



New South Wales

# Work Health and Safety Legislation Amendment Bill 2011

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Work Health and Safety Act 2011 (WHS Act)*, the *Mine Health and Safety Act 2004* and the *Coal Mine Health and Safety Act 2002* as follows:

- (a) the WHS Act is amended as follows:
  - (i) to alter the commencement provision of the Act to provide for an alternative arrangement of commencement by proclamation,
  - (ii) to require the notification of an incident under the Act even if the incident has been notified under the *Workplace Injury Management and Workers Compensation Act 1998*,
  - (iii) to provide for the division of the functions of the regulator under the Act between the WorkCover Authority and (for functions concerning mines and coal mines) the head of the Department of Trade and Investment, Regional Infrastructure and Services,
  - (iv) to make minor amendments to the administrative arrangements for the appointment of inspectors,

- (v) to provide for the sharing of information between the regulators for the purpose of assisting in the exercise of functions under the WHS Act, the *Mine Health and Safety Act 2004* and the *Coal Mine Health and Safety Act 2002*,
- (vi) to expand the savings and transitional regulation-making power to authorise the making of savings and transitional regulations that can operate despite provisions of the WHS Act,
- (vii) to insert savings and transitional provisions that are consequent on amendments to be made by the Bill to other Acts,
- (viii) to make other amendments of a minor or consequential nature,
- (b) the *Mine Health and Safety Act 2004* is amended as follows:
  - (i) to abolish the Metalliferous Mines and Extractive Industries Competence Board and replace it with a newly constituted Mining Competence Board with the same functions as the abolished Board in relation to competence standards for persons working at mines and coal operations,
  - (ii) to give the Mining Competence Board the power to make various orders in relation to certificates of competence for people working in mines subject to any orders of the Minister or provisions of the regulations,
- (c) the *Coal Mine Health and Safety Act 2002* is amended to abolish the Coal Competence Board and transfer its functions to the Mining Competence Board to be established under the *Mine Health and Safety Act 2004* (as amended by Schedule 2 to the proposed Act).

The Bill also makes amendments to other Acts that are consequential on the enactment of the WHS Act and the proposed Act.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on 1 January 2012 or on a later date to be appointed by proclamation (except for the amendment to the commencement proclamation of the WHS Act and the insertion of savings and transitional provisions in the *Mine Health and Safety Act 2004*, which will commence on the date of assent to the proposed Act).

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

### **Commencement of Work Health and Safety Act 2011**

The WHS Act is due to commence on 1 January 2012. **Schedule 1 [1]** provides that it may commence on that date or on such later day as appointed by proclamation before that date.

## Regulator

The regulator under the WHS Act is the WorkCover Authority. **Schedule 1 [4]** amends the definition of *regulator* to make it clear that the head of the Department of Trade and Investment, Regional Infrastructure and Services is the regulator in relation to matters or the exercise of a power or function concerning a mining workplace or a coal workplace. Mining and coal workplaces are regulated under the *Mine Health and Safety Act 2004* and the *Coal Mine Health and Safety Act 2002*, respectively. **Schedule 1 [3]** provides that the term *member of staff* of a regulator includes, in the case of the head of the Department of Trade and Investment, Regional Infrastructure and Services, a member of staff of that Department. **Schedule 1 [8], [10] and [14]** are consequential amendments.

**Schedule 1 [13]** authorises the sharing of information between the two regulators and members of staff of the regulators in certain circumstances.

**Schedule 1 [6]** authorises the regulator to delegate powers and functions under the WHS Act to an authorised person (that is, a member of staff of the regulator or person of a class prescribed by the regulations or a class approved by the regulator).

## Miscellaneous

**Schedule 1 [2]** updates the definition of *inspector* to include a person deemed to be an inspector under Part 9 of the WHS Act. **Schedule 1 [7] and [16]** are consequential amendments.

**Schedule 1 [12]** provides that a Minister of a State or the Commonwealth who makes decisions that affect the business or undertaking of a public authority is not taken to be an officer of that public authority for the purposes of the WHS Act.

**Schedule 1 [5]** requires a person who conducts a business or undertaking to notify the regulator of a notifiable incident arising out of the conduct of the business or undertaking even if the person has complied with the notification requirements under the *Workplace Injury Management and Workers Compensation Act 1998* as an employer of an injured worker.

**Schedule 1 [11]** is consequential on an amendment to be made by Schedule 4 to the *Criminal Procedure Act 1986* that confers summary jurisdiction on the District Court in connection with proceedings for certain offences under the WHS Act.

**Schedule 1 [9] and [18]** are law revision amendments.

## Savings and transitional provisions

**Schedule 1 [15]** makes further provision in relation to the power to make regulations of a savings or transitional nature consequent on the enactment of the WHS Act. The regulation-making power is expanded to authorise the making of regulations that can override provisions of the WHS Act.

**Schedule 1 [17]** enables regulations to be made in relation to the continued operation of regulations made under the *Occupational Health and Safety Act 2000* that will be repealed on the commencement of the WHS Act.

**Schedule 1 [19]** contains savings and transitional provisions consequent on the enactment of the WHS Act and amendments to be made to the WHS Act by the Bill.

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

**Schedule 2 [5]** abolishes the Metalliferous Mines and Extractive Industries Competence Board and constitutes the Mining Competence Board as a body corporate with similar functions. The Mining Competence Board will also have functions under the *Coal Mine Health and Safety Act 2002* in relation to competence standards for persons working at coal operations. **Schedule 2 [6]** provides for the membership of the Mining Competence Board. **Schedule 2 [1]–[4], [7] and [8]** are consequential amendments.

**Schedule 2 [9]–[13]** give the Mining Competence Board the power to make various orders in relation to certificates of competence for people working in mines subject to any orders of the Minister or provisions of the regulations.

**Schedule 2 [14]** enables savings and transitional regulations to be made as a consequence of the amendments made by the proposed Act. **Schedule 2 [15]** contains savings and transitional provisions in relation to the abolition of the Metalliferous Mines and Extractive Industries Competence Board and the creation of the Mining Competence Board.

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

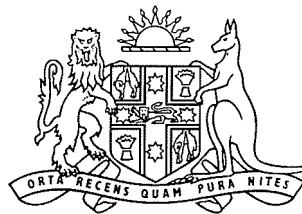
**Schedule 3 [2]** abolishes the Coal Competence Board. The Mining Competence Board established under the *Mine Health and Safety Act 2004* (as amended by Schedule 2 to the proposed Act) will have functions similar to the abolished Board in relation to competence standards for persons working at coal operations. **Schedule 3 [1] and [3]** are consequential amendments.

**Schedule 3 [4]** enables savings and transitional regulations to be made as a consequence of the amendments made by the proposed Act. **Schedule 3 [5]** contains savings and transitional provisions relating to the abolition of the Coal Competence Board.

## **Schedule 4      Consequential amendments of Acts**

Schedule 4 makes amendments to various Acts as a consequence of the enactment of the proposed Act and the WHS Act.

First print



New South Wales

# Work Health and Safety Legislation Amendment Bill 2011

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New South Wales

# Work Health and Safety Legislation Amendment Bill 2011

No. , 2011

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## A Bill for

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.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Work Health and Safety Legislation Amendment Act 2011</i> .	3 4
<b>2 Commencement</b>	5
(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.	6 7 8
(2) Schedules 1 [1] and 2 [14] and [15] commence on the date of assent to this Act.	9 10
(3) Schedules 2 (except Schedule 2 [14] and [15]) and 3 commence on a day or days to be appointed by proclamation.	11 12



<b>Schedule 1</b>	<b>Amendment of Work Health and Safety Act 2011 No 10</b>	1
		2
<b>[1] Section 2</b>		3
	Omit the section. Insert instead:	4
	<b>2 Commencement</b>	5
	This Act commences on 1 January 2012 or on such later day as may be appointed by proclamation before 1 January 2012.	6
		7
<b>[2] Section 4 Definitions</b>		8
	Omit the definition of <i>inspector</i> . Insert instead:	9
	<i>inspector</i> means an inspector appointed under Part 9 or deemed to be an inspector under that Part.	10
		11
<b>[3] Section 4, definition of “member of staff”</b>		12
	Insert in alphabetical order:	13
	<i>member of staff</i> 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.	14
		15
		16
<b>[4] Section 4, definition of “regulator”</b>		17
	Omit the definition. Insert instead:	18
	<i>regulator</i> means:	19
	(a) the WorkCover Authority constituted under the <i>Workplace Injury Management and Workers Compensation Act 1998</i> , unless paragraph (b) applies, or	20
		21
		22
	(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.	23
		24
		25
		26
<b>[5] Section 38 Duty to notify of notifiable incidents</b>		27
	Omit section 38 (8). Insert instead:	28
	(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 <i>Mine Health and Safety Act 2004</i> applies or at a coal workplace.	29
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<b>[6] Section 154</b>	1
Insert after section 153:	2
<b>154 Delegation by regulator</b>	3
(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.	4 5 6
(2) A delegation under this section:	7
(a) may be made subject to such conditions as the regulator thinks fit, and	8 9
(b) is revocable at will, and	10
(c) does not derogate from the power of the regulator to act.	11
(3) In this section:	12
<i>authorised person</i> means:	13
(a) a member of staff of the regulator, or	14
(b) a person of a class prescribed by the regulations or of a class approved by the regulator.	15 16
<b>[7] Section 156A Special provision for mining and coal workplace inspectors</b>	17 18
Omit “is an inspector” from section 156A (2) and (3) wherever occurring.	19
Insert instead “is deemed to be an inspector”.	20
<b>[8] Section 162A Exercise of inspector functions outside area of jurisdiction</b>	21
Omit “regulator” from paragraph (a) of the definition of <i>appropriate authority</i> in section 162A (7).	22 23
Insert instead “WorkCover Authority”.	24
<b>[9] Section 165A Special powers of entry for coal and mining workplaces</b>	25
Insert after section 165A (2):	26
(3) In this section:	27
<i>authorised representative</i> 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 <i>Industrial Relations Act 1996</i> in respect of that industrial organisation of employees.	28 29 30 31 32 33

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<b>[10]</b>	<b>Section 229A Part extends to mines and coal workplaces</b>	1
	Omit section 229A (2). Insert instead:	2
	(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.	3 4 5
<b>[11]</b>	<b>Section 229B Procedure for offences</b>	6
	Omit section 229B (5).	7
<b>[12]</b>	<b>Section 252 Officer of public authority</b>	8
	Insert at the end of the section:	9
	(2) A Minister of a State or the Commonwealth is not in that capacity an officer for the purposes of this Act.	10 11
<b>[13]</b>	<b>Section 271A</b>	12
	Insert after section 271:	13
	<b>271A Information sharing between regulators</b>	14
	(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 <i>Mine Health and Safety Act 2004</i> or the <i>Coal Mine Health and Safety Act 2002</i> .	15 16 17 18 19 20 21
	(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.	22 23 24 25 26 27
	(3) Section 271 (2) does not apply to the disclosure of information or giving of access to a document as authorised by this section.	28 29
<b>[14]</b>	<b>Section 276A Application of Act to mining workplaces and coal workplaces—references to regulator</b>	30 31
	Omit the section.	32

<b>[15] Schedule 4 Savings, transitional and other provisions</b>	1
Insert after clause 1 (3):	2
(4) A provision referred to in subclause (1) has effect, if the regulations so provide, despite any other clause of this Schedule.	3 4
(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:	5 6 7 8
(a) may only be made for or with respect to matters for or with respect to which this Act makes provision, and	9 10
(b) may not be made so as to have effect after 31 December 2012, and	11 12
(c) ceases to have effect, unless sooner revoked or otherwise ceasing to have effect, on 31 December 2012.	13 14
<b>[16] Schedule 4, clause 5</b>	15
Omit clause 5 (2). Insert instead:	16
(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 18 19 20 21 22
<b>[17] Schedule 4, clause 7</b>	23
Omit the clause. Insert instead:	24
<b>7 Continuation of repealed Regulations</b>	25
Without limiting clause 1, the regulations under that clause may make provision for or with respect to:	26 27
(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	28 29 30 31
(b) anything done under any such regulation or provision and having any force or effect immediately before the commencement of this Act.	32 33 34

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<b>[18] Schedule 4, clause 8</b>	1
Omit “or exemption”. Insert instead “, exemption or other instrument”.	2
<b>[19] Schedule 4, Part 3</b>	3
Insert after clause 9:	4
<b>Part 3 Provisions consequent on enactment of Work Health and Safety Legislation Amendment Act 2011</b>	5 6 7
<b>10 Definitions</b>	8
In this Part:	9
<i>amending Act</i> means the <i>Work Health and Safety Legislation Amendment Act 2011</i> .	10 11
<i>OHS Act</i> means the <i>Occupational Health and Safety Act 2000</i> .	12
<b>11 Amendment of Coal Mine Health and Safety Act 2002</b>	13
(1) Section 8B of the <i>Coal Mine Health and Safety Act 2002 (the CMHS Act)</i> 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.	14 15 16 17
(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.	18 19 20
(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.	21 22 23 24 25
(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.	26 27 28
(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.	29 30 31
(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.	32 33 34

(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.	1 2 3 4
<b>12</b>	<b>Amendment of Crimes (Sentencing Procedure) Act 1999</b>	5
	Section 27 of the <i>Crimes (Sentencing Procedure) Act 1999</i> 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.	6 7 8 9 10
<b>13</b>	<b>Amendment of Criminal Procedure Act 1986</b>	11
	Sections 215 and 257D of the <i>Criminal Procedure Act 1986</i> 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.	12 13 14 15
<b>14</b>	<b>Amendment of Industrial Relations Act 1996</b>	16
(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 <i>Industrial Relations Act 1996</i> ( <b>the IR Act</b> ) after the repeal of that section, except as provided by subclause (2).	17 18 19 20 21
(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.	22 23 24
(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:	25 26
	(a) any complaint made about a workplace matter (as referred to in that provision) before the repeal of that provision, and	27 28
	(b) the exercise before the repeal of that provision of any function conferred under Division 2 of Part 2 of the OHS Act.	29 30 31
(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.	32 33 34 35 36

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<b>15</b>	<b>Amendment of Mine Health and Safety Act 2004</b>	1
(1)	Section 8 of the <i>Mine Health and Safety Act 2004 (the MHS Act)</i> 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 3 4 5
(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.	6 7 8
(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.	9 10 11 12
(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.	13 14 15
(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 17 18
<b>16</b>	<b>Amendment of Mining Act 1992</b>	19
	A reference to this Act in section 378E of the <i>Mining Act 1992</i> includes a reference to the OHS Act in relation to an order or direction given before the commencement of this Act.	20 21 22
<b>17</b>	<b>Amendment of Rail Safety Act 2008</b>	23
(1)	Section 138 (1) of the <i>Rail Safety Act 2008 (the Act)</i> 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.	24 25 26 27
(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.	28 29 30 31
(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.	32 33 34 35

<b>18</b>	<b>Amendment of Road Transport (General) Act 2005</b>	1
	For the purposes of section 244A of the <i>Road Transport (General) Act 2005</i> , 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.	2 3 4 5 6 7
<b>19</b>	<b>Amendment of Rural Workers Accommodation Act 1969</b>	8
	For the purposes of section 20 of the <i>Rural Workers Accommodation Act 1969 (the Act)</i> , 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.	9 10 11 12 13 14
<b>20</b>	<b>Amendment of Workplace Injury Management and Workers Compensation Act 1998</b>	15 16
	(1) A reference in section 245A (Evidence—criminal proceedings under WHS legislation) of the <i>Workplace Injury Management and Workers Compensation Act 1998</i> 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.	17 18 19 20 21 22 23
	(2) For the purposes of the operation of section 254 of the <i>Workplace Injury Management and Workers Compensation Act 1998</i> 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.	24 25 26 27 28 29
	(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 <i>Workplace Injury Management and Workers Compensation Act 1998</i> before the commencement of this Act.	30 31 32 33 34 35



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## **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

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	(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	1 2 3
	(e) 2 officers of the Department.	4
<b>[7]</b>	<b>Section 116 Functions of Board</b>	5
	Insert “or the <i>Coal Mine Health and Safety Act 2002</i> ” after “this Act” in section 116 (1).	6 7
<b>[8]</b>	<b>Section 116</b>	8
	Insert “or coal operations” after “mines” wherever occurring.	9
<b>[9]</b>	<b>Section 120 Power to make orders</b>	10
	Omit “The Minister may make orders” from section 120 (1).	11
	Insert instead “The Minister or the Board may make orders”.	12
<b>[10]</b>	<b>Section 120 (1) (f)</b>	13
	Omit “rules”. Insert instead “orders”.	14
<b>[11]</b>	<b>Section 120 (1) (h)</b>	15
	Omit the paragraph. Insert instead:	16
	(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),	17 18 19
<b>[12]</b>	<b>Section 120 (1A)</b>	20
	Insert after section 120 (1):	21
	(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.	22 23
<b>[13]</b>	<b>Section 120 (2)</b>	24
	Insert “by the Minister” after “orders”.	25
<b>[14]</b>	<b>Schedule 5 Savings, transitional and other provisions</b>	26
	Insert at the end of clause 1 (1):	27
	<i>Work Health and Safety Legislation Amendment Act 2011</i>	28

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<b>[15] Schedule 5</b>	1
Insert at the end of the Schedule:	2
<b>Part 3 Provisions consequent on the enactment of Work Health and Safety Legislation Amendment Act 2011</b>	3 4 5
<b>19 Definitions</b>	6
In this Part:	7
<i>amending Act</i> means the <i>Work Health and Safety Legislation Amendment Act 2011</i> .	8 9
<i>former Board</i> means the Metalliferous Mines and Extractive Industries Competence Board constituted by section 112 immediately before the new Board commencement.	10 11 12
<i>new Board</i> means the Mining Competence Board constituted by section 112 after the new Board commencement.	13 14
<i>new Board commencement</i> means the commencement of the amendment made by the amending Act to section 112.	15 16
<b>20 Dissolution of former Board</b>	17
(1) On the new Board commencement, the former Board is dissolved.	18 19
(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.	20 21 22 23 24
(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.	25 26 27 28
<b>21 Appointment of new Board</b>	29
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.	30 31 32 33 34

<b>22</b>	<b>Actions of former Board</b>	1
(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 3 4 5
(2)	This clause extends to but is not limited to the following things done by the former Board:	6 7
(a)	an assessment of competence,	8
(b)	the conduct of an examination,	9
(c)	the grant, suspension or cancellation of, or the imposition of conditions on, a certificate of competence or exemption,	10 11
(d)	any approval given or appointment or recommendation made by the former Board.	12 13
<b>23</b>	<b>Delegations to former Board</b>	14
	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.	15 16 17
<b>24</b>	<b>Annual report of former Board</b>	18
	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.	19 20 21
<b>25</b>	<b>Protection from liability</b>	22
	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.	23 24 25 26

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<b>Schedule 3</b>	<b>Amendment of Coal Mine Health and Safety Act 2002 No 129</b>	1
		2
<b>[1] Section 3 Definitions</b>		3
	Omit the definition of <i>Board</i> . Insert instead:	4
	<i>Board</i> means the Mining Competence Board constituted by section 112 of the <i>Mine Health and Safety Act 2004</i> .	5 6
<b>[2] Part 9, Division 2 Coal Competence Board</b>		7
	Omit the Division.	8
<b>[3] Section 135 Annual report</b>		9
	Omit the section.	10
<b>[4] Schedule 3 Savings, transitional and other provisions</b>		11
	Insert at the end of clause 1 (1):	12
	<i>Work Health and Safety Legislation Amendment Act 2011</i> , but only to the extent that it amends this Act	13 14
<b>[5] Schedule 3</b>		15
	Insert at the end of the Schedule:	16
<b>Part 4</b>	<b>Provisions consequent on the enactment of Work Health and Safety Legislation Amendment Act 2011</b>	17 18 19
<b>28</b>	<b>Definitions</b>	20
	In this Part:	21
	<i>amending Act</i> means the <i>Work Health and Safety Legislation Amendment Act 2011</i> .	22 23
	<i>former Board</i> means the Coal Competence Board constituted by section 130 immediately before the repeal of that section by the amending Act.	24 25 26
	<i>new Board</i> means the Mining Competence Board constituted by section 112 of the <i>Mine Health and Safety Act 2004</i> after the commencement of the amendment made by the amending Act to section 112 of the <i>Mine Health and Safety Act 2004</i> .	27 28 29 30

<b>29</b>	<b>Dissolution of former Board</b>	1
(1)	The former Board is dissolved on the repeal of section 130 by the amending Act.	2 3
(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.	4 5 6 7 8
(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.	9 10 11 12
<b>30</b>	<b>Actions of former Board</b>	13
(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.	14 15 16
(2)	This clause extends to but is not limited to the following things done by the former Board:	17 18
(a)	an assessment of competence,	19
(b)	the conduct of an examination,	20
(c)	the grant, suspension or cancellation of, or the imposition of conditions on, a certificate of competence or exemption,	21 22
(d)	any approval given or appointment or recommendation made by the former Board.	23 24
<b>31</b>	<b>Delegations to former Board</b>	25
	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.	26 27 28
<b>32</b>	<b>Annual report of former Board</b>	29
	The first annual report of the new Board under section 117 of the <i>Mine Health and Safety Act 2004</i> after the dissolution of the former Board is to include a report of the activities of the former Board during the preceding year.	30 31 32 33

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**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.

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<b>Schedule 4</b>	<b>Consequential amendment of Acts</b>	1
<b>4.1</b>	<b>Coal Industry Act 2001 No 107</b>	2
[1]	<b>Section 10 General functions</b>	3
	Omit “occupational” from section 10 (1) (a). Insert instead “work”.	4
[2]	<b>Section 17 Discretionary functions—non-rescue services for mines and others</b>	5
	Omit “occupational” from section 17 (a). Insert instead “work”.	6
[3]	<b>Section 24 Workers compensation funds</b>	7
	Omit “occupational” from section 24 (1) (c). Insert instead “work”.	8
<b>4.2</b>	<b>Coal Mine Health and Safety Act 2002 No 129</b>	9
[1]	<b>Section 3 Definitions</b>	10
	Insert after paragraph (b) of the definition of <i>previous offender</i> :	11
	(b1) the <i>Work Health and Safety Act 2011</i> , or	12
[2]	<b>Section 8 Application of Act</b>	13
	Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 8 (4).	14
	Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	15
[3]	<b>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)</b>	16
	Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 8A (2).	17
	Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	18
[4]	<b>Section 8B Decisions on jurisdictional questions (as inserted by Schedule 1 [11] to the Coal Mine Health and Safety Amendment Act 2010)</b>	19
	Omit “ <i>Occupational Health and Safety Act 2000</i> ” wherever occurring in section 8B (3) and (7).	20
	Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	21
[5]	<b>Section 10 Objects of Act</b>	22
	Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 10 (a).	23
	Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	24
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<b>[6] Part 4</b>	1
Omit the Part. Insert instead:	2
<b>Part 4 Application of Work Health and Safety Act 2011</b>	3
	4
<b>Note.</b> The <i>Work Health and Safety Act 2011</i> 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 <i>Work Health and Safety Act 2011</i> . 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 <i>Work Health and Safety Act 2011</i> would otherwise provide.	5 6 7 8 9 10 11
<b>11 Act to be read in conjunction with WHS Act</b>	12
This Act is to be read in conjunction with the <i>Work Health and Safety Act 2011</i> .	13 14
<b>12 Act adds to protection provided by WHS Act</b>	15
(1) If a provision of the <i>Work Health and Safety Act 2011</i> 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.	16 17 18 19
<b>Note.</b> For example, Part 2 of the <i>Work Health and Safety Act 2011</i> 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.	20 21 22 23 24
(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 <i>Work Health and Safety Act 2011</i> or the regulations under that Act.	25 26 27 28 29
<b>13 WHS Act prevails</b>	30
(1) The provisions of the <i>Work Health and Safety Act 2011</i> 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.	31 32 33 34
<b>Note.</b> For example, if a provision of this Act deals with a certain matter and a provision of the <i>Work Health and Safety Act 2011</i> deals with the same matter and it is not possible to comply with both provisions, then a person must comply with the <i>Work Health and Safety Act 2011</i> and not	35 36 37 38

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	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.	1 2 3
	(2) This section is subject to section 122.	4
<b>14</b>	<b>Compliance with this Act is no defence to prosecution under WHS Act</b>	5 6
	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 <i>Work Health and Safety Act 2011</i> or the regulations under that Act.	7 8 9 10 11
<b>15</b>	<b>Evidence of contraventions of this Act and WHS Act</b>	12
	Evidence of a relevant contravention of this Act or the regulations is admissible in any proceedings for an offence against the <i>Work Health and Safety Act 2011</i> or the regulations under that Act.	13 14 15 16
<b>16</b>	<b>No double jeopardy</b>	17
	Where an act or omission constitutes an offence:	18
	(a) under this Act or the regulations, and	19
	(b) under the <i>Work Health and Safety Act 2011</i> or the regulations under that Act,	20 21
	the offender is not liable to be punished twice in relation to the offence.	22 23
<b>[7]</b>	<b>Part 5 Duties relating to health, safety and welfare at coal operations</b>	24
	Omit the note to Part 5. Insert instead:	25
	<b>Note.</b> Part 2 of the <i>Work Health and Safety Act 2011</i> imposes duties relating to health, safety and welfare at work. Those duties apply to work at coal operations.	26 27 28
	This Part imposes extra duties.	29
<b>[8]</b>	<b>Part 5, Division 1, note</b>	30
	Omit the note.	31
<b>[9]</b>	<b>Part 5, Division 2, note</b>	32
	Omit the note.	33
<b>[10]</b>	<b>Section 42 Duties of operator regarding contractors</b>	34
	Omit “occupational” from section 42 (1) (b). Insert instead “work”.	35

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<b>[11] Section 42 (3) (a) (ii), (3) (b) (ii), (3) (c) and (4)</b>	1
Omit “ <i>Occupational Health and Safety Act 2000</i> ” wherever occurring.	2
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	3
<b>[12] Part 5, Division 3, note</b>	4
Omit the note.	5
<b>[13] Section 61 Unlawful dismissal or other victimisation of employee</b>	6
Omit the note to the section.	7
<b>[14] Part 5, Division 4, note</b>	8
Omit the note.	9
<b>[15] Section 63 Duties of manager of mining engineering</b>	10
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 63 (3).	11
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	12
<b>[16] Section 64 Duties of manager of electrical engineering</b>	13
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 64 (3).	14
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	15
<b>[17] Section 65 Duties of manager of mechanical engineering</b>	16
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 65 (3).	17
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	18
<b>[18] Section 67 Those in management positions must inform operator of non-compliance</b>	19
Omit “ <i>Occupational Health and Safety Act 2000</i> ” wherever occurring.	20
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	21
<b>[19] Section 70 Supervisor must inform operator of non-compliance</b>	22
Omit “ <i>Occupational Health and Safety Act 2000</i> ” wherever occurring.	23
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	24
<b>[20] Part 5, Division 6, note</b>	25
Omit the note.	26
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<b>[21] Section 75 Contractor must prepare and implement WHS management plan</b>	1
Omit “occupational” wherever occurring. Insert instead “work”.	2
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<b>[22] Section 76 Contractor’s duties regarding subcontractors</b>	4
Omit “occupational” wherever occurring in section 76 (1) (b), (3) and (4).	5
Insert instead “work”.	6
<b>[23] Section 118 Minister to make stop work orders</b>	7
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 118 (1) (a).	8
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	9
<b>[24] Section 122 Stop work order prevails over other instruments</b>	10
Omit “An investigation notice” from section 122 (1).	11
Insert instead “A non-disturbance notice”.	12
<b>[25] Section 122 (1)</b>	13
Omit “ <i>Occupational Health and Safety Act 2000</i> ”.	14
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	15
<b>[26] Section 145 Appointment of government officials</b>	16
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 145 (2) (as substituted by Schedule 1 [19] to the <i>Coal Mine Health and Safety Amendment Act 2010</i> ).	17
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	19
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	20
<b>[27] Section 145 (3)</b>	21
Omit “section 48 of the <i>Occupational Health and Safety Act 2000</i> ”.	22
Insert instead “section 157 of the <i>Work Health and Safety Act 2011</i> ”.	23
<b>[28] Part 10 Oversight of coal operations</b>	24
Omit the note to Subdivision 3 of Division 2. Insert instead:	25
<b>Note.</b> Section 156A of the <i>Work Health and Safety Act 2011</i> 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.	26
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<b>[29] Section 155 Power of entry at any time</b>	1
Omit “Despite Part 5 of the <i>Occupational Health and Safety Act 2000</i> ”.	2
Insert instead “Despite Part 9 of the <i>Work Health and Safety Act 2011</i> ”.	3
<b>[30] Section 164 Functions of site check inspectors</b>	4
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 164 (e).	5
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	6
<b>[31] Section 165 Training of site check inspectors</b>	7
Omit “occupational” from section 165 (1). Insert instead “work”.	8
<b>[32] Section 167 Duties of operators in relation to site check inspectors</b>	9
Omit “OHS committee (established under the <i>Occupational Health and Safety Act 2000</i> )” from section 167 (c).	10 11
Insert instead “health and safety committee (established under the <i>Work Health and Safety Act 2011</i> )”.	12 13
<b>[33] Section 168 Duties of contractors in relation to site check inspectors</b>	14
Omit “OHS committee (established under the <i>Occupational Health and Safety Act 2000</i> )” from section 168 (c).	15 16
Insert instead “health and safety committee (established under the <i>Work Health and Safety Act 2011</i> )”.	17 18
<b>[34] Part 10, Division 3, Subdivision 3, note</b>	19
Omit the note.	20
<b>[35] Section 173 Appointment of industry check inspectors</b>	21
Omit section 173 (1) (b). Insert instead:	22
(b) is an authorised industrial officer within the meaning of	23
Part 7 (Entry and inspection by officers of industrial	24
organisations) of Chapter 5 of the <i>Industrial Relations Act</i>	25
1996, and	26
<b>[36] Section 175 Powers of industry check inspectors to suspend operations</b>	27
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 175 (1) (a).	28
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	29

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<b>[37] Section 179 Inspections by check inspectors</b>	1
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 179 (b).	2
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	3
<b>[38] Section 185</b>	4
Omit the section. Insert instead:	5
<b>185 Purpose of industry codes of practice</b>	6
The purpose of a coal mining industry code of practice is to	7
provide practical guidance to operators and others who have	8
duties under Part 5 of this Act or Part 2 of the <i>Work Health and</i>	9
<i>Safety Act 2011</i> in relation to work health, safety and welfare at	10
coal operations.	11
<b>[39] Section 191 Use of codes</b>	12
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 191 (1).	13
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	14
<b>[40] Section 202 Regulations relating to consultation</b>	15
Omit “OHS committee for the coal operation (established under the	16
<i>Occupational Health and Safety Act 2000</i> )” from section 202 (1).	17
Insert instead “health and safety committee for the coal operation (established	18
under the <i>Work Health and Safety Act 2011</i> )”.	19
<b>[41] Part 13 Miscellaneous</b>	20
Omit the note to Division 1. Insert instead:	21
<b>Note.</b> Section 229A of the <i>Work Health and Safety Act 2011</i> provides for	22
offences under this Act and the regulations to be prosecuted under that	23
Act.	24
<b>[42] Section 220 Protection from liability</b>	25
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 220 (1).	26
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	27
<b>4.3 Coal Mine Health and Safety Amendment Act 2010 No 23</b>	28
<b>[1] Schedule 1 Amendment of Coal Mine Health and Safety Act 2002 No 129</b>	29
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from proposed	30
section 8A (2) in Schedule 1 [11].	31
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	32

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<b>[2] Schedule 1 [11]</b>	1
Omit “ <i>Occupational Health and Safety Act 2000</i> ” wherever occurring in proposed section 8B (3) and (7).	2 3
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	4
<b>[3] Schedule 1 [19]</b>	5
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from proposed section 145 (2).	6 7
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	8
<b>[4] Schedule 3 Amendment of other Acts and instruments</b>	9
Omit “ <i>Occupational Health and Safety Act 2000</i> ” wherever occurring in proposed section 8 (3) and (7) in Schedule 3.6 [1].	10 11
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	12
<b>[5] Schedule 3.6 [2]</b>	13
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from proposed section 127 (2).	14 15
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	16
<b>4.4 Crimes (Sentencing Procedure) Act 1999 No 92</b>	17
<b>[1] Section 27 Application of Division</b>	18
Omit “this Division applies only if the offence is being dealt with on indictment” from section 27 (2).	19 20
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”.	21 22 23
<b>[2] Section 27 (2A) (a)</b>	24
Omit “Division 1 of Part 2 of the <i>Occupational Health and Safety Act 2000</i> ”.	25
Insert instead “Division 5 of Part 2 of the <i>Work Health and Safety Act 2011</i> ”.	26
<b>4.5 Criminal Procedure Act 1986 No 209</b>	27
<b>[1] Section 170 Application</b>	28
Insert after section 170 (3) (c):	29
(c1) proceedings before the District Court,	30

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<b>[2] Section 215 When costs may be awarded to prosecutor</b>	1
Omit section 215 (1B). Instead instead:	2
(1B) Subsection (1A) does not apply in relation to proceedings for an offence against the <i>Work Health and Safety Act 2011</i> or the regulations under that Act.	3 4 5
<b>[3] Section 257D Limit on award of professional costs against a prosecutor acting in a public capacity</b>	6 7
Omit section 257D (2) (b). Insert instead:	8
(b) does not apply in relation to proceedings for an offence against the <i>Work Health and Safety Act 2011</i> or the regulations under that Act.	9 10 11
<b>4.6 Dangerous Goods (Road and Rail Transport) Act 2008 No 95</b>	12
<b>Section 22</b>	13
Omit the section. Insert instead:	14
<b>22 General powers of authorised officers appointed by WorkCover: application of Part 9 of Work Health and Safety Act 2011</b>	15 16
(1) An authorised officer appointed by WorkCover has and may exercise the functions of an inspector under Part 9 of the <i>Work Health and Safety Act 2011</i> (the <i>WHS Act</i> ) for the following purposes:	17 18 19 20
(a) for determining whether there has been compliance with or a contravention of this Act and the regulations,	21 22
(b) for obtaining information or records for purposes connected with the administration of this Act and the regulations,	23 24 25
(c) generally for administering this Act and the regulations.	26
(2) The provisions of Part 9 of the <i>WHS Act</i> apply to and in respect of this Act as if those provisions were part of this Act, subject to the following modifications:	27 28 29
(a) references in those provisions to an inspector were references to an authorised officer appointed by WorkCover as a Competent Authority under this Act,	30 31 32
(b) references in those provisions to “this Act” were references to this Act,	33 34
(c) references in those provisions to the regulator were references to WorkCover as a Competent Authority.	35 36



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(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.	1 2 3 4
(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 6 7
(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.	8 9 10 11 12 13
<b>4.7</b>	<b>Electricity (Consumer Safety) Act 2004 No 4</b>	14
	<b>Section 38 Arrangements with other public authorities regarding investigable electrical incidents</b>	15 16
	Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 38 (1) (a).	17
	Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	18
<b>4.8</b>	<b>Explosives Act 2003 No 39</b>	19
<b>[1]</b>	<b>Section 27</b>	20
	Omit the section. Insert instead:	21
<b>27</b>	<b>Extension of certain provisions of Work Health and Safety Act 2011 relating to inspectors and the enforcement of this Act</b>	22 23
(1)	Part 9 (Securing compliance), other than section 187, of the <i>Work Health and Safety Act 2011</i> applies to inspectors (within the meaning of this Act) for the purposes of the administration of this Act and the regulations.	24 25 26 27
(2)	For the purpose of the application of those provisions:	28
(a)	a reference in the <i>Work Health and Safety Act 2011</i> to “this Act or the regulations” is taken to be a reference to this Act or the regulations under this Act, and	29 30 31
(b)	a reference in the <i>Work Health and Safety Act 2011</i> 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	32 33 34 35 36

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(c)	a reference in the <i>Work Health and Safety Act 2011</i> to an inspector (within the meaning of that Act) is taken to be a reference to an inspector (within the meaning of this Act).	1 2 3
<b>[2]</b>	<b>Section 31 Regulations relating to dangerous goods</b>	4
	Omit “section 135A of the <i>Occupational Health and Safety Act 2000</i> ” from section 31 (1).	5 6
	Insert instead “Schedule 1 to the <i>Work Health and Safety Act 2011</i> ”.	7
<b>[3]</b>	<b>Section 31 (1)</b>	8
	Omit “that section”. Insert instead “that Schedule”.	9
<b>4.9</b>	<b>Greyhound Racing Act 2009 No 19</b>	10
<b>[1]</b>	<b>Section 20 Suspension or cancellation of registration of greyhound racing clubs and trial tracks on commercial grounds</b>	11 12
	Omit “occupational” from section 20 (3). Insert instead “work”.	13
<b>[2]</b>	<b>Section 21 Disciplinary and work health and safety action may be taken by GRNSW</b>	14 15
	Omit “occupational” from section 21 (3). Insert instead “work”.	16
<b>4.10</b>	<b>Harness Racing Act 2009 No 20</b>	17
<b>[1]</b>	<b>Section 20 Suspension or cancellation of registration of harness racing clubs on commercial grounds</b>	18 19
	Omit “occupational” from section 20 (3). Insert instead “work”.	20
<b>[2]</b>	<b>Section 21 Disciplinary and work health and safety action may be taken by HRNSW</b>	21 22
	Omit “occupational” from section 21 (3). Insert instead “work”.	23
<b>4.11</b>	<b>Health Services Act 1997 No 154</b>	24
	<b>Section 116E Obligations of declared affiliated health organisations under certain legislation</b>	25 26
	Omit section 116E (1). Insert instead:	27
(1)	For the purposes of the <i>Work Health and Safety Act 2011</i> , 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	28 29 30 31 32

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recognised establishment or recognised service of the organisation.	1 2
<b>4.12 Homebush Motor Racing (Sydney 400) Act 2008 No 106</b>	3
<b>Section 17 Authorisation to carry out works</b>	4
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 17 (8) (a).	5
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	6
<b>4.13 Industrial Relations Act 1996 No 17</b>	7
<b>[1] Section 70 Transfer to a safe job</b>	8
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 70 (1).	9
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	10
<b>[2] Section 185 Rules of Commission</b>	11
Insert after section 185 (2) (d):	12
(d1) authorising any function of the Commission under the <i>Work Health and Safety Act 2011</i> to be exercised by the Industrial Registrar, or	13 14 15
<b>[3] Section 197 Appeals from Local Court</b>	16
Insert at the end of section 197 (1) (c):	17
, or	18
(d) a civil penalty imposed under Division 7 of Part 13 of the <i>Work Health and Safety Act 2011</i> 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.	19 20 21 22 23
<b>[4] Section 197A Appeals against acquittals in proceedings for offences against occupational health and safety legislation</b>	24 25
Omit the section.	26
<b>[5] Section 210 Freedom from victimisation</b>	27
Omit section 210 (1) (j). Insert instead:	28
(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 <i>Work Health and Safety Act 2011</i> , or	29 30 31 32

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<b>[6] Section 382 Jurisdiction of Chief and other Industrial Magistrates</b>	1
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 382 (1).	2
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	3
<b>[7] Section 383A Recovery of amount ordered to be paid by Industrial Magistrate under other legislation</b>	4
Omit section 383A (a).	5
<b>[8] Section 396 Penalty notices</b>	6
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 396 (9).	7
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	8
<b>4.14 Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009 No 32</b>	9
<b>[1] Schedule 1 Amendment of Industrial Relations Act 1996 No 17</b>	10
Omit Schedule 1 [5].	11
<b>[2] Schedule 2 Amendment of other legislation</b>	12
Omit Schedule 2.15.	13
<b>4.15 Law Enforcement (Powers and Responsibilities) Act 2002 No 103</b>	14
<b>Schedule 2 Search warrants under other Acts</b>	15
Omit “ <i>Occupational Health and Safety Act 2000</i> , section 58”.	16
Insert in alphabetical order:	17
<i>Work Health and Safety Act 2011</i> , section 167	18
<b>4.16 Licensing and Registration (Uniform Procedures) Act 2002 No 28</b>	19
<b>Schedules 1, 2 and 3A</b>	20
Omit the matter relating to the <i>Occupational Health and Safety Regulation 2001</i> wherever occurring.	21
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<b>4.17 Local Government Act 1993 No 30</b>	1
<b>Dictionary</b>	2
Omit the definition of <i>amusement device</i> . Insert instead:	3
<i>amusement device</i> means an amusement device that is high risk plant	4
within the meaning of clause 6 of Schedule 1 to the <i>Work Health and</i>	5
<i>Safety Act 2011</i> , and includes any other device that is declared by the	6
regulations to be an amusement device for the purposes of this Act.	7
<b>4.18 Mine Health and Safety Act 2004 No 74</b>	8
<b>[1] Section 3 Definitions</b>	9
Omit the definition of <i>authorised representative</i> from section 3 (1).	10
Insert instead:	11
<i>authorised representative</i> , in relation to an industrial organisation of	12
employees, means a person who is an authorised industrial officer	13
within the meaning of Part 7 (Entry and inspection by officers of	14
industrial organisations) of Chapter 5 of the <i>Industrial Relations Act</i>	15
1996 in relation to that industrial organisation of employees.	16
<b>[2] Section 3 (1), definition of “previous offender”</b>	17
Insert after paragraph (d) of the definition:	18
(d1) the <i>Work Health and Safety Act 2011</i> , or	19
<b>[3] Section 7 Act does not apply to certain mines or places</b>	20
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 7 (2).	21
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	22
<b>[4] Section 8 Decision on question of whether this Act applies</b>	23
Omit “ <i>Occupational Health and Safety Act 2000</i> ” wherever occurring.	24
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	25
<b>[5] Section 14 Objects of Act</b>	26
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 14 (a).	27
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	28

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<b>[6] Part 4</b>	1
Omit the Part. Insert instead:	2
<b>Part 4 Application of Work Health and Safety Act 2011</b>	3
	4
<b>Note.</b> The <i>Work Health and Safety Act 2011</i> 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 <i>Work Health and Safety Act 2011</i> . 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 <i>Work Health and Safety Act 2011</i> would otherwise provide.	5 6 7 8 9 10 11
<b>15 Act to be read in conjunction with WHS Act</b>	12
This Act is to be read in conjunction with the <i>Work Health and Safety Act 2011</i> .	13 14
<b>16 Act adds to protection provided by WHS Act</b>	15
(1) If a provision of the <i>Work Health and Safety Act 2011</i> 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.	16 17 18 19 20
<b>Note.</b> For example, Part 2 of the <i>Work Health and Safety Act 2011</i> 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.	21 22 23 24 25
(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 <i>Work Health and Safety Act 2011</i> or the regulations under that Act.	26 27 28 29 30
<b>17 WHS Act prevails</b>	31
(1) The provisions of the <i>Work Health and Safety Act 2011</i> 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.	32 33 34 35
<b>Note.</b> For example, if a provision of this Act deals with a certain matter and a provision of the <i>Work Health and Safety Act 2011</i> deals with the same matter and it is not possible to comply with both provisions, then a person must comply with the <i>Work Health and Safety Act 2011</i> and not	36 37 38 39

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	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.	1 2 3
	(2) This section is subject to section 104.	4
<b>18</b>	<b>Compliance with this Act is no defence to prosecution under WHS Act</b>	5 6
	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 <i>Work Health and Safety Act 2011</i> or the regulations under that Act.	7 8 9 10 11
<b>19</b>	<b>Evidence of contraventions of this Act and WHS Act</b>	12
	Evidence of a relevant contravention of this Act or the regulations is admissible in any proceedings for an offence against the <i>Work Health and Safety Act 2011</i> or the regulations under that Act.	13 14 15 16
<b>20</b>	<b>No double jeopardy</b>	17
	Where an act or omission constitutes an offence:	18
	(a) under this Act or the regulations, and	19
	(b) under the <i>Work Health and Safety Act 2011</i> or the regulations under that Act,	20 21
	the offender is not liable to be punished twice in relation to the offence.	22 23
<b>[7]</b>	<b>Part 5 Duties relating to health, safety and welfare at mines</b>	24
	Omit the note to Part 5. Insert instead:	25
	<b>Note.</b> Part 2 of the <i>Work Health and Safety Act 2011</i> imposes duties relating to health, safety and welfare at work. Those duties apply to work at mines.	26 27 28
	This Part imposes extra duties.	29
<b>[8]</b>	<b>Part 5, Division 1, note</b>	30
	Omit the note.	31
<b>[9]</b>	<b>Part 5, Division 2, note</b>	32
	Omit the note.	33

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<b>[10]</b>	<b>Section 40 Duties of operator regarding contractors</b>	1
	Omit “ <i>Occupational Health and Safety Act 2000</i> ” wherever occurring in section 40 (1) (a)–(c) and (2).	2
		3
	Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	4
<b>[11]</b>	<b>Section 40 (1) (e)</b>	5
	Omit “occupational”. Insert instead “work”.	6
<b>[12]</b>	<b>Part 5, Division 3, note</b>	7
	Omit the note.	8
<b>[13]</b>	<b>Section 52 Unlawful dismissal or other victimisation of employee</b>	9
	Omit the note to the section.	10
<b>[14]</b>	<b>Part 5, Division 4, note</b>	11
	Omit the note.	12
<b>[15]</b>	<b>Section 55 Persons in management positions must inform operator of non-compliance</b>	13
		14
	Omit “ <i>Occupational Health and Safety Act 2000</i> ” wherever occurring.	15
	Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	16
<b>[16]</b>	<b>Section 59 Supervisor must inform operator of non-compliance</b>	17
	Omit “ <i>Occupational Health and Safety Act 2000</i> ” wherever occurring.	18
	Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	19
<b>[17]</b>	<b>Part 5, Division 6, note</b>	20
	Omit the note.	21
<b>[18]</b>	<b>Section 63 Contractor’s safety management plan</b>	22
	Omit “occupational” from section 63 (2). Insert instead “work”.	23
<b>[19]</b>	<b>Section 100 Minister may make stop work order</b>	24
	Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 100 (1) (b).	25
	Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	26
<b>[20]</b>	<b>Section 104 Stop work order prevails over other instruments</b>	27
	Omit “An investigation notice” from section 104 (1).	28
	Insert instead “A non-disturbance notice”.	29



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<b>[21] Section 104 (1)</b>	1
Omit “ <i>Occupational Health and Safety Act 2000</i> ”.	2
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	3
<b>[22] Section 127 Appointment of government officials</b>	4
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 127 (2) (as substituted by Schedule 3.6 [2] to the <i>Coal Mine Health and Safety Amendment Act 2010</i> ).	5
	6
	7
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	8
<b>[23] Section 127 (3)</b>	9
Omit “section 48 of the <i>Occupational Health and Safety Act 2000</i> ”.	10
Insert instead “section 157 of the <i>Work Health and Safety Act 2011</i> ”.	11
<b>[24] Part 10 Oversight of mines</b>	12
Omit the note to Subdivision 3 of Division 2. Insert instead:	13
<b>Note.</b> Section 156A of the <i>Work Health and Safety Act 2011</i> provides	14
that a person appointed as a government official under this Act is	15
deemed to have been appointed as an inspector for the purposes of the	16
WHS Act and has the powers of an inspector under that Act in relation	17
to mining workplaces.	18
<b>[25] Section 135 Power of entry at any time</b>	19
Omit “Despite Part 5 of the <i>Occupational Health and Safety Act 2000</i> ”.	20
Insert instead “Despite Part 9 of the <i>Work Health and Safety Act 2011</i> ”.	21
<b>[26] Section 136 Power to cross land</b>	22
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 136 (1).	23
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	24
<b>[27] Part 10, Division 3, notes</b>	25
Omit the notes.	26
<b>[28] Section 144 Functions of site check inspectors</b>	27
Omit section 144 (d).	28
<b>[29] Section 144 (e) and (f)</b>	29
Omit “occupational” wherever occurring. Insert instead “work”.	30

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<b>[30] Section 144 (k)</b>	1
Omit “ <i>Occupational Health and Safety Act 2000</i> ”.	2
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	3
<b>[31] Section 145 Training of site check inspectors</b>	4
Omit “occupational” from section 145 (1). Insert instead “work”.	5
<b>[32] Section 146 Duties of operators in relation to site check inspectors</b>	6
Omit “OHS committee under the <i>Occupational Health and Safety Act 2000</i> ”	7
from section 146 (c).	8
Insert instead “health and safety committee (established under the <i>Work Health and Safety Act 2011</i> )”.	9
	10
<b>[33] Section 146, note</b>	11
Omit the note.	12
<b>[34] Section 147 Duties of contractors in relation to site check inspectors</b>	13
Omit “OHS committee (established under the <i>Occupational Health and Safety Act 2000</i> )” from section 147 (c).	14
	15
Insert instead “health and safety committee (established under the <i>Work Health and Safety Act 2011</i> )”.	16
	17
<b>[35] Section 147, note</b>	18
Omit the note.	19
<b>[36] Section 150 Inspections by site check inspectors</b>	20
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 150 (b).	21
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	22
<b>[37] Section 153 Power to cross land</b>	23
Omit “or the <i>Occupational Health and Safety Act 2000</i> ” from section 153 (1).	24
<b>[38] Section 158</b>	25
Omit the section. Insert instead:	26
<b>158 Purpose of industry codes of practice</b>	27
The purpose of a mining industry code of practice is to provide	28
practical guidance to operators and others who have duties under	29
Part 5 of this Act or Part 2 of the <i>Work Health and Safety Act</i>	30
<i>2011</i> in relation to work health, safety and welfare at mines.	31

<b>[39] Section 164 Use of codes</b>	1
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 164 (1).	2
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	3
<b>[40] Section 173 Regulations relating to consultation</b>	4
Omit “OHS committee for the mine (established under the <i>Occupational Health and Safety Act 2000</i> )” from section 173 (1).	5
Insert instead “health and safety committee for the mine (established under the <i>Work Health and Safety Act 2011</i> )”.	6
	7
	8
<b>[41] Part 13 Miscellaneous</b>	9
Omit the note to Division 1. Insert instead:	10
<b>Note.</b> Section 229A of the <i>Work Health and Safety Act 2011</i> provides for offences under this Act and the regulations to be prosecuted under that Act.	11
	12
	13
<b>[42] Section 189 Protection from liability</b>	14
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 189 (1).	15
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	16
<b>4.19 Mine Safety (Cost Recovery) Act 2005 No 116</b>	17
<b>Section 3 Definitions</b>	18
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from paragraph (b) of the definition of <i>mine safety legislation</i> in section 3 (1).	19
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	20
	21
<b>4.20 Mining Act 1992 No 29</b>	22
<b>[1] Section 341 Establishment of Mine Safety Advisory Council</b>	23
Omit “occupational” wherever occurring in section 341 (2).	24
Insert instead “work”.	25
<b>[2] Section 365 Disclosure of information</b>	26
Omit “occupational” from section 365 (1) (g). Insert instead “work”.	27
<b>[3] Section 378E Defences</b>	28
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from the definition of <i>mine safety legislation</i> in section 378E (4).	29
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	30
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<b>[4] Dictionary</b>	1
Omit the definition of <i>occupational health and safety legislation</i> .	2
<b>[5] Dictionary</b>	3
Insert in alphabetical order:	4
<i>work health and safety legislation</i> means:	5
(a) the <i>Occupational Health and Safety Act 1983</i> and the regulations made under that Act, and	6 7
(b) the <i>Occupational Health and Safety Act 2000</i> and the regulations made under that Act, and	8 9
(c) the <i>Work Health and Safety Act 2011</i> and the regulations made under that Act, and	10 11
(d) the <i>Coal Mines Regulation Act 1982</i> and the regulations and any rules made under that Act, and	12 13
(e) the <i>Coal Mine Health and Safety Act 2002</i> and the regulations made under that Act, and	14 15
(f) the <i>Mine Health and Safety Act 2004</i> and the regulations made under that Act, and	16 17
(g) the <i>Mines Inspection Act 1901</i> and the regulations and any rules made under that Act.	18 19
<b>4.21 Petroleum (Onshore) Act 1991 No 84</b>	20
<b>Section 128 Work practices</b>	21
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 128 (1).	22
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	23
<b>4.22 Radiation Control Act 1990 No 13</b>	24
<b>[1] Section 29 Radiation Advisory Council</b>	25
Omit “occupational” from section 29 (2) (h). Insert instead “work”.	26
<b>[2] Section 38 Consultation and co-operation between Ministers</b>	27
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 38 (a) (iii).	28
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	29

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<b>4.23 Rail Safety Act 2008 No 97</b>	1
<b>[1] Section 4 Interpretation</b>	2
Omit the definition of <i>occupational health and safety legislation</i> from section 4 (1).	3 4
<b>[2] Section 4 (1), definition of “work health and safety legislation”</b>	5
Insert in alphabetical order:	6
<i>work health and safety legislation</i> means the following Acts and any regulations made under those Acts:	7 8
(a) the <i>Work Health and Safety Act 2011</i> ,	9
(b) the <i>Coal Mine Health and Safety Act 2002</i> ,	10
(c) the <i>Mine Health and Safety Act 2004</i> .	11
<b>[3] Sections 6 and 6A</b>	12
Omit section 6. Insert instead:	13
<b>6 Management of risks</b>	14
A duty imposed on a person to ensure safety requires the person:	15
(a) to eliminate risks to safety, so far as is reasonably practicable, and	16 17
(b) if it is not reasonably practicable to eliminate risks to safety, to minimise those risks so far as is reasonably practicable.	18 19 20
<b>6A What is “reasonably practicable” in ensuring safety</b>	21
In this Act, <i>reasonably practicable</i> , 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:	22 23 24 25
(a) the likelihood of the risk concerned occurring, and	26
(b) the degree of harm that might result from the risk, and	27
(c) what the person concerned knows, or ought reasonably to know, about:	28 29
(i) the risk, and	30
(ii) ways of eliminating or minimising the risk, and	31
(d) the availability and suitability of ways to eliminate or minimise the risk, and	32 33

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(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.	1 2 3 4 5
<b>[4]</b>	<b>Section 10 Duties of rail safety workers</b>	6
	Omit “occupational” wherever occurring in the note to the section.	7
	Insert instead “work”.	8
<b>[5]</b>	<b>Section 11 Onus of proving limits of what is reasonably practicable under this Division</b>	9 10
	Omit the section.	11
<b>[6]</b>	<b>Section 12 Safety management system</b>	12
	Omit section 12 (3) (c). Insert instead:	13
(c)	health and safety representatives under the <i>Work Health and Safety Act 2011</i> who represent persons with whom the rail transport operator is required to consult under this section, and	14 15 16 17
<b>[7]</b>	<b>Section 64 Confidential reporting of safety information by rail safety workers</b>	18 19
	Omit “section 23 of the <i>Occupational Health and Safety Act 2000</i> ” from the note to the section.	20 21
	Insert instead “section 104 of the <i>Work Health and Safety Act 2011</i> ”.	22
<b>[8]</b>	<b>Section 135 Multiple contraventions of general duties</b>	23
	Insert “or section 136” after “Part 2” in section 135 (1).	24
<b>[9]</b>	<b>Section 136</b>	25
	Omit the section. Insert instead:	26
<b>136</b>	<b>Duty of officers</b>	27
(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.	28 29 30
	Maximum penalty: the same maximum penalty that is applicable to a failure by an individual to comply with the duty or obligation.	31 32

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|-----|--|----------------------------|
| (2) | In this section, <i>due diligence</i> includes taking reasonable steps:  | 1                          |
| (a) | to acquire and keep up-to-date knowledge of rail safety matters, and   | 2<br>3                     |
| (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  | 4<br>5<br>6                |
| (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  | 7<br>8<br>9<br>10          |
| (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   | 11<br>12<br>13<br>14       |
| (e) | to ensure that the corporation has, and implements, processes for complying with any duty or obligation of the corporation under Part 2, and   | 15<br>16<br>17             |
| (f) | to verify the provision and use of the resources and processes referred to in paragraphs (c)–(e).  | 18<br>19                   |
| (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.  | 20<br>21<br>22<br>23       |
| (4) | An officer of a corporation who is a volunteer does not commit an offence under this section.  | 24<br>25                   |
| (5) | In this section:   | 26                         |
|     | <i>corporation</i> means any body corporate (including a body corporate representing the Crown).   | 27<br>28                   |
|     | <i>officer</i> means an officer within the meaning of section 9 of the <i>Corporations Act 2001</i> 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. | 29<br>30<br>31<br>32<br>33 |
|     | <i>volunteer</i> means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).   | 34<br>35<br>36             |
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<b>[10] Section 138</b>	1
Omit the section. Insert instead:	2
<b>138 Proceedings against the Crown and public authorities</b>	3
(1) Divisions 5 and 6 of Part 13 of the <i>Work Health and Safety Act 2011</i> 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.	4 5 6 7
(2) Section 248 of the <i>Work Health and Safety Act 2011</i> applies to improvement or prohibition notices under this Act in the same way as it applies to improvement or prohibition notices under that Act.	8 9 10 11
<b>[11] Section 175 Application of work health and safety legislation</b>	12
Omit “occupational” wherever occurring. Insert instead “work”.	13
<b>4.24 Road Transport (General) Act 2005 No 11</b>	14
<b>Section 244A</b>	15
Omit the section. Insert instead:	16
<b>244A Application of work health and safety legislation</b>	17
(1) The provisions of an applicable road law do not preclude, or otherwise affect, the operation of the work health and safety legislation.	18 19 20
(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.	21 22 23 24
(3) Where an act or omission constitutes an offence under an applicable road law and:	25 26
(a) under the work health and safety legislation, or	27
(b) under the <i>Dangerous Goods (Road and Rail Transport) Act 2008</i> ,	28 29
the offender is not liable to be punished twice in relation to the offence.	30 31
(4) In this section:	32
<b><i>work health and safety legislation</i></b> means the following Acts and any regulations made under those Acts:	33 34
(a) the <i>Work Health and Safety Act 2011</i> ,	35



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(b) the <i>Coal Mine Health and Safety Act 2002</i> ,	1
(c) the <i>Mine Health and Safety Act 2004</i> .	2
<b>4.25 Road Transport (Safety and Traffic Management) Act 1999 No 20</b>	3 4
<b>Section 59 Definitions</b>	5
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from the definition of <i>prescribed officer</i> in section 59 (1).	6 7
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	8
<b>4.26 Rural Workers Accommodation Act 1969 No 34</b>	9
<b>[1] Part 4</b>	10
Omit the Part. Insert instead:	11
<b>Part 4 Application of Work Health and Safety Act 2011</b>	12 13
<b>16 Act adds to protection provided by WHS Act</b>	14
If a provision of the <i>Work Health and Safety Act 2011</i> 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.	15 16 17 18
<b>17 WHS Act prevails</b>	19
The provisions of the <i>Work Health and Safety Act 2011</i> 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.	20 21 22 23
<b>18 Compliance with this Act is no defence to prosecution under WHS Act</b>	24 25
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 <i>Work Health and Safety Act 2011</i> or the regulations under that Act.	26 27 28 29 30
<b>19 Relationship between duties under this Act and WHS Act</b>	31
Evidence of a relevant contravention of this Act or the regulations is admissible in any proceedings for an offence	32 33

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against the <i>Work Health and Safety Act 2011</i> or the regulations under that Act.	1 2
<b>20 No double jeopardy</b>	3
Where an act or omission constitutes an offence:	4
(a) under this Act or the regulations, and	5
(b) under the <i>Work Health and Safety Act 2011</i> or the regulations under that Act,	6 7
the offender is not liable to be punished twice in relation to the offence.	8 9
<b>[2] Section 21</b>	10
Omit the section. Insert instead:	11
<b>21 Application of Work Health and Safety Act 2011</b>	12
(1) Parts 3, 9, 10 and 13, and section 271, of the <i>Work Health and Safety Act 2011</i> (the <b><i>applied provisions</i></b> ) and any regulations under those provisions extend to this Act and its enforcement.	13 14 15
(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.	16 17 18
(3) For the purposes of this section:	19
(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	20 21 22
(b) in relation to such premises, the reference to the person with management or control of the place in section 170 of the <i>Work Health and Safety Act 2011</i> is taken to be a reference to the rural worker resident in premises.	23 24 25 26
(4) The regulations may make other provisions modifying the applied provisions for the purposes of this section.	27 28
<b>4.27 Smoke-free Environment Act 2000 No 69</b>	29
<b>Section 12 Premises containing exempt areas to comply with certain requirements</b>	30 31
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 12 (3).	32
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	33

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<b>4.28 Transport Administration Act 1988 No 109</b>	1
<b>[1] Section 88Y Obligations and rights under Work Health and Safety Act 2011</b>	2
	3
Omit “ <i>Occupational Health and Safety Act 2000</i> ” wherever occurring.	4
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	5
<b>[2] Section 88Y (3), definition of “employer liability legislation”</b>	6
Omit paragraph (b) of the definition.	7
<b>4.29 Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986 No 194</b>	8
	9
<b>Section 6 Act to prevail over other Acts and laws</b>	10
Omit section 6 (2) (b). Insert instead:	11
(b) the <i>Work Health and Safety Act 2011</i> .	12
<b>4.30 Workplace Injury Management and Workers Compensation Act 1998 No 86</b>	13
	14
<b>[1] Section 4 Definitions</b>	15
Omit the definition of <i>Council</i> from section 4 (1). Insert instead:	16
<i>Council</i> means the Workers Compensation and Work Health and Safety Council of New South Wales constituted under this Act.	17
	18
<b>[2] Section 4 (1), definition of “occupational health and safety legislation”</b>	19
Omit the definition.	20
<b>[3] Section 4 (1)</b>	21
Insert in alphabetical order:	22
<i>work health and safety legislation</i> means:	23
(a) the <i>Work Health and Safety Act 2011</i> and the instruments under that Act, or	24
	25
(b) any other Act or instrument (or part) prescribed by the regulations under this Act.	26
	27
<b>[4] Section 22 General functions of Authority</b>	28
Omit “occupational” wherever occurring. Insert instead “work”.	29

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<b>[5] Section 23 Specific functions</b>	1
Omit “occupational” wherever occurring. Insert instead “work”.	2
<b>[6] Section 23 (1) (e)</b>	3
Omit the paragraph.	4
<b>[7] Section 23 (1) (i)</b>	5
Omit the third dot point.	6
<b>[8] Chapter 2, Part 4, heading</b>	7
Omit the heading. Insert instead:	8
<b>Part 4 Workers Compensation and Work Health and Safety Council of New South Wales</b>	9 10
<b>[9] Section 28 Constitution of Council</b>	11
Omit “Workplace Occupational”. Insert instead “Work”.	12
<b>[10] Section 29 Membership and procedure of Council</b>	13
Omit “occupational” from section 29 (1) (i). Insert instead “work”.	14
<b>[11] Section 30 Functions of Council</b>	15
Omit “occupational” wherever occurring. Insert instead “work”.	16
<b>[12] Section 32 Industry Reference Groups</b>	17
Omit “occupational” from section 32 (3) (b). Insert instead “work”.	18
<b>[13] Section 230A Premium Discount Schemes</b>	19
Omit “occupational” wherever occurring. Insert instead “work”.	20
<b>[14] Section 245A Evidence—criminal proceedings under WHS legislation</b>	21
Omit “occupational” wherever occurring. Insert instead “work”.	22
<b>[15] Section 254 Notice of injury must be given to employer</b>	23
Omit “ <i>Occupational Health and Safety Act 2000</i> ” from section 254 (4) (b).	24
Insert instead “ <i>Work Health and Safety Act 2011</i> ”.	25

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**4.31 Workplace Surveillance Act 2005 No 47**

1

**Section 8 Relationship with WHS Act**

2

Omit "*Occupational Health and Safety Act 2000*".

3

Insert instead "*Work Health and Safety Act 2011*".

4