2011* or the regulations under that Act,

the offender is not liable to be punished twice in relation to the offence.

[7] Part 5 Duties relating to health, safety and welfare at coal operations

Omit the note to Part 5. Insert instead:

Note. Part 2 of the *Work Health and Safety Act 2011* imposes duties relating to health, safety and welfare at work. Those duties apply to work at coal operations.

This Part imposes extra duties.

[8] Part 5, Division 1, note

Omit the note.

[9] Part 5, Division 2, note

Omit the note.

[10] Section 42 Duties of operator regarding contractors

Omit “occupational” from section 42 (1) (b). Insert instead “work”.

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- [11] **Section 42 (3) (a) (ii), (3) (b) (ii), (3) (c) and (4)**
Omit “*Occupational Health and Safety Act 2000*” wherever occurring.
Insert instead “*Work Health and Safety Act 2011*”.
- [12] **Part 5, Division 3, note**
Omit the note.
- [13] **Section 61 Unlawful dismissal or other victimisation of employee**
Omit the note to the section.
- [14] **Part 5, Division 4, note**
Omit the note.
- [15] **Section 63 Duties of manager of mining engineering**
Omit “*Occupational Health and Safety Act 2000*” from section 63 (3).
Insert instead “*Work Health and Safety Act 2011*”.
- [16] **Section 64 Duties of manager of electrical engineering**
Omit “*Occupational Health and Safety Act 2000*” from section 64 (3).
Insert instead “*Work Health and Safety Act 2011*”.
- [17] **Section 65 Duties of manager of mechanical engineering**
Omit “*Occupational Health and Safety Act 2000*” from section 65 (3).
Insert instead “*Work Health and Safety Act 2011*”.
- [18] **Section 67 Those in management positions must inform operator of non-compliance**
Omit “*Occupational Health and Safety Act 2000*” wherever occurring.
Insert instead “*Work Health and Safety Act 2011*”.
- [19] **Section 70 Supervisor must inform operator of non-compliance**
Omit “*Occupational Health and Safety Act 2000*” wherever occurring.
Insert instead “*Work Health and Safety Act 2011*”.
- [20] **Part 5, Division 6, note**
Omit the note.
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- [21] Section 75 Contractor must prepare and implement WHS management plan**
Omit “occupational” wherever occurring. Insert instead “work”.
- [22] Section 76 Contractor’s duties regarding subcontractors**
Omit “occupational” wherever occurring in section 76 (1) (b), (3) and (4).
Insert instead “work”.
- [23] Section 118 Minister to make stop work orders**
Omit “*Occupational Health and Safety Act 2000*” from section 118 (1) (a).
Insert instead “*Work Health and Safety Act 2011*”.
- [24] Section 122 Stop work order prevails over other instruments**
Omit “An investigation notice” from section 122 (1).
Insert instead “A non-disturbance notice”.
- [25] Section 122 (1)**
Omit “*Occupational Health and Safety Act 2000*”.
Insert instead “*Work Health and Safety Act 2011*”.
- [26] Section 145 Appointment of government officials**
Omit “*Occupational Health and Safety Act 2000*” from section 145 (2) (as substituted by Schedule 1 [19] to the *Coal Mine Health and Safety Amendment Act 2010*).
Insert instead “*Work Health and Safety Act 2011*”.
- [27] Section 145 (3)**
Omit “section 48 of the *Occupational Health and Safety Act 2000*”.
Insert instead “section 157 of the *Work Health and Safety Act 2011*”.
- [28] Part 10 Oversight of coal operations**
Omit the note to Subdivision 3 of Division 2. Insert instead:
Note. Section 156A of the *Work Health and Safety Act 2011* provides that a person appointed as a government official under this Act is deemed to have been appointed as an inspector for the purposes of the WHS Act and has the powers of an inspector under that Act in relation to coal workplaces.

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- [29] **Section 155 Power of entry at any time**
Omit “Despite Part 5 of the *Occupational Health and Safety Act 2000*”.
Insert instead “Despite Part 9 of the *Work Health and Safety Act 2011*”.
- [30] **Section 164 Functions of site check inspectors**
Omit “*Occupational Health and Safety Act 2000*” from section 164 (e).
Insert instead “*Work Health and Safety Act 2011*”.
- [31] **Section 165 Training of site check inspectors**
Omit “occupational” from section 165 (1). Insert instead “work”.
- [32] **Section 167 Duties of operators in relation to site check inspectors**
Omit “OHS committee (established under the *Occupational Health and Safety Act 2000*)” from section 167 (c).
Insert instead “health and safety committee (established under the *Work Health and Safety Act 2011*)”.
- [33] **Section 168 Duties of contractors in relation to site check inspectors**
Omit “OHS committee (established under the *Occupational Health and Safety Act 2000*)” from section 168 (c).
Insert instead “health and safety committee (established under the *Work Health and Safety Act 2011*)”.
- [34] **Part 10, Division 3, Subdivision 3, note**
Omit the note.
- [35] **Section 173 Appointment of industry check inspectors**
Omit section 173 (1) (b). Insert instead:
(b) is an authorised industrial officer within the meaning of Part 7 (Entry and inspection by officers of industrial organisations) of Chapter 5 of the *Industrial Relations Act 1996*, and
- [36] **Section 175 Powers of industry check inspectors to suspend operations**
Omit “*Occupational Health and Safety Act 2000*” from section 175 (1) (a).
Insert instead “*Work Health and Safety Act 2011*”.

[37] Section 179 Inspections by check inspectors

Omit “*Occupational Health and Safety Act 2000*” from section 179 (b).

Insert instead “*Work Health and Safety Act 2011*”.

[38] Section 185

Omit the section. Insert instead:

185 Purpose of industry codes of practice

The purpose of a coal mining industry code of practice is to provide practical guidance to operators and others who have duties under Part 5 of this Act or Part 2 of the *Work Health and Safety Act 2011* in relation to work health, safety and welfare at coal operations.

[39] Section 191 Use of codes

Omit “*Occupational Health and Safety Act 2000*” from section 191 (1).

Insert instead “*Work Health and Safety Act 2011*”.

[40] Section 202 Regulations relating to consultation

Omit “OHS committee for the coal operation (established under the *Occupational Health and Safety Act 2000*)” from section 202 (1).

Insert instead “health and safety committee for the coal operation (established under the *Work Health and Safety Act 2011*)”.

[41] Part 13 Miscellaneous

Omit the note to Division 1. Insert instead:

Note. Section 229A of the *Work Health and Safety Act 2011* provides for offences under this Act and the regulations to be prosecuted under that Act.

[42] Section 220 Protection from liability

Omit “*Occupational Health and Safety Act 2000*” from section 220 (1).

Insert instead “*Work Health and Safety Act 2011*”.

4.3 Coal Mine Health and Safety Amendment Act 2010 No 23

[1] Schedule 1 Amendment of Coal Mine Health and Safety Act 2002 No 129

Omit “*Occupational Health and Safety Act 2000*” from proposed section 8A (2) in Schedule 1 [11].

Insert instead “*Work Health and Safety Act 2011*”.

[2] Schedule 1 [11]

Omit “*Occupational Health and Safety Act 2000*” wherever occurring in proposed section 8B (3) and (7).

Insert instead “*Work Health and Safety Act 2011*”.

[3] Schedule 1 [19]

Omit “*Occupational Health and Safety Act 2000*” from proposed section 145 (2).

Insert instead “*Work Health and Safety Act 2011*”.

[4] Schedule 3 Amendment of other Acts and instruments

Omit “*Occupational Health and Safety Act 2000*” wherever occurring in proposed section 8 (3) and (7) in Schedule 3.6 [1].

Insert instead “*Work Health and Safety Act 2011*”.

[5] Schedule 3.6 [2]

Omit “*Occupational Health and Safety Act 2000*” from proposed section 127 (2).

Insert instead “*Work Health and Safety Act 2011*”.

4.4 Crimes (Sentencing Procedure) Act 1999 No 92

[1] Section 27 Application of Division

Omit “this Division applies only if the offence is being dealt with on indictment” from section 27 (2).

Insert instead “this Division applies only if the offence is being dealt with on indictment in the Supreme Court or on indictment or summarily in the District Court”.

[2] Section 27 (2A) (a)

Omit “Division 1 of Part 2 of the *Occupational Health and Safety Act 2000*”.

Insert instead “Division 5 of Part 2 of the *Work Health and Safety Act 2011*”.

4.5 Criminal Appeal Act 1912 No 16

[1] Section 5AA Appeal in criminal cases dealt with by Supreme Court or District Court in their summary jurisdiction

Insert after section 5AA (6):

- (7) This section applies to and in respect of the District Court in its summary jurisdiction in the same way as it applies to and in respect of the Supreme Court in its summary jurisdiction.

[2] Section 5AE Point of law stated during summary proceedings

Insert “, the District Court in its summary jurisdiction” after “Land and Environment Court in its summary jurisdiction” in section 5AE (1).

[3] Section 5C Appeal against quashing of an indictment

Insert “or District Court” after “or the Supreme Court”.

4.6 Criminal Procedure Act 1986 No 209

[1] Section 170 Application

Insert after section 170 (3) (c):

- (c1) proceedings before the District Court,

[2] Section 215 When costs may be awarded to prosecutor

Omit section 215 (1B). Instead instead:

- (1B) Subsection (1A) does not apply in relation to proceedings for an offence against the *Work Health and Safety Act 2011* or the regulations under that Act.

[3] Section 257D Limit on award of professional costs against a prosecutor acting in a public capacity

Omit section 257D (2) (b). Insert instead:

- (b) does not apply in relation to proceedings for an offence against the *Work Health and Safety Act 2011* or the regulations under that Act.

4.7 Dangerous Goods (Road and Rail Transport) Act 2008 No 95

Section 22

Omit the section. Insert instead:

22 General powers of authorised officers appointed by WorkCover: application of Part 9 of Work Health and Safety Act 2011

- (1) An authorised officer appointed by WorkCover has and may exercise the functions of an inspector under Part 9 of the *Work Health and Safety Act 2011* (the **WHS Act**) for the following purposes:
 - (a) for determining whether there has been compliance with or a contravention of this Act and the regulations,
 - (b) for obtaining information or records for purposes connected with the administration of this Act and the regulations,
 - (c) generally for administering this Act and the regulations.
- (2) The provisions of Part 9 of the WHS Act apply to and in respect of this Act as if those provisions were part of this Act, subject to the following modifications:
 - (a) references in those provisions to an inspector were references to an authorised officer appointed by WorkCover as a Competent Authority under this Act,
 - (b) references in those provisions to “this Act” were references to this Act,
 - (c) references in those provisions to the regulator were references to WorkCover as a Competent Authority.
- (3) For the avoidance of doubt, a prosecution of a person for an offence against a provision of Part 9 of the WHS Act (as applying under this section) is to be taken as if the offence were an offence against this Act.
- (4) The functions that an authorised officer has under Part 9 of the WHS Act are, for the purposes of any provision of this Act, taken to be functions under this Act.
- (5) If an authorised officer has functions in relation to a matter under both Part 9 of the WHS Act (as applying under this section) and under any other provision of this Act, the fact that there is a restriction on the exercise of a function under this Act does not of itself operate to restrict the exercise by an authorised officer of any similar or the same function under Part 9 of the WHS Act.

4.8 Electricity (Consumer Safety) Act 2004 No 4

Section 38 Arrangements with other public authorities regarding investigable electrical incidents

Omit “*Occupational Health and Safety Act 2000*” from section 38 (1) (a).

Insert instead “*Work Health and Safety Act 2011*”.

4.9 Explosives Act 2003 No 39

[1] Section 27

Omit the section. Insert instead:

27 Extension of certain provisions of Work Health and Safety Act 2011 relating to inspectors and the enforcement of this Act

- (1) Part 9 (Securing compliance), other than section 187, of the *Work Health and Safety Act 2011* applies to inspectors (within the meaning of this Act) for the purposes of the administration of this Act and the regulations.
- (2) For the purpose of the application of those provisions:
 - (a) a reference in the *Work Health and Safety Act 2011* to “this Act or the regulations” is taken to be a reference to this Act or the regulations under this Act, and
 - (b) a reference in the *Work Health and Safety Act 2011* to a workplace is taken to be a reference to premises in which the handling of explosives, explosive precursors or dangerous goods to which section 31 of this Act applies is occurring, and
 - (c) a reference in the *Work Health and Safety Act 2011* to an inspector (within the meaning of that Act) is taken to be a reference to an inspector (within the meaning of this Act).

[2] Section 31 Regulations relating to dangerous goods

Omit “section 135A of the *Occupational Health and Safety Act 2000*” from section 31 (1).

Insert instead “Schedule 1 to the *Work Health and Safety Act 2011*”.

[3] Section 31 (1)

Omit “that section”. Insert instead “that Schedule”.

4.10 Greyhound Racing Act 2009 No 19

[1] Section 20 Suspension or cancellation of registration of greyhound racing clubs and trial tracks on commercial grounds

Omit “occupational” from section 20 (3). Insert instead “work”.

[2] Section 21 Disciplinary and work health and safety action may be taken by GRNSW

Omit “occupational” from section 21 (3). Insert instead “work”.

4.11 Harness Racing Act 2009 No 20

[1] Section 20 Suspension or cancellation of registration of harness racing clubs on commercial grounds

Omit “occupational” from section 20 (3). Insert instead “work”.

[2] Section 21 Disciplinary and work health and safety action may be taken by HRNSW

Omit “occupational” from section 21 (3). Insert instead “work”.

4.12 Health Services Act 1997 No 154

Section 116E Obligations of declared affiliated health organisations under certain legislation

Omit section 116E (1). Insert instead:

- (1) For the purposes of the *Work Health and Safety Act 2011*, a declared affiliated health organisation has, in respect of the staff employed in the NSW Health Service to enable the organisation to exercise its functions, the functions and liabilities of the person conducting the business or undertaking conducted by a recognised establishment or recognised service of the organisation.

4.13 Homebush Motor Racing (Sydney 400) Act 2008 No 106

Section 17 Authorisation to carry out works

Omit “*Occupational Health and Safety Act 2000*” from section 17 (8) (a).

Insert instead “*Work Health and Safety Act 2011*”.

4.14 Industrial Relations Act 1996 No 17

[1] Section 70 Transfer to a safe job

Omit “*Occupational Health and Safety Act 2000*” from section 70 (1).

Insert instead “*Work Health and Safety Act 2011*”.

[2] Section 185 Rules of Commission

Insert after section 185 (2) (d):

- (d1) authorising any function of the Commission under the *Work Health and Safety Act 2011* to be exercised by the Industrial Registrar, or

[3] Section 197 Appeals from Local Court

Insert at the end of section 197 (1) (c):

, or

- (d) a civil penalty imposed under Division 7 of Part 13 of the *Work Health and Safety Act 2011* by the Local Court for a contravention of a WHS civil penalty provision or the dismissal by the Local Court of proceedings for such a civil penalty.

[4] Section 197A Appeals against acquittals in proceedings for offences against occupational health and safety legislation

Omit the section.

[5] Section 210 Freedom from victimisation

Omit section 210 (1) (j). Insert instead:

- (j) makes a complaint about a workplace matter that the person considers is not safe or a risk to health, or exercises functions under Part 5 (Consultation, representation and participation) of the *Work Health and Safety Act 2011*, or

[6] Section 382 Jurisdiction of Chief and other Industrial Magistrates

Omit “*Occupational Health and Safety Act 2000*” from section 382 (1).

Insert instead “*Work Health and Safety Act 2011*”.

[7] Section 383A Recovery of amount ordered to be paid by Industrial Magistrate under other legislation

Omit section 383A (a).

[8] Section 396 Penalty notices

Omit “*Occupational Health and Safety Act 2000*” from section 396 (9).

Insert instead “*Work Health and Safety Act 2011*”.

4.15 Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009 No 32

[1] Schedule 1 Amendment of Industrial Relations Act 1996 No 17

Omit Schedule 1 [5].

[2] Schedule 2 Amendment of other legislation

Omit Schedule 2.15.

4.16 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Omit “*Occupational Health and Safety Act 2000*, section 58”.

Insert in alphabetical order:

Work Health and Safety Act 2011, section 167

4.17 Licensing and Registration (Uniform Procedures) Act 2002 No 28

Schedules 1, 2 and 3A

Omit the matter relating to the *Occupational Health and Safety Regulation 2001* wherever occurring.

4.18 Local Government Act 1993 No 30

Dictionary

Omit the definition of *amusement device*. Insert instead:

amusement device means an amusement device that is high risk plant within the meaning of clause 6 of Schedule 1 to the *Work Health and Safety Act 2011*, and includes any other device that is declared by the regulations to be an amusement device for the purposes of this Act.

4.19 Mine Health and Safety Act 2004 No 74

[1] Section 3 Definitions

Omit the definition of *authorised representative* from section 3 (1).

Insert instead:

authorised representative, in relation to an industrial organisation of employees, means a person who is an authorised industrial officer within the meaning of Part 7 (Entry and inspection by officers of industrial organisations) of Chapter 5 of the *Industrial Relations Act 1996* in relation to that industrial organisation of employees.

[2] Section 3 (1), definition of “previous offender”

Insert after paragraph (d) of the definition:

(d1) the *Work Health and Safety Act 2011*, or

[3] Section 7 Act does not apply to certain mines or places

Omit “*Occupational Health and Safety Act 2000*” from section 7 (2).

Insert instead “*Work Health and Safety Act 2011*”.

[4] Section 8 Decision on question of whether this Act applies

Omit “*Occupational Health and Safety Act 2000*” wherever occurring.

Insert instead “*Work Health and Safety Act 2011*”.

[5] Section 14 Objects of Act

Omit “*Occupational Health and Safety Act 2000*” from section 14 (a).

Insert instead “*Work Health and Safety Act 2011*”.

[6] Part 4

Omit the Part. Insert instead:

Part 4 Application of Work Health and Safety Act 2011

Note. The *Work Health and Safety Act 2011* is the main Act that deals with the health, safety and welfare of persons at work. This Part explains how this Act fits in with the *Work Health and Safety Act 2011*. Basically, this Act creates additional protections, rights and obligations necessary because of the special risks associated with mines. This Part makes it clear that this Act provides for an increase in the standard of protection of persons at work at mines and does not result in less protection than the *Work Health and Safety Act 2011* would otherwise provide.

15 Act to be read in conjunction with WHS Act

This Act is to be read in conjunction with the *Work Health and Safety Act 2011*.

16 Act adds to protection provided by WHS Act

- (1) If a provision of the *Work Health and Safety Act 2011* or the regulations under that Act applies to mines or other places to which this Act applies, that provision continues to apply, and must be observed, in addition to this Act or the regulations under this Act.

Note. For example, Part 2 of the *Work Health and Safety Act 2011* imposes duties relating to health, safety and welfare at mines. So does Part 5 of this Act. The provisions of this Act apply in addition to those of the WHS Act and do not remove any WHS protections, rights or obligations.

- (2) Without limiting subsection (1) or any other provision of this Act, the failure by an operator to comply with a provision of this Act or the regulations does not affect any liability of any other person under this Act or the regulations or under the *Work Health and Safety Act 2011* or the regulations under that Act.

17 WHS Act prevails

- (1) The provisions of the *Work Health and Safety Act 2011* and the regulations under that Act prevail, to the extent of any inconsistency, over the provisions of this Act and the regulations under this Act.

Note. For example, if a provision of this Act deals with a certain matter and a provision of the *Work Health and Safety Act 2011* deals with the same matter and it is not possible to comply with both provisions, then a person must comply with the *Work Health and Safety Act 2011* and not with this Act. If provisions of both Acts deal with the same matter but it is possible to comply with both provisions, then a person must comply with both Acts.

- (2) This section is subject to section 104.

18 Compliance with this Act is no defence to prosecution under WHS Act

Compliance with this Act or the regulations, or with any requirement imposed under this Act or the regulations, is not in itself a defence in any proceedings for an offence against the *Work Health and Safety Act 2011* or the regulations under that Act.

19 Evidence of contraventions of this Act and WHS Act

Evidence of a relevant contravention of this Act or the regulations is admissible in any proceedings for an offence against the *Work Health and Safety Act 2011* or the regulations under that Act.

20 No double jeopardy

Where an act or omission constitutes an offence:

- (a) under this Act or the regulations, and
- (b) under the *Work Health and Safety Act 2011* or the regulations under that Act,

the offender is not liable to be punished twice in relation to the offence.

[7] Part 5 Duties relating to health, safety and welfare at mines

Omit the note to Part 5. Insert instead:

Note. Part 2 of the *Work Health and Safety Act 2011* imposes duties relating to health, safety and welfare at work. Those duties apply to work at mines.

This Part imposes extra duties.

[8] Part 5, Division 1, note

Omit the note.

[9] Part 5, Division 2, note

Omit the note.

[10] Section 40 Duties of operator regarding contractors

Omit “*Occupational Health and Safety Act 2000*” wherever occurring in section 40 (1) (a)–(c) and (2).

Insert instead “*Work Health and Safety Act 2011*”.

[11] Section 40 (1) (e)

Omit “occupational”. Insert instead “work”.

[12] Part 5, Division 3, note

Omit the note.

[13] Section 52 Unlawful dismissal or other victimisation of employee

Omit the note to the section.

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- [14] **Part 5, Division 4, note**
Omit the note.
- [15] **Section 55 Persons in management positions must inform operator of non-compliance**
Omit “*Occupational Health and Safety Act 2000*” wherever occurring.
Insert instead “*Work Health and Safety Act 2011*”.
- [16] **Section 59 Supervisor must inform operator of non-compliance**
Omit “*Occupational Health and Safety Act 2000*” wherever occurring.
Insert instead “*Work Health and Safety Act 2011*”.
- [17] **Part 5, Division 6, note**
Omit the note.
- [18] **Section 63 Contractor’s safety management plan**
Omit “occupational” from section 63 (2). Insert instead “work”.
- [19] **Section 100 Minister may make stop work order**
Omit “*Occupational Health and Safety Act 2000*” from section 100 (1) (b).
Insert instead “*Work Health and Safety Act 2011*”.
- [20] **Section 104 Stop work order prevails over other instruments**
Omit “An investigation notice” from section 104 (1).
Insert instead “A non-disturbance notice”.
- [21] **Section 104 (1)**
Omit “*Occupational Health and Safety Act 2000*”.
Insert instead “*Work Health and Safety Act 2011*”.
- [22] **Section 127 Appointment of government officials**
Omit “*Occupational Health and Safety Act 2000*” from section 127 (2) (as substituted by Schedule 3.6 [2] to the *Coal Mine Health and Safety Amendment Act 2010*).
Insert instead “*Work Health and Safety Act 2011*”.

[23] Section 127 (3)

Omit “section 48 of the *Occupational Health and Safety Act 2000*”.
Insert instead “section 157 of the *Work Health and Safety Act 2011*”.

[24] Part 10 Oversight of mines

Omit the note to Subdivision 3 of Division 2. Insert instead:

Note. Section 156A of the *Work Health and Safety Act 2011* provides that a person appointed as a government official under this Act is deemed to have been appointed as an inspector for the purposes of the WHS Act and has the powers of an inspector under that Act in relation to mining workplaces.

[25] Section 135 Power of entry at any time

Omit “Despite Part 5 of the *Occupational Health and Safety Act 2000*”.
Insert instead “Despite Part 9 of the *Work Health and Safety Act 2011*”.

[26] Section 136 Power to cross land

Omit “*Occupational Health and Safety Act 2000*” from section 136 (1).
Insert instead “*Work Health and Safety Act 2011*”.

[27] Part 10, Division 3, notes

Omit the notes.

[28] Section 144 Functions of site check inspectors

Omit section 144 (d).

[29] Section 144 (e) and (f)

Omit “occupational” wherever occurring. Insert instead “work”.

[30] Section 144 (k)

Omit “*Occupational Health and Safety Act 2000*”.
Insert instead “*Work Health and Safety Act 2011*”.

[31] Section 145 Training of site check inspectors

Omit “occupational” from section 145 (1). Insert instead “work”.

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- [32] Section 146 Duties of operators in relation to site check inspectors**
Omit “OHS committee under the *Occupational Health and Safety Act 2000*” from section 146 (c).
Insert instead “health and safety committee (established under the *Work Health and Safety Act 2011*)”.
- [33] Section 146, note**
Omit the note.
- [34] Section 147 Duties of contractors in relation to site check inspectors**
Omit “OHS committee (established under the *Occupational Health and Safety Act 2000*)” from section 147 (c).
Insert instead “health and safety committee (established under the *Work Health and Safety Act 2011*)”.
- [35] Section 147, note**
Omit the note.
- [36] Section 150 Inspections by site check inspectors**
Omit “*Occupational Health and Safety Act 2000*” from section 150 (b).
Insert instead “*Work Health and Safety Act 2011*”.
- [37] Section 153 Power to cross land**
Omit “or the *Occupational Health and Safety Act 2000*” from section 153 (1).
- [38] Section 158**
Omit the section. Insert instead:
158 Purpose of industry codes of practice
The purpose of a mining industry code of practice is to provide practical guidance to operators and others who have duties under Part 5 of this Act or Part 2 of the *Work Health and Safety Act 2011* in relation to work health, safety and welfare at mines.
- [39] Section 164 Use of codes**
Omit “*Occupational Health and Safety Act 2000*” from section 164 (1).
Insert instead “*Work Health and Safety Act 2011*”.

[40] Section 173 Regulations relating to consultation

Omit “OHS committee for the mine (established under the *Occupational Health and Safety Act 2000*)” from section 173 (1).

Insert instead “health and safety committee for the mine (established under the *Work Health and Safety Act 2011*)”.

[41] Part 13 Miscellaneous

Omit the note to Division 1. Insert instead:

Note. Section 229A of the *Work Health and Safety Act 2011* provides for offences under this Act and the regulations to be prosecuted under that Act.

[42] Section 189 Protection from liability

Omit “*Occupational Health and Safety Act 2000*” from section 189 (1).

Insert instead “*Work Health and Safety Act 2011*”.

4.20 Mine Safety (Cost Recovery) Act 2005 No 116

Section 3 Definitions

Omit “*Occupational Health and Safety Act 2000*” from paragraph (b) of the definition of *mine safety legislation* in section 3 (1).

Insert instead “*Work Health and Safety Act 2011*”.

4.21 Mining Act 1992 No 29

[1] Section 341 Establishment of Mine Safety Advisory Council

Omit “occupational” wherever occurring in section 341 (2).

Insert instead “work”.

[2] Section 365 Disclosure of information

Omit “occupational” from section 365 (1) (g). Insert instead “work”.

[3] Section 378E Defences

Omit “*Occupational Health and Safety Act 2000*” from the definition of *mine safety legislation* in section 378E (4).

Insert instead “*Work Health and Safety Act 2011*”.

[4] Dictionary

Omit the definition of *occupational health and safety legislation*.

[5] Dictionary

Insert in alphabetical order:

work health and safety legislation means:

- (a) the *Occupational Health and Safety Act 1983* and the regulations made under that Act, and
- (b) the *Occupational Health and Safety Act 2000* and the regulations made under that Act, and
- (c) the *Work Health and Safety Act 2011* and the regulations made under that Act, and
- (d) the *Coal Mines Regulation Act 1982* and the regulations and any rules made under that Act, and
- (e) the *Coal Mine Health and Safety Act 2002* and the regulations made under that Act, and
- (f) the *Mine Health and Safety Act 2004* and the regulations made under that Act, and
- (g) the *Mines Inspection Act 1901* and the regulations and any rules made under that Act.

4.22 Petroleum (Onshore) Act 1991 No 84

Section 128 Work practices

Omit “*Occupational Health and Safety Act 2000*” from section 128 (1).

Insert instead “*Work Health and Safety Act 2011*”.

4.23 Radiation Control Act 1990 No 13

[1] Section 29 Radiation Advisory Council

Omit “occupational” from section 29 (2) (h). Insert instead “work”.

[2] Section 38 Consultation and co-operation between Ministers

Omit “*Occupational Health and Safety Act 2000*” from section 38 (a) (iii).

Insert instead “*Work Health and Safety Act 2011*”.

4.24 Rail Safety Act 2008 No 97

[1] Section 4 Interpretation

Omit the definition of ***occupational health and safety legislation*** from section 4 (1).

[2] Section 4 (1), definition of “work health and safety legislation”

Insert in alphabetical order:

work health and safety legislation means the following Acts and any regulations made under those Acts:

- (a) the *Work Health and Safety Act 2011*,
- (b) the *Coal Mine Health and Safety Act 2002*,
- (c) the *Mine Health and Safety Act 2004*.

[3] Sections 6 and 6A

Omit section 6. Insert instead:

6 Management of risks

A duty imposed on a person to ensure safety requires the person:

- (a) to eliminate risks to safety, so far as is reasonably practicable, and
- (b) if it is not reasonably practicable to eliminate risks to safety, to minimise those risks so far as is reasonably practicable.

6A What is “reasonably practicable” in ensuring safety

In this Act, *reasonably practicable*, in relation to a duty to ensure safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring safety, taking into account and weighing up all relevant matters including:

- (a) the likelihood of the risk concerned occurring, and
- (b) the degree of harm that might result from the risk, and
- (c) what the person concerned knows, or ought reasonably to know, about:
 - (i) the risk, and
 - (ii) ways of eliminating or minimising the risk, and
- (d) the availability and suitability of ways to eliminate or minimise the risk, and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

[4] Section 10 Duties of rail safety workers

Omit “occupational” wherever occurring in the note to the section.

Insert instead “work”.

[5] Section 11 Onus of proving limits of what is reasonably practicable under this Division

Omit the section.

[6] Section 12 Safety management system

Omit section 12 (3) (c). Insert instead:

- (c) health and safety representatives under the *Work Health and Safety Act 2011* who represent persons with whom the rail transport operator is required to consult under this section, and

[7] Section 64 Confidential reporting of safety information by rail safety workers

Omit “section 23 of the *Occupational Health and Safety Act 2000*” from the note to the section.

Insert instead “section 104 of the *Work Health and Safety Act 2011*”.

[8] Section 135 Multiple contraventions of general duties

Insert “or section 136” after “Part 2” in section 135 (1).

[9] Section 136

Omit the section. Insert instead:

136 Duty of officers

- (1) If a corporation has a duty or obligation under Part 2, an officer of the corporation must exercise due diligence to ensure that the corporation complies with that duty or obligation.
Maximum penalty: the same maximum penalty that is applicable to a failure by an individual to comply with the duty or obligation.
- (2) In this section, *due diligence* includes taking reasonable steps:
 - (a) to acquire and keep up-to-date knowledge of rail safety matters, and
 - (b) to gain an understanding of the nature of the rail operations of the corporation and generally of the risks associated with those operations, and

- (c) to ensure that the corporation has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to safety from the rail operations of the corporation, and
 - (d) to ensure that the corporation has appropriate processes for receiving and considering information regarding incidents and risks and responding in a timely way to that information, and
 - (e) to ensure that the corporation has, and implements, processes for complying with any duty or obligation of the corporation under Part 2, and
 - (f) to verify the provision and use of the resources and processes referred to in paragraphs (c)–(e).
- (3) A person may be proceeded against and convicted of an offence under subsection (1) whether or not the corporation has been proceeded against or has been convicted of an offence in relation to the duty or obligation.
- (4) An officer of a corporation who is a volunteer does not commit an offence under this section.
- (5) In this section:
- corporation** means any body corporate (including a body corporate representing the Crown).
- officer** means an officer within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth, but does not include a Minister of the Crown acting in that capacity, an elected member of a local authority acting in that capacity or a partner in a partnership.
- volunteer** means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

[10] Section 138

Omit the section. Insert instead:

138 Proceedings against the Crown and public authorities

- (1) Divisions 5 and 6 of Part 13 of the *Work Health and Safety Act 2011* apply to offences against this Act or the regulations, and to proceedings for offences, in the same way as they apply to offences against that Act or the regulations under that Act.

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- (2) Section 248 of the *Work Health and Safety Act 2011* applies to improvement or prohibition notices under this Act in the same way as it applies to improvement or prohibition notices under that Act.

[11] Section 175 Application of work health and safety legislation

Omit “occupational” wherever occurring. Insert instead “work”.

4.25 Road Transport (General) Act 2005 No 11

Section 244A

Omit the section. Insert instead:

244A Application of work health and safety legislation

- (1) The provisions of an applicable road law do not preclude, or otherwise affect, the operation of the work health and safety legislation.
- (2) If the effect of complying with a requirement of an applicable road law would be to cause a person to contravene a provision of the work health and safety legislation, the person is not required to comply with the requirement of the applicable road law.
- (3) Where an act or omission constitutes an offence under an applicable road law and:
- (a) under the work health and safety legislation, or
 - (b) under the *Dangerous Goods (Road and Rail Transport) Act 2008*,
- the offender is not liable to be punished twice in relation to the offence.
- (4) In this section:
- work health and safety legislation*** means the following Acts and any regulations made under those Acts:
- (a) the *Work Health and Safety Act 2011*,
 - (b) the *Coal Mine Health and Safety Act 2002*,
 - (c) the *Mine Health and Safety Act 2004*.

4.26 Road Transport (Safety and Traffic Management) Act 1999 No 20

Section 59 Definitions

Omit “*Occupational Health and Safety Act 2000*” from the definition of *prescribed officer* in section 59 (1).

Insert instead “*Work Health and Safety Act 2011*”.

4.27 Rural Workers Accommodation Act 1969 No 34

[1] Part 4

Omit the Part. Insert instead:

Part 4 Application of Work Health and Safety Act 2011

16 Act adds to protection provided by WHS Act

If a provision of the *Work Health and Safety Act 2011* or the regulations under that Act applies to rural premises to which this Act applies, that provision continues to apply, and must be observed, in addition to this Act or the regulations under this Act.

17 WHS Act prevails

The provisions of the *Work Health and Safety Act 2011* and the regulations under that Act prevail, to the extent of any inconsistency, over the provisions of this Act (other than section 6) and the regulations under this Act.

18 Compliance with this Act is no defence to prosecution under WHS Act

Compliance with this Act or the regulations, or with any requirement imposed under this Act or the regulations, is not in itself a defence in any proceedings for an offence against the *Work Health and Safety Act 2011* or the regulations under that Act.

19 Relationship between duties under this Act and WHS Act

Evidence of a relevant contravention of this Act or the regulations is admissible in any proceedings for an offence against the *Work Health and Safety Act 2011* or the regulations under that Act.

20 No double jeopardy

Where an act or omission constitutes an offence:

- (a) under this Act or the regulations, and
- (b) under the *Work Health and Safety Act 2011* or the regulations under that Act,

the offender is not liable to be punished twice in relation to the offence.

[2] Section 21

Omit the section. Insert instead:

21 Application of Work Health and Safety Act 2011

- (1) Parts 3, 9, 10 and 13, and section 271, of the *Work Health and Safety Act 2011* (the *applied provisions*) and any regulations under those provisions extend to this Act and its enforcement.
- (2) Accordingly, for that purpose a reference in the applied provisions to that Act or those regulations includes a reference to this Act and the regulations under this Act.
- (3) For the purposes of this section:
 - (a) premises that are used for accommodation provided for a rural worker for the purposes of this Act are taken to be a workplace, and
 - (b) in relation to such premises, the reference to the person with management or control of the place in section 170 of the *Work Health and Safety Act 2011* is taken to be a reference to the rural worker resident in premises.
- (4) The regulations may make other provisions modifying the applied provisions for the purposes of this section.

4.28 Smoke-free Environment Act 2000 No 69

Section 12 Premises containing exempt areas to comply with certain requirements

Omit “*Occupational Health and Safety Act 2000*” from section 12 (3).

Insert instead “*Work Health and Safety Act 2011*”.

4.29 Transport Administration Act 1988 No 109

[1] Section 88Y Obligations and rights under Work Health and Safety Act 2011

Omit “*Occupational Health and Safety Act 2000*” wherever occurring.

Insert instead “*Work Health and Safety Act 2011*”.

[2] Section 88Y (3), definition of “employer liability legislation”

Omit paragraph (b) of the definition.

4.30 Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986 No 194

Section 6 Act to prevail over other Acts and laws

Omit section 6 (2) (b). Insert instead:

(b) the *Work Health and Safety Act 2011*.

4.31 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 4 Definitions

Omit the definition of *Council* from section 4 (1). Insert instead:

Council means the Workers Compensation and Work Health and Safety Council of New South Wales constituted under this Act.

[2] Section 4 (1), definition of “occupational health and safety legislation”

Omit the definition.

[3] Section 4 (1)

Insert in alphabetical order:

work health and safety legislation means:

- (a) the *Work Health and Safety Act 2011* and the instruments under that Act, or
- (b) any other Act or instrument (or part) prescribed by the regulations under this Act.

[4] Section 22 General functions of Authority

Omit “occupational” wherever occurring. Insert instead “work”.

[5] Section 23 Specific functions

Omit “occupational” wherever occurring. Insert instead “work”.

[6] Section 23 (1) (e)

Omit the paragraph.

[7] Section 23 (1) (i)

Omit the third dot point.

[8] Chapter 2, Part 4, heading

Omit the heading. Insert instead:

**Part 4 Workers Compensation and Work Health
and Safety Council of New South Wales**

[9] Section 28 Constitution of Council

Omit “Workplace Occupational”. Insert instead “Work”.

[10] Section 29 Membership and procedure of Council

Omit “occupational” from section 29 (1) (i). Insert instead “work”.

[11] Section 30 Functions of Council

Omit “occupational” wherever occurring. Insert instead “work”.

[12] Section 32 Industry Reference Groups

Omit “occupational” from section 32 (3) (b). Insert instead “work”.

[13] Section 230A Premium Discount Schemes

Omit “occupational” wherever occurring. Insert instead “work”.

[14] Section 245A Evidence—criminal proceedings under WHS legislation

Omit “occupational” wherever occurring. Insert instead “work”.

[15] Section 254 Notice of injury must be given to employer

Omit “*Occupational Health and Safety Act 2000*” from section 254 (4) (b).
Insert instead “*Work Health and Safety Act 2011*”.

4.32 Workplace Surveillance Act 2005 No 47

Section 8 Relationship with WHS Act

Omit “*Occupational Health and Safety Act 2000*”.

Insert instead “*Work Health and Safety Act 2011*”.

[Second reading speech made in Legislative Council on 20 October 2011
Agreement in principle speech made in Legislative Assembly on 24 November 2011]

BY AUTHORITY