

Act No. 80

## OCCUPATIONAL HEALTH AND SAFETY (WORKERS COMPENSATION) AMENDMENT BILL 1987

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

This Bill is cognate with the Workers Compensation Bill 1987.

The object of this Bill is to amend the Occupational Health and Safety Act 1983 so as—

- (a) to increase penalties for offences under that Act;
- (b) to provide that proceedings for such an offence may be taken before the Industrial Commission rather than, as at present, the Supreme Court in its summary jurisdiction;
- (c) to increase the maximum penalty which may be imposed for such an offence by a Local Court or an industrial magistrate;
- (d) to enable the secretary of an industrial union whose members have an interest in the proceedings to institute proceedings for such an offence;
- (e) to empower the imposition of an additional penalty of up to 2 years imprisonment for a second or subsequent offence against that Act comprising wilful repetition of a previous offence;
- (f) to require employers to make available to their employees certain information relating to plant or substances used at a workplace;
- (g) to enable the formulation of industry codes of practice;
- (h) to expand the regulation making powers under that Act; and

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- (i) to make other minor or consequential amendments.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that, with minor exceptions, the proposed Act will commence on such day or days as may be appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

Clause 4 amends section 10 of the Search Warrants Act 1985 as a consequence of the amendments made by Schedule 2 (3).

Clause 5 is a transitional provision.

Schedule 1 (1) defines "Industrial Commission" in the Principal Act to mean the Industrial Commission of New South Wales.

Schedule 1 (2) increases from \$50,000 to \$100,000 in the case of a corporation and from \$5,000 to \$10,000 in any other case the penalty for the following offences under the Principal Act:

section 15—employers to ensure health, safety and welfare of their employees

section 16—employers and self-employed persons to ensure health and safety of persons other than employees at places of work

section 17—persons in control of workplaces etc. used by non-employees to ensure health and safety

section 18—manufacturers, suppliers etc. to ensure health and safety as regards plant and substances for use at work

section 21—employer not to charge employees for things done or provided pursuant to statutory requirement

section 21A—person not to hinder aid to injured worker etc.

Schedule 1 (3) increases from \$1,000 to \$2,000 the penalty for the following offences:

section 19—employees at work to take care of others and to co-operate with employer

section 20—person not to interfere with or misuse things provided for health, safety and welfare

Schedule 1 (4) increases from \$5,000 to \$10,000 the penalty for the following offences:

section 23—failure to establish occupational health and safety committees in workplaces

section 26—unlawful dismissal of employees

section 27—failure to notify accidents and other matters

section 27A—failure to notify particulars of certain places of work

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section 52—wilfully hindering or obstructing inspectors etc.

Schedule 1 (5) amends section 25 of the Principal Act to make a person guilty of an offence and liable to a penalty of up to \$4,000 if the person does not provide (as required by the regulations) appropriate training to a member of an occupational health and safety committee.

Schedule 1 (6) increases from \$100 to \$200 the daily penalty for failing to give effect to a court order to reimburse salary or wages to, or to reinstate, an unlawfully dismissed employee.

Schedule 1 (7) increases from \$2,000 to \$4,000 the penalty which may be provided for a breach of a regulation.

Schedule 1 (8) substitutes section 47 of the Principal Act, dealing with summary procedure for offences. The effect is that proceedings for an offence may now be taken before the Industrial Commission rather than the Supreme Court and the maximum penalty which may be imposed for an offence by a Local Court or an industrial magistrate is \$10,000 rather than \$5,000.

Schedule 1 (9) enables the secretary of an industrial union, the members of which are concerned in a proceeding, to commence proceedings for an offence against the Principal Act. Currently proceedings may only be instituted with the written consent of the Minister or a prescribed officer.

Schedule 1 (10) enables an additional penalty of up to 2 years imprisonment to be imposed for a second or subsequent offence against the Act if it comprises a wilful repetition of the act or omission constituting a previous offence.

Schedule 2 (1) amends section 15 of the Principal Act to require employers to make available to their employees information relating to the plant or substances used at a workplace, including research or tests carried out in connection with those substances.

Schedule 2 (2) amends section 17 of the Principal Act (which requires a person to ensure that non-domestic premises over which the person has some control are safe) to place the onus of proving that it was not reasonable or possible for the defendant to take a particular safety measure on the defendant.

Schedule 2 (3) enables inspectors under the Factories, Shops and Industries Act 1962 to enter domestic premises which are a workplace, but only with the consent of the occupier or with the authority of a search warrant executed in accordance with the Search Warrants Act 1985.

Schedule 2 (4) inserts into the Principal Act proposed Part IVA (Industry codes of practice) which contains the following provisions:

Proposed section 44A provides for the formulation and preparation of industry codes of practice by the Occupational Health, Safety and Rehabilitation Council of New South Wales. The Minister may approve of any such code and have the code published in the Government Gazette.

Proposed section 44B provides that in certain circumstances an industry code of practice is admissible in proceedings under the Principal Act and that a failure to comply with any relevant provision of the industry code of practice is evidence of a failure to comply with the Principal Act.

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Schedule 2 (5) amends section 45 of the Principal Act to expand the range of regulations which may be made under that Act by the Governor-in-Council. Regulations are authorised with respect to (among other things)—

- (a) the issuing of permits to persons carrying on any specified activity and the registering and licensing of businesses, activities and workplaces;
- (b) the charging of fees;
- (c) the regulation of substances (being provisions currently contained in Part VIIA of the Public Health Act 1902 but to be repealed by the proposed Public Health (Workers Compensation) Amendment Bill 1987); and
- (d) any matters which may be the subject of regulations under those Acts which are declared under the Principal Act to be associated occupational health and safety legislation.

Schedule 2 (6) inserts into the Principal Act proposed section 54 which enables a statement signed by the Co-ordinator of Occupational Health, Safety and Rehabilitation Services and stating the contents of certain government documents or records relating to occupational health and safety to be admissible in proceedings under that Act and to be evidence of the matters contained in the statement.

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