

Act 1994 No. 5

**OCCUPATIONAL HEALTH AND SAFETY LEGISLATION  
(AMENDMENT) BILL 1993**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The Workers Compensation Legislation (Miscellaneous Amendments) Bill 1993 is cognate with this Bill.

The objects of this Bill are as follows:

- (a) to amend the Occupational Health and Safety Act 1983:
- to provide for the appointment and powers of inspectors to carry out functions under the Act, the Construction Safety Act 1912 and the Factories, Shops and Industries Act 1962; and
  - to make it clear that actions in tort for breach of statutory duty can be brought in respect of breaches of duty imposed by the regulations and by provisions of the Act adapted by regulations made under section 46; and
  - to enable industry codes of practice to deal with matters of welfare at a place of work; and
  - to make it an offence for a person deliberately to create a risk or the appearance of a risk to the health or safety of persons at a place of work with the intention of causing a disruption of work; and
  - to insert some transitional provisions in the Act dealing with fumigation; and
- (b) to amend the Construction Safety Act 1912, the Factories, Shops and Industries Act 1962 and the Dangerous Goods Act 1975:
- to transfer to the WorkCover Authority certain functions presently exercised by Chief Inspectors and Deputy Chief Inspectors under those Acts; and

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- to provide that the Industrial Court has jurisdiction to deal with proceedings for an offence under those Acts where the penalty or the maximum penalty for the offence is 100 penalty units (currently \$10,000); and
  - to make other consequential amendments; and
- (c) to amend the Dangerous Goods Act 1975 to enable the Authority to disclose information about dangerous goods to certain persons and authorities in cases of emergencies and the like; and
- (d) to make other amendments to the Factories, Shops and Industries Act 1962 to update certain references.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act commences on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the Schedule amending the Occupational Health and Safety Act 1983.

**Clause 4** is a formal provision giving effect to the Schedule amending the Construction Safety Act 1912.

**Clause 5** is a formal provision giving effect to the Schedule amending the Factories, Shops and Industries Act 1962.

**Clause 6** is a formal provision giving effect to the Schedule amending the Dangerous Goods Act 1975.

**Clause 7** makes a consequential amendment to the Search Warrants Act 1985.

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

**Inspectors**

Schedule 1 (4) replaces Division 4 of Part 3 with a new Division containing provisions dealing with the appointment of inspectors (proposed section 31), powers of search and entry (proposed sections 31A–31K), powers to attend coronial inquiries (proposed section 31L), protection against incrimination (proposed section 31M), offences relating to inspectors (proposed sections 31N, 31O) and the disclosure of information by inspectors (proposed section 31P). Proposed section 31Q, which in substance reproduces the present section 31, provides for employees' representatives to accompany inspectors conducting inspections.

Schedule 1, (6) (a), (7) and (8) make consequential amendments. Schedule 1 (11), which inserts Schedule 8 into the Act, which contains provisions of a transitional nature in relation to existing inspectors appointed under the Construction Safety Act 1912 and the Factories, Shops and Industries Act 1962 (proposed clause 3).

**Civil liability**

Schedule 1 (3) amends section 22 to make it clear that a civil action may be brought with respect to breaches of duties imposed by the regulations. It also amends that section to enable an action (if otherwise available) to be brought for a breach of a provision of Division 1 of Part 3 that has been adapted by regulations made under section 46.

**Industry codes of practice**

Schedule 1 (5) amends section 44A to enable industry codes of practice to deal with matters of welfare at places of work (for example, the provision of lockers, toilets and eating rooms).

**Offence of disrupting workplace**

Schedule 1 (9) inserts section 52A into the Act to make it an offence deliberately to create a risk to the health or safety of persons at a place of work (or the appearance of such a risk) with the intention of causing a disruption of work. It will be a defence if the person had reasonable excuse or lawful authority to create the risk or the appearance of the risk. For instance, it would not be an offence for a person to conduct a fire or other safety drill.

**Fumigations and pesticides**

Proposed Schedule 8 contains transitional provisions that:

- enable dangerous substances to be prescribed by regulation and make it an offence to use a dangerous substance for fumigation in any premises without a licence (proposed clause 4);
- revive Part 12 of the Public Health Regulations as originally made under Part 7A of the Public Health Act 1902 and continued in force by clause 89 of the Public Health Regulations 1991 (proposed clause 5);
- validate proclamations made, and acts or things done, under Part 7A of the Public Health Act 1902 or the Public Health Regulations (proposed clauses 6 and 7);
- repeal clause 89 of the Public Health Regulation 1991 (proposed clause 8).

**Minor amendments**

Schedules 1 (2) and (5) (b) make some minor amendments by way of statute law revision. Schedule 1 (6) (c) omits section 45 (3) since an equivalent provision is now contained in section 42 (2) of the Interpretation Act 1987. Schedule 1 (10) inserts section 55 into the Act to give effect to the transitional provisions to be contained in proposed Schedule 8.

**SCHEDULE 2—AMENDMENT OF CONSTRUCTION SAFETY ACT 1912****References to Chief Inspector**

Schedule 2 (7)–(10), (11) (c) and (d), and (12) replace references to the Chief Inspector of Construction Safety and Deputy Chief Inspector with references to the WorkCover Authority to enable the Authority to exercise the functions presently

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exercised by them. Schedule 2 (1) (a) and (b) make consequential amendments to section 3 (Definitions). Schedule 2 (14) inserts a Second Schedule into the Act which contains transitional and savings provisions relating to the Chief Inspector and Deputy Chief Inspector (proposed clauses 2–5).

### **Inspectors**

Schedule 2 (1) (c) replaces the definition of inspector with a new definition and Schedule 2 (2) repeals section 5 dealing with the appointment of inspectors to ensure that in the future inspectors exercising functions under the Act will be appointed under the Occupational Health and Safety Act 1983. Schedule 2 (4) replaces section 13 with a new section to make it clear that inspectors may also exercise their functions under that Act in relation to certain places that may not be places of work. Schedule 2 (5) and (6) make consequential amendments to repeal provisions relating to offences against, and disclosures by, inspectors. These provisions will now be located in the Occupational Health and Safety Act 1983.

### **Proceedings for offences**

Schedule 2 (11) amends section 21 to provide that the Industrial Court has jurisdiction to deal with proceedings for an offence under the Act where the penalty or the maximum penalty for the offence is 100 penalty units (currently \$10,000). The Supreme Court presently has summary jurisdiction over these matters. Schedule 2 (14) inserts a transitional provision in the proposed Second Schedule to the Act relating to pending proceedings (proposed clause 6).

### **Minor amendments**

Schedule 2 (3) amends section 5A to ensure that the Chairperson of each Board of Reference is to be the General Manager of the Workcover Authority. Schedule 2 (13) inserts section 23 into the Act to give effect to the proposed Second Schedule to the Act.

## **SCHEDULE 3—AMENDMENT OF FACTORIES, SHOPS AND INDUSTRIES ACT 1962**

### **References to Chief Inspectors**

Schedule 3 (3), (4), (8), (10), (12), (13) and (23) replace references to the Chief Inspector of Factories, Shops and Industries, the Chief Inspector of Boilers and the Deputy Chief Inspector of Factories, Shops and Industries with references to the Workcover Authority to enable the Authority to exercise the functions presently exercised by them. Schedule 3 (1) (a) and (b) make consequential amendments to section 3 (Definitions). Schedule 3 (27) inserts Schedule 2 into the Act which contains transitional and savings provisions relating to the Chief Inspectors and Deputy Chief Inspector (proposed clauses 2–5).

### **Inspectors**

Schedule 3 (1) (c) replaces the definition of inspector with a new definition and Schedule 3 (2) repeals Part 2 of the Act dealing with the appointment and powers of inspectors, disclosures by inspectors and annual reports. This will ensure that in the future inspectors exercising functions under the Act (other than Part 4 or 6) will be appointed under the Occupational Health and Safety Act 1983. Schedule 3 (15) replaces

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section 73 with a new section to make it clear that these inspectors can exercise their functions in relation to certain places that may not be places of work.

Schedule 3 (18) and (22) insert sections 101A and 114A into the Act to ensure that section 745 of the Industrial Relations Act 1991 (Disclosure of information) applies to inspectors appointed under the Industrial Relations Act 1991 to exercise functions under Parts 4 and 6 of the Act.

**Proceedings for offences**

Schedule 3 (24) amends section 145 to provide that the Industrial Court has jurisdiction to deal with proceedings for an offence under the Act where the penalty or the maximum penalty for the offence is 100 penalty units (currently \$10,000). The Supreme Court presently has summary jurisdiction over these matters. Proposed Schedule 2 contains a transitional provision relating to pending proceedings (proposed clause 6).

**Statute law revision**

Schedule 3 (1) (d), (11), (17), (20), (21) and (25) replace outdated references to the Under Secretary of the Department of Industrial Relations and Employment with references to the General Manager of the WorkCover Authority (in relation to Parts 3 and 11) and the Director-General of the Department of Industrial Relations, Employment, Training and Further Education (in relation to Parts 4 and 6).

Schedule 3 (16) and (19) update references to the Industrial Arbitration Act 1940 by replacing them with references to the Industrial Relations Act 1991.

Schedule 3 (5)–(7), (9) and (14) omit, respectively, sections 18 (Inspector not to divulge contents of registers etc.), 22 (Floors, roofs and ceilings), 32 (Prohibition of use of machines), 42 (Confined spaces) and 66 (f).

**SCHEDULE 4—AMENDMENT OF DANGEROUS GOODS ACT 1975**

**References to Chief Inspector**

Schedule 4 (3)–(13) and 15 (b) replace references to the Chief Inspector of Dangerous Goods with references to the Workcover Authority to enable the Authority to exercise the functions presently exercised by the Chief Inspector. Schedule 4 (1) makes consequential amendments to section 4 (Definitions). Schedule 4 (16) inserts Part 2 into Schedule 3 to the Act containing transitional provisions relating to the Chief Inspector (proposed clauses 4–7).

**Appointment of inspectors of dangerous goods**

Schedule 4 (2) replaces section 6 with a new section that enables the Authority to appoint certain persons as inspectors of dangerous goods.

**Proceedings for offences**

Schedule 4 (14) amends section 33 to provide that the Industrial Court has jurisdiction to deal with proceedings for an offence under the Act where the penalty or the maximum penalty for the offence is 100 penalty units (currently \$10,000). The Supreme Court presently has summary jurisdiction over these matters. Proposed Part 2

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of Schedule 3 to the Act contains a transitional provision relating to pending proceedings (proposed clause 8).

**Disclosure of information**

Schedule 4 (15) amends section 44 to enable the Authority to disclose certain information about dangerous goods to persons or authorities providing emergency or rescue services or some other lawful service.

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