

Health and Safety in Employment Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill provides the basis for a new approach to the management of health and safety in workplaces by amending, and adding important new elements to, the Health and Safety in Employment Act 1992 (“the principal Act”).

Workplace health and safety is best achieved by enabling those in workplaces to manage safety in ways that make sense to them. It is also impossible for legislation to provide solutions for every hazard. Therefore, the law sets a standard and establishes that good processes must be followed to assess, eliminate, isolate, or minimise hazards that may harm people. Only good processes produce good outcomes, and the principal Act lacks these in some critical areas.

Motivations for pursuing workplace health and safety vary. The principal Act provides 1 part of the system that is focused on achieving fewer and less severe injuries and illnesses from work.

The amendments in this Bill reinforce the seriousness with which human life and wellbeing should be treated in the workplace. They emphasise the importance of the interdependence of people in workplaces, and therefore the importance of those at work taking responsibility for the wellbeing of themselves and others. Employees have a role to play, as well as their employers.

The amendments ensure that a consistent legislative framework applies to New Zealand workplaces to enable employers, employees, self-employed people, and the Government to improve workplace health and safety. They encourage a more inclusive approach to workplace health and safety management and strengthen the health dimension. They rationalise the coverage of the principal Act, particularly in the transport sector, and reinforce its intended comprehensive work coverage.

In a wider context, the changes will better align the Government's occupational health and safety strategy with employment relations reforms, in particular by emphasising that the good faith obligation applies equally in a health and safety context. The Bill will also strengthen the penalties against poor injury prevention practice and outcomes.

Clause by clause analysis

Clause 1 is the Title clause. The principal Act amended by this **Bill** is the Health and Safety in Employment Act 1992.

Clause 2 is the commencement clause. The Bill comes into force on **2 September 2002**.

Clause 3 sets out the purpose of the Bill.

Clause 4 amends section 2 of the principal Act. The following are the main amendments:

- the definitions of the terms **harm and hazard** are extended to confirm that they cover, respectively, mental harm and hazards arising through physical or mental fatigue:
- the definition of the term **place of work** is amended to confirm that it includes vehicles:
- various amendments are made so that persons who work on ships and aircraft are covered by the principal Act:
- a volunteer and an employee who is "loaned" by an employer to another person are both given protection by treating them as employees for the purposes of the principal Act:
- a provision is inserted in order to confirm that a place of work includes a place where a person is working in a transitory sense.

Clause 5 inserts *new sections 3A and 3B* into the principal Act. Currently, the principal Act does not cover the crew of aircraft. *New section 3A* removes this exclusion and provides that the principal Act applies to aircraft personnel on flights operating in New Zealand and to aircraft personnel on flights operating outside New Zealand if their employment agreements or contracts for services are governed by New Zealand law. However, section 16 of the principal Act, which relates to the duties of persons in control of places of work, will not apply while an aircraft is

taking off, flying, or landing. This is because aviation law places relevant aircraft safety obligations on carriers and pilots.

The crew of ships are also not currently covered by the principal Act. Instead, the Maritime Transport Act 1994 mirrors the principal Act's requirements. Amendments contained in *clause 23* remove this regime. *New section 3B* provides that the principal Act applies to ship personnel whose employment agreements or contracts for services are governed by New Zealand law, whether they are inside or outside New Zealand. However, section 16 of the principal Act, which relates to the duties of persons in control of places of work, will not apply while ships are at sea. This is because maritime legislation deals with general ship safety.

Clause 6 substitutes a new objects section into the principal Act. The new provision sets out the objects of the legislation in more detail than the previous objects section and reflects the amendments to the principal Act.

Clause 7 amends section 10(2)(b) of the principal Act, which sets out the steps that an employer must take if a significant hazard cannot be minimised. The amendment clarifies that the employer is required to actually provide protective clothing and equipment, and to ensure that it is made accessible to, and used by, the employees.

Clause 8 amends section 12 of the principal Act to include a duty on employers to ensure that health and safety representatives have enough information on health and safety matters to enable them to perform their functions effectively.

Clause 9 repeals section 14 of the principal Act, which sets out a duty on employers to give employees an opportunity to be involved in the development of health and safety procedures. This amendment is made because a *new Part 2A* is inserted into the principal Act by *clause 11*, in order to deal with employee participation in more detail.

Clause 10 inserts a *new section 18A* into the principal Act, so that persons who provide plant to be used in a place of work must take all practicable steps to ensure that the plant is safe for its intended use in the place of work. The effect of this provision is to include hirers of equipment under the principal Act, following their unintended exclusion by the Health and Safety in Employment Amendment Act 1998.

Clause 11 inserts a new *Part 2A* into the principal Act, which deals with employee participation. Under *new section 19A*, employers have a duty to provide reasonable opportunities for employees to participate effectively in workplace health and safety.

New section 19B provides that an employer who employs 30 or more employees, the employees who wish to be involved, and any union acting on their behalf must co-operate in good faith to develop, agree, implement, and maintain a system for employee participation. This requirement also applies if an employer employs fewer than 30 employees and 1 or more of the employees requests a system.

New sections 19C, 19D, and 19F provide that, if a system of employee participation is not agreed and implemented within 6 months of a specified date, the employees and any unions must arrange for an election for an employee representative or employee members on a health and safety committee (both called health and safety representatives). However, the employees and unions may require the employer to hold the election instead. In that case, the election must be held within 2 months of the employer being notified of the requirement to do so. *New section 19E* provides that vacancies in positions of health and safety representative must be filled through a further election. Requirements relating to the conduct of an election are set out in *new section 19G*.

New section 19H provides that health and safety representatives have the following functions:

- fostering health and safety in the workplace:
- identifying and bringing hazards to the attention of the employer:
- consulting with inspectors: promoting the interests of employees harmed at work:
- participating in health and safety committees if they are established:
- any other functions that the representative is required to perform under the employee participation system or by agreement with the employer, including functions referred to in a code of practice.

The effect of *new section 19J* is to make it unlawful to discriminate against someone on the grounds that he or she is a health and safety representative.

New section 19J provides that health and safety representatives are entitled to 2 days' leave each year to attend health and safety training courses approved by the Minister under *new section 19K*.

Clause 12 amends section 20 of the principal Act, which contains provisions relating to codes of practice. The *new subsection (1AA)* enables the Minister to direct the Secretary to prepare codes of practice on particular health and safety issues.

Clause 13 amends section 21(1)(a) of the principal Act, so that regulations may be made that impose duties on principals and self-employed persons in addition to the other persons listed in that section.

Clause 14 inserts *new sections 28A and 28B* into the principal Act. Reflecting the existing common law right, employees will have the right, under *new section 28A*, to refuse to perform work that they believe on reasonable grounds is likely to cause them serious harm. However, an employee who refuses to do that work must perform any other work that the employer reasonably requests and that comes within the scope of the employee's employment agreement. An exception is included for employees whose work inherently involves risk of serious harm, such as firefighters and members of the New Zealand Police. Under the Employment Relations Act 2000, parties to an employment relationship are required to deal with each other in good faith. This obligation is emphasised for the avoidance of doubt.

New section 28B allows the Prime Minister to designate, by notice in the *Gazette*, a Crown agency to administer the principal Act for a particular industry, sector, or type of work. This provision will enable the Maritime Safety Authority, for example, to be designated to administer the Act in respect of the maritime industry. Designated agencies will be required to comply with policy directions given jointly by the Minister of Labour and the Minister responsible for the agency.

Clause 15 amends section 30(b) of the principal Act to make it clear that an inspector's functions also include ascertaining whether the Act has been complied with or is likely to be complied with.

Clause 16 amends section 31 of the principal Act, which relates to an inspector's powers of entry and inspection. Currently, an inspector's powers rely on him or her being in the place of work. The *new subsection*

(1A) allows the powers to be exercised in a variety of places. However, as is currently the case, the inspector may not enter a home except with the occupier's consent or under the authority of a warrant.

Clause 17 substitutes a *new section 33(1)* into the principal Act, which relates to an inspector's powers to take samples and collect evidence. The effect of the amendment is to make it clear that the section applies for the purpose of, amongst other things, determining whether the Act has been complied with or is likely to be complied with. A reference to infringement notices is also inserted.

Clause 18 inserts a *new section 46A*. Under this section, a health and safety representative who has achieved a level of competency specified by the Minister may issue a hazard notice to his or her employer if the employer fails to address a hazard identified by the representative. It is intended that the hazard notice is a clear signal to an employer of the employer's responsibility under the principal Act and amounts to prior warning for the purposes of the new infringement offence regime. The obligation for employers and employees to deal with each other in good faith is also emphasised, for the avoidance of doubt.

Clause 19 amends section 49(3) of the principal Act to increase the penalties for offences that the offender knows are likely to cause serious harm. The penalty of imprisonment is increased from a maximum of 1 year to a maximum of 2 years, and the fine is increased from a maximum of \$100,000 to a maximum of \$500,000.

Clause 20 substitutes a *new section 50(1)* into the principal Act, which relates to other offences. The *new subsection (1)* removes the distinction between penalties depending on whether a person has suffered serious harm. The penalty is increased to a maximum of \$250,000, regardless of whether a person has been caused serious harm. Breaches of *new sections 19A and 19F* (which relate to employee participation) and *56I(2)* (which relates to the prohibition on indemnification against the cost of fines) are included as offences under this section.

Clause 21 repeals section 52 of the principal Act because the failure to comply with provisions relating to employee participation is included as an offence under section 50.

Clause 22 substitutes *new sections 53 to 54D*. *New section 53* is the

same as the current section relating to proof of intention, except that it includes a reference to the new infringement offence regime.

New sections 54 to 54D are new enforcement provisions. Under *new section 54*, a person may require the Secretary to notify him or her as to whether an inspector will take action in respect of a breach of the Act, and of any information the Secretary is aware of as to whether another agency will prosecute in respect of the matter. *New section 54A* allows persons other than inspectors to commence a prosecution for an offence. However, a person other than an inspector may only commence a prosecution if an inspector has decided not to do so in relation to the situation and (except with leave of the court) if another agency has not taken action.

Generally, a prosecution may only be commenced within 6 months after the offence became known, or should have become known, to an inspector (*new section 54B*). However, under *new sections 54C and 54D*, the District Court may extend the time within which an information may be laid.

Clause 23 inserts *new sections 56A to 56I* into the principal Act. *New sections 56A to 56H* provide a new infringement offence regime. An infringement offence under *new section 56A* is an offence described in section 50(1) of the principal Act. Only an inspector may issue an infringement notice and he or she may only do so if the person in breach has had prior warning of the infringement offence (*new section 56B*). Prior warning is set out in *new section 56C*, and includes a written warning from an inspector, various notices (including hazard notices), and conviction.

New sections 56D to 56G set out administrative and procedural provisions relating to infringement notices. An infringement notice may not be issued later than 14 days after the inspector becomes aware of the alleged infringement offence. Infringement fees range from \$100 to \$4,000.

A person who receives an infringement notice may choose to have a hearing in the District Court rather than paying the fee.

Under *new section 56H*, the effect of an infringement notice is that an information may not be laid in respect of the same matter unless the offence is continuing or repeated. A criminal record must not be created

in respect of the infringement offence, but, if a person is being sentenced for an offence under the principal Act, the Court may be told that a person has paid, or is obliged to pay, an infringement fee for a particular infringement offence.

New section 56I makes it unlawful to enter into an insurance policy or contract of insurance that indemnifies or purports to indemnify a person for the cost of fines under the principal Act. To the extent that a policy or contract does so, it will be of no effect and a court or tribunal will be unable to grant relief in respect of it. This amendment recognises that such insurance arrangements are contrary to public policy and are tantamount to allowing persons to contract out of their obligations under the Act.

Clause 24 consequentially amends section 104 of the Employment Relations Act 2000 so that it is unlawful to discriminate against an employee who refuses to do work under *new section 28A*.

Clause 25 consequentially amends section 2(1) of the Hazardous Substances and New Organisms Act 1996 to bring the definition of place of work into line with the amendments made to the definition in the principal Act.

Clauses 26 and 27 consequentially amend the Maritime Transport Act 1994 and the Transport Services Licensing Act 1989 to remove provisions relating to occupational safety and health.

Regulatory impact and compliance cost statement

Statement of public policy objective

The amendment Bill forms part of the Government's overall strategy for improving injury prevention in the workplace.

The specific changes will ensure comprehensive coverage of all workers in workplaces, improve the effectiveness of the principal Act by more effective enforcement capability, and improve employee participation in the management of health and safety at work.

Statement of problem and need for action

The principal Act does not currently provide a comprehensive health and safety legislative framework or delivery system. This package of

changes will provide a more complete framework applicable to more workplaces. It will enable employers, employees, self-employed persons, and Occupational Safety and Health (OSH) to improve workplace health and safety. The changes will encourage a more inclusive approach to workplace health and safety management, will strengthen the health dimension of the principal Act, and will rationalise the coverage of the principal Act (especially in the transport sector). In a wider policy context, the changes will better align the principal Act with the Government's employment relations reforms and strengthen the penalties against poor injury prevention practice and outcomes.

Other options considered for each proposal

Aircrew

Aircrew could be given occupational health and safety coverage under the Civil Aviation Act 1990. This option was not preferred, because the expertise required to provide occupational health and safety does not sit well with the expertise required to provide for aircraft safety. To this end, OSH is the preferred administering agency and a memorandum of understanding will be negotiated between agencies to ensure a smooth boundary transition for technical expertise.

Loaned and volunteer workers, and hired equipment

A range of legislative options was considered but all included amendment to section 16. The preferred option achieves the objective of coverage for loaned and volunteer workers who **are in a place** of work and for hired equipment. It maintains certainty for farmers and recreational users of rural land as section 16 remains unaltered.

Place of work

The other option relating to the definition of place of work would be to continue administering the principal Act as covering mobile workers without amending it. However, in light of *Department of Labour v Berryman* (District Court, New Plymouth, 22 February 1996), this approach leaves coverage of mobile workers uncertain until a further case on the issue is decided. It could take some time for this issue to be resolved. Further, the actions of Parliament in passing legislation without clarifying the issue could be interpreted as endorsing the legal effect of the *Berryman* decision.

Rail

No other option will achieve the desired outcome of the same level of occupational health and safety cover for rail workers.

Maritime

The other options for ensuring consistent occupational health and safety cover for maritime workers included:

- making consequential changes to the Maritime Transport Act 1994 to reflect the principal Act amendments; and
- bringing the maritime sector under the principal Act and OSH administration.

The preferred option retains Maritime Safety Authority expertise while ensuring that legislative health and safety cover for maritime workers is consistent with that for all other New Zealand workers.

Stress and fatigue

Stress and fatigue could be dealt with administratively, but transparency about the principal Act's scope is preferred, and they are increasingly important issues in the workplace. This proposal was included because of support from submissions on the *Discussion Paper on the Review of the Health and Safety in Employment Act* (the **HSE Review**) released in December 2000.

Infringement offences

Two other options were considered.

The first option was proposed in the HSE Review.

The proposal included the following elements:

- a limited number of minor offences only (if there is a clear hazard but no harm has occurred); and
- a maximum infringement fine of \$1,000; and
- application to employers and employees; and
- payment of fines into the Crown account; and
- an opportunity to request a court hearing.

The second option was an administrative penalty system comparable

to British Columbia's occupational health and safety scheme, which includes:

- a wide range of offences that are the same offences as those for which prosecution could be an option; and
- a maximum administrative penalty of \$750,000; and application to employers only; and
- a variable penalty that can be adjusted plus or minus 30% based on a number of specified factors such as employer size, the nature of offence, and employer history; and
- penalties paid into a compensation fund; and
- opportunity for appeal to an independent administrative tribunal.

Employee participation

Employee participation could be implemented in legislation in many ways. Several options and mixes of options were considered. The approach adopted will create a system with a mix of employee participation options that are flexible enough to apply across a broad range of workplaces.

Other individual options that were considered are set out below.

Retain the status quo

This option was not preferred, as research shows that employee participation in workplace health and safety management is linked with lower costs and lower incidence of injury.

Compulsory health and safety representatives for all or certain size workplaces

This option was not preferred, as it is not flexible enough to cater for the diversity of the New Zealand labour market. In particular, there was concern that health and safety representatives may not be practical for businesses with small numbers of employees, or very large businesses.

Compulsory health and safety committees for all workplaces

This option was not preferred, as it is not flexible enough to cater for the diversity of the New Zealand labour market. In particular, there was concern that health and safety committees may not be practical for

businesses with small numbers of employees, or for larger businesses with scattered and remote employees.

Enable trained health and safety representatives, after consultation with the person to whom the notice is being issued, to issue provisional improvement and prohibition notices

The individual right to refuse dangerous work and the right of trained representatives to issue a hazard notice were considered non-coercive and more effective than allowing health and safety representatives to issue provisional improvement and provisional prohibition notices. The option of provisional improvement notices and provisional prohibition notices also attracted significant opposition from submitters on the HSE Review.

Statement of benefits and costs of proposals

This package of changes will provide a more complete framework applicable to more workplaces, in order to enable employers, employees, self-employed persons, and OSH to improve workplace health and safety.

The overall costs to implement the amendments to the principal Act are as follows:

All figures are \$ million

| | 2001/02 | 2002/03 | 2003/04 | 2004/05 | Outyears | GST |
|------------------------|----------------|----------------|----------------|----------------|-----------------|------------|
| Operating provisions | 0.826 | 4.627 | 4.060 | 4.003 | 3.844 | incl |
| Crown revenue | - | - | (0.487) | (0.487) | (0.487) | n/a |
| Offsetting savings | (0.826) | - | - | - | - | |
| Total operating impact | 0 | 4.627 | 3.573 | 3.516 | 3.357 | incl |
| Outside the provisions | - | 0.086 | 0.018 | 0.018 | 0.018 | incl |
| Total capital impact | - | 0.958 | - | - | - | n/a |
| Total | 0 | 5.671 | 3.591 | 3.534 | 3.375 | |

Business compliance cost statement

Comprehensive coverage

Having comprehensive coverage for workplaces and those employed in workplaces reduces doubts and wasteful argument over the application of the principal Act and ensures consistency. The coverage proposals plug gaps in the coverage of the principal Act.

There will be a period of adjustment and some compliance costs for those currently not covered or only partially covered by the principal Act (for example, rail operations). Highlighting in the principal Act the need to consider stress and fatigue when managing health and safety will help ensure that stress and fatigue are not ignored or considered unimportant by employers, employees, or OSH.

Effective enforcement

Application of the standards required by the principal Act depends on employers and employees choosing to implement them in their workplaces. In part, this depends on there being credible enforcement of the standard when voluntary compliance does not occur. The amendments address gaps in the enforcement regime and will improve enforcement of the principal Act.

The amendments will impose compliance costs on the following groups of employers:

- employers who currently do not comply with the principal Act but perceive a greater risk if non-compliance is detected; and
- employers who are already compliant with the principal Act but who decide that the amendments require additional investment in health and safety; and
- employers who currently insure against risk of fine under the principal Act.

Employee participation

Dealing systematically with health and safety demands that both employers and employees are engaged in managing hazards. The current provisions of the principal Act do not require ongoing employee involvement. Many employees have useful knowledge about the hazards that they face in their workplace, and ideas on how to remove or reduce them. The amendments will help to ensure employee knowledge is utilised, by requiring employers to co-operate with employees and plan how they are to manage health and safety in an ongoing way. Having the common law right to refuse dangerous work included in legislation will improve knowledge of that right.

The amendments will impose compliance costs on the following groups of employers:

- employers who currently do not involve employees in workplace health and safety management; and
- employers whose employees have requested involvement in health and safety management, and employers of 30 or more employees who already have employee participation in their workplace but have not developed the system co-operatively with employees.

Costs

The costs to employers will be for the following activities:

- establishing and maintaining systems for employee participation; and
- (where applicable) releasing health and safety representatives on paid leave for health and safety education; and
- (where applicable) responding to hazard notices by either complying with the notice or calling an inspector to advise on the notice; and
- responding when an employee exercises the right to refuse dangerous work.

These costs should be seen as an investment in wellbeing and productivity. Investing in health and safety will result in lower costs through less lost time, less absenteeism due to illness or injury, and increased employee empowerment and ‘ownership’ of health and safety. For some employers, the costs of complying may be offset by qualifying for ACC levy discounts for establishing and maintaining well-developed health and safety systems, either through the Partnership Programme or the Workplace Safety Management Programme.

The Department of Labour, with advice from the Ministry of Economic Development, has established a test panel comprising representatives of business groups, union groups, small to medium enterprises, and a member of the Business Compliance Cost Panel. It is intended that the test panel will provide feedback and advice throughout the implementation of the Bill, with a view to minimising both the cost and the impact of the changes to business.

Consultation programme undertaken

Those consulted in the amendments were:

- 177 submitters to the HSE Review, including key unions, employer organisations and employers; and
 - Accident Compensation Corporation, Department of the Prime Minister and Cabinet, Treasury, Ministry for Economic Development, Ministry of Health, Ministry of Justice, Ministry of Transport, Ministry of Agriculture and Forestry (Rural Affairs division), Ministry for the Environment, Ministry of Foreign Affairs and Trade, Ministry of Fisheries, Department for Courts, Te Puni Kokiri, and Ministry of Women's Affairs.
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Hon Margaret Wilson

Health and Safety in Employment Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Health and Safety in Employment Amendment Act 2001.
- (2) In this Act, the Health and Safety in Employment Act 1992¹ is called “the principal Act”.

¹ 1992 No 96

**Part 1
Preliminary provisions**

2 Commencement

This Act comes into force on **2 September 2002**.

3 Purpose

The purpose of this Act is to—

- (a) make the principal Act more comprehensive in its coverage, in particular by—
 - (i) including the maritime, rail, and air industries; and
 - (ii) confirming that persons who are mobile while they work are covered; and
 - (iii) providing protection to volunteers and employees on loan; and
 - (iv) confirming that fatigue and work-related stress are covered; and
- (b) include provisions in the principal Act requiring good faith co-operation between employers and employees in relation to health and safety; and
- (c) provide for more effective enforcement of the principal Act; and
- (d) prohibit persons from being indemnified and from indemnifying others against the cost of penalties for failing to comply with the principal Act; and
- (e) promote compliance with International Labour Convention 155 concerning Occupational Safety and Health and the Working Environment.

Part 2

Amendments to principal Act

4 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definition of the term **crew**.
- (2) Section 2(1) of the principal Act is amended by omitting from the definition of the term **employee** the words “subsection (3) of this section”, and substituting the words “subsections (3) to **(3C)**”.
- (3) Section 2(1) of the principal Act is amended by inserting, after the definition of **the term employee**, the following definitions:
“employee committee member means an employee described in **section 19B(3)(b)**

“employee representative means an employee described in **section 19B(3)(a)**”.

(4) Section 2(1) of the principal Act is amended by inserting in the definition of the term **employer**, before the word “means”, the words “, subject to subsections (3) to **(3C)**,”.

(5) Section 2(1) of the principal Act is amended by repealing the definitions of the terms **harm and hazard**, and substituting the following definitions:

“harm—

“(a) means illness, injury, or both; and

“(b) includes physical or mental harm caused by work-related stress

“hazard—

“(a) means an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation, or substance (whether arising or caused within or outside a place of work) that is an actual or potential cause or source of harm; and

“(b) includes a situation where, for example, because of physical or mental fatigue, a person may be an actual or potential cause or source of harm

“hazard notice has the meaning set out in **section 46A(1)**

“health and safety committee means a committee described in **section 19B(3)(b)**

“health and safety representative means an employee committee member or employee representative”.

(6) Section 2(1) of the principal Act is amended by inserting, after 25 the definition of the term **improvement notice**, the following definition:

“infringement notice means a notice given under **section 56B**”.

(7) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **machinery**, the following definition:

“matter, in **sections 54, 54A, 54C, and 56H**, means a failure or a series of associated failures to comply with this Act or regulations made under this Act that arise out of, or relate to, the same incident, situation, or set of circumstances”.

- (8) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **Minister**, the following definition:
“**New Zealand** includes all waters and airspace within the territorial limits of New Zealand”.
- (9) Section 2(1) of the principal Act is amended by omitting from the definition of the term **place of work** the words “or structure”, and substituting the words “, structure, or vehicle”.
- (10) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **serious harm**, the following definition:
“**ship** means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes—
“(a) a barge, lighter, or other like vessel:
“(b) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates:
“(c) a submarine or other submersible”.
- (11) Section 2(1) of the principal Act is amended by adding the following definitions:
“**trained health and safety representative** has the meaning set out in **section 46A(1)**
“**union** means a union registered under the Employment Relations Act 2000
“**volunteer**—
“(a) means a person who—
“(i) does not expect to be rewarded for work to be performed as a volunteer; and
“(ii) receives no reward for work performed as a volunteer; and
“(b) includes a person who is required to be in a place of work for the purposes of training or gaining work experience.”
- (12) Section 2 of the principal Act is amended by repealing subsection (3), and substituting the following subsections:
“(2A) To avoid doubt, a person is in a place of work whenever and wherever the person performs work for gain or reward, including in a place that—

- “(a) the person moves through; or
 - “(b) itself moves.
- “(3) **Subsection (3A)** applies when—
- “(a) a volunteer does work for another person (being an employer or a self-employed person) with the knowledge or consent of the other person; and
 - “(b) the work produces gain or reward for the other person.
- “(3A) For the purposes of this Act,—
- “(a) a volunteer must be treated as an employee of the other person; and
 - “(b) the other person must be treated as the volunteer’s employer; and
 - “(c) the volunteer must be treated as at work when doing the work for the other person.
- “(3B) **Subsection (3c)** applies when—
- “(a) an employer or principal (**person A**) places an employee (the **loaned employee**) at the disposal of another person (**person B**, being an employer or a self-employed person) to do work for person B; and
 - “(b) there is no contractual relationship between person A and person B.
- “(3C) For the purposes of this Act, a loaned employee must be treated also as an employee of person B, and person B must be treated as another employer of the loaned employee.”

5 New sections 3A and 3B inserted

The principal Act is amended by inserting, after section 3, the following sections:

“3A Application of Act to aircraft

- “(1) This Act applies to—
 - “(a) a person employed or engaged to work on board an aircraft; and
 - “(b) the person who employs or engages the person specified in **paragraph (a)**; and
 - “(c) the aircraft as a place of work.
- “(2) However, this Act applies only while an aircraft is—

- “(a) operating between 2 places in New Zealand (not as part of a flight beginning or ending outside New Zealand); or
 - “(b) operating outside New Zealand, and the person is working under an employment agreement or contract for services governed by New Zealand law.
- “(3) For the purposes of **subsection 2(b)**, an aircraft operating in New Zealand as part of a flight beginning or ending outside New Zealand must be treated as operating outside New Zealand.
- “(4) Section 16 does not apply to an aircraft while it is taking off, flying, or landing.
- “(5) To avoid doubt, where this Act applies outside New Zealand, the provisions relating to offences apply even though an act or omission that constitutes an offence occurred in respect of an aircraft outside New Zealand.

“3B **Application of Act to ships**

- “(1) This Act applies—
- “(a) to a person employed or engaged to work on board a ship under an employment agreement or contract for services governed by New Zealand law; and
 - “(b) to the person who employs or engages the person specified in **paragraph (a)**; and
 - “(c) to the ship as a place of work.
- “(2) This Act applies whether the ship is operating inside or outside New Zealand.
- “(3) Section 16 does not apply to a ship while it is at sea.
- “(4) To avoid doubt, where this Act applies outside New Zealand, the provisions relating to offences apply even though an act or omission that constitutes an offence occurred in respect of a ship outside New Zealand.”

6 New section 5 substituted

The principal Act is amended by repealing section 5, and substituting the following section:

“(5) **Object of Act**

The object of this Act is to promote the prevention of harm to all persons at work and other persons in, or in the vicinity of, a place of work by—

- “(a) promoting the systematic management of hazards; and
- “(b) defining hazards and harm in a comprehensive way so that all hazards and harm are covered, including those associated with fatigue and work-related stress; and
- “(c) imposing various duties on persons who are responsible for work and those who do the work; and
- “(d) setting requirements that—
 - “(i) relate to taking all practicable steps to ensure health and safety; and
 - “(ii) are flexible to cover different circumstances; and
 - “(iii) promote excellence in health and safety management; and
- “(e) recognising that successful management of health and safety issues is best achieved through co-operation in the place of work and, in particular, through the input of the persons doing the work; and
- “(f) providing a range of enforcement methods, including various notices and prosecution, so as to enable an appropriate response to a failure to comply with the Act depending on its nature and gravity; and
- “(g) prohibiting persons from being indemnified or from indemnifying others against the cost of penalties for failing to comply with the Act.”

7 Significant hazards to employees to be minimised, and employees to be protected, where elimination and isolation impracticable

Section 10(2)(b) of the principal Act is amended by omitting the words “To ensure that there is provided for, accessible to, and used by the employees”, and substituting the words “to provide, make accessible to, and ensure the use by the employees of”.

8 Information for employees generally

- (1) The heading to section 12 of the principal Act is amended by adding the words “**and health and safety representatives**”.
- (2) Section 12 of the principal Act is amended by adding, as subsection (2), the following subsection:
 - “(2) An employer must ensure that all health and safety representatives in a place of work have sufficient information about health and

safety systems and health and safety issues in the place of work to enable the representatives to perform their functions effectively.”

9 Section 14 repealed

Section 14 of the principal Act is repealed.

10 New section 18A inserted

The principal Act is amended by inserting, after section 18, the following section:

“18A Duties of persons selling or supplying plant for use in place of work

A person who sells or supplies to another person plant to be used in a place of work must take all practicable steps to ensure that the plant is arranged, designed, and made, and has been maintained, so that it is safe for its intended use.”

11 New Part 2A inserted

The principal Act is amended by inserting, after section 19, the following Part:

**“Part 2A
“Employee participation**

“19A General duty to involve employees in health and safety matters

“(1) Every employer must provide reasonable opportunities for the employer’s employees to participate effectively in the ongoing management and improvement of health and safety in the employees’ places of work.

“(2) Without limiting **subsection (1)**, the management of health and safety includes the matters referred to in sections 6 to 13.

“(3) In complying with **subsection (1)**, an employer must take into account any approved code of practice for employee participation in workplace health and safety.

“19B Development of employee participation system

“(1) This section applies if an employer employs—

“(a) fewer than 30 employees, whether or not at a single location, and 1 or more of the employees requires the development of a system for employee participation; or

“(b) 30 or more employees, whether or not at a single location.

- “(2) The following persons must co-operate in good faith to develop, agree, implement, and maintain a system that sets out the ways in which the employer must seek to comply with **section 19A(1)**:
- “(a) the employer;
 - “(b) the employees who wish to be involved;
 - “(c) a union or unions representing any of the employees.
- “(3) A system comprises matters that the employer and the employees, and any union representing them, agree on and may include, for example,—
- “(a) electing employees to have particular responsibilities in respect of health and safety by carrying out the functions set out in **section 19H(a) to (d) and (f)**;
 - “(b) electing employee members of a health and safety committee established to support the ongoing management and improvement of health and safety in the place of work;
 - “(c) processes for reviewing and improving the system;
 - “(d) other processes for ensuring regular and co-operative interaction between representatives of the employer and employees on health and safety issues generally or on particular issues.
- “(4) A system must specify a date on which it expires or an event on the occurrence of which it expires.
- “(5) If a system includes a health and safety committee, the committee must—
- “(a) comprise—
 - “(i) employee committee members; and
 - “(ii) committee members who represent the employer;but
 - “(b) not include more committee members representing the employer than employee committee members.
- “(6) In developing a system, any approved code of practice for employee participation in workplace health and safety must be taken into account.
- “19C **Effect of failure to develop system if fewer than 30 employees**
- “(1) This section applies if—
- “(a) 1 or more employees require the development of a system

- for employee participation under **section 19B(1)(a)**; and
- “(b) a system is not agreed and implemented within 6 months after the employees require it to be developed.
- “(2) The employees, together with any unions representing them, must hold an election for at least 1 employee representative.
 - “(3) This section is subject to **sections 19F and 19G**.
- “19D **Effect of failure to develop system if 30 employees or more**
- “(1) This section applies if—
 - “(a) the development of a system for employee participation is required under **section 19B(1)(b)**; and
 - “(b) a system is not agreed and implemented within 6 months after the later of—
 - “(i) the date of the commencement of this Act; or
 - “(ii) the date when the employer first employs 30 or more employees.
 - “(2) The employees, together with any unions representing them, must hold an election for—
 - “(a) at least 1 employee representative; or
 - “(b) employee committee members.
 - “(3) This section is subject to **sections 19F and 19G**.
- “19E **Filling vacancy for health and safety representative**
- “(1) The employees, together with any unions representing them, must hold an election if a vacancy arises in a position of health and safety representative.
 - “(2) This section is subject to **sections 19F and 19G**.
- “19F **Employees or union may require employer to hold election for health and safety representative**
- “(1) Instead of holding an election as required by **section 19C, section 19D, or section 19E**, the employees, together with any unions representing them, may notify the employer that they require the employer to hold the election.
 - “(2) The employer must hold the election within 2 months of receiving notification.
 - “(3) This section is subject to **section 19G**.

“19G Method of electing health and safety representatives

- “(1) An election for a health and safety representative must—
- “(a) involve candidates who are willing to take on the position; and
 - “(b) be conducted through a secret ballot; and
 - “(c) give all employees a reasonable opportunity to vote; and
 - “(d) be determined by the wishes of the majority of those who vote.
- “(2) An election is not required if—
- “(a) there is only 1 candidate for a position, in which case the candidate automatically fills the position; or
 - “(b) there are no candidates for a position, in which case the position is not filled.

“19H Functions of health and safety representatives

The functions of a health and safety representative are—

- “(a) fostering positive health and safety management practices in the place of work; and
- “(b) identifying and bringing to the employer’s attention hazards in the place of work and discussing with the employer ways that the hazards may be dealt with; and
- “(c) consulting with inspectors on health and safety issues; and
- “(d) promoting the interests of employees who have been harmed at work, including in relation to arrangements for rehabilitation and return to work; and
- “(e) participating in health and safety committees if they are established in the place of work; and
- “(f) any functions conferred on the representative by—
 - “(i) a system under **section 19B**; or
 - “(ii) the employer with the agreement of the representative, or a union representing the representative, including any functions referred to in a code of practice.

“19I No discrimination against health and safety representatives

For the purposes of section 107(g) of the Employment Relations Act 2000, a health and safety representative must be treated as a delegate of other employees.

“ 19J Training of health and safety representatives

- “(1) An employer must allow a health and safety representative 2 days’ paid leave each year to attend health and safety training approved under **section 19K**.
- “(2) Sections 78 and 79 of the Employment Relations Act 2000 apply when a representative is proposing to take, and is taking, the leave as if—
- “(a) the representative were an eligible employee; and
 - “(b) the leave were employment relations education leave.
- “(3) In this section, **year**—
- “(a) means a period of 12 months beginning on 1 September and ending on the close of 31 August; and
 - “(b) includes the period beginning on the commencement of this Act and ending on the close of **31 August 2003**.

“19K Minister may approve occupational health and safety training

- “(1) The Minister may approve, by notice in the *Gazette*, courses of occupational health and safety training.
- “(2) The Minister may approve a course only if he or she is satisfied that the course is—
- “(a) consistent with the object of this Act; and
 - “(b) relevant to the role of a health and safety representative.
- “(3) The Minister may delegate his or her power under **subsection (1)** to 1 or more persons.
- “(4) To avoid doubt, a course approved under this section may be a course that is also approved under section 72 of the Employment Relations Act 2000.”

12 Codes of practice

Section 20 of the principal Act is amended by inserting, before subsection (1), the following subsection:

- “(1AA) The Minister may direct the Secretary to prepare, and submit for the Minister’s approval in accordance with this section, a statement, amendment, or revocation referred to in subsection (1) that relates to a particular health and safety issue.”

13 Regulations

Section 21(1)(a) of the principal Act is amended by adding the following subparagraph:

“(iv) principals, or self-employed persons.”

14 New headings and sections 28A and 28B inserted

The principal Act is amended by inserting, after section 28, the following headings and sections:

“Right of employees to refuse to perform work likely to cause serious harm

“28A Employees may refuse to perform work likely to cause serious harm

- “(1) An employee may refuse to do work and may continue to refuse to do work if the employee believes on reasonable grounds that the work that the employee is required to perform is likely to cause serious harm to him or her.
- “(2) Without limiting **subsection (1)**, reasonable grounds exist for the purposes of that subsection if a health and safety representative believes on reasonable grounds that the work that the employee is required to perform is likely to cause serious harm to him or her and the representative advises the employee accordingly.
- “(3) Despite **subsection (1)**, an employee may not refuse to do work that, because of its nature, inherently or usually carries a risk of serious harm unless the risk has materially increased beyond the inherent or usual risk.
- “(4) While **subsection (1) applies**, an employee who refuses to do work must do any other work within the scope of the employee’s employment agreement that the employer reasonably requests.
- “(5) This section does not limit an employee’s right to refuse to do work under another enactment or the general law.
- “(6) To avoid doubt—
- “(a) in situations to which this section applies, the employer, employee, and health and safety representative must deal with each other in good faith; and
- “(b) a question about the application of this section to a particular situation is an employment relationship problem for the purposes of the Employment Relations Act 2000.

“Enforcement by other agencies

“28B Enforcement by other agencies

- “(1) The Prime Minister may, by notice in the *Gazette*, designate another agency to administer this Act for a particular industry, sector, or type of work.
- “(2) In carrying out functions under this Act, the chief executive of the agency must comply with policy directions on occupational safety and health given to him or her and signed by the Minister and the Minister responsible for that agency.
- “(3) A copy of the policy direction must be tabled in the House of Representatives within 10 working days after the date that it is given to the chief executive.
- “(4) This Act applies as if references to the Secretary were references to the chief executive of the agency.
- “(5) In this section,—
- “**agency** means—
- “(a) a government department:
- “(b) a Crown entity within the meaning of section 2(1) of the Public Finance Act 1989:
- “(c) the New Zealand Police:
- “(d) the New Zealand Defence Force
- “**chief executive** includes the Commissioner of Police and the Chief of Defence Force.”

15 Functions of inspectors

Section 30(b) of the principal Act is amended by omitting the words “is being and will”, and substituting the words “has been, is being, or is likely to”.

16 Powers of entry and inspection

- (1) Section 31 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) An inspector may do any of the things referred to in **subsection (1)**, whether or not—
- “(a) the inspector or the person whom the inspector is dealing with is in the place of work; or
- “(b) the place of work is still a place of work; or

- “(c) the employer’s employees work in the place of work; or
 - “(d) the person who was in control of the place of work is still in control of it; or
 - “(e) the employer’s employees are still employed by the employer; or
 - “(f) in respect of a document or information, the document or information is—
 - “(i) in the place of work; or
 - “(ii) in the place where the inspector is; or
 - “(iii) in another place.”
- (2) Section 31(2) of the principal Act is amended by inserting, after the expression “subsection (1)”, the words “or **subsection (1A)**.”

17 Powers to take samples and other objects and things

Section 33 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

- “(1) An inspector who enters a place of work or a former place of work under section 31 may take or remove a sample of a substance or thing for analysis, or seize and retain any material, substance, or thing, for the purpose of—
- “(a) monitoring conditions in the place; or
 - “(b) determining the nature of any material or substance in the place; or
 - “(c) determining whether or not this Act has been, is being, or is likely to be complied with; or
 - “(d) gathering evidence to support the issuing of an infringement notice or for a prosecution for an offence against this Act.

18 New heading and section 46A inserted

The principal Act is amended by inserting, after section 46, the following heading and section:

“Hazard notices

“46A Trained health and safety representatives may issue hazard notices

- “(1) In this section,—
- “**hazard notice** means a notice that—
- “(a) describes a hazard identified in a place of work; and

“(b) is in the prescribed form; and

“(c) may set out suggested steps to deal with the hazard

“**trained health and safety representative** means a health and safety representative who has achieved a level of competency in health and safety practice specified by the Minister by notice in the *Gazette*.

“(2) **Subsection (3)** applies if a trained health and safety representative—

“(a) believes on reasonable grounds that there is a hazard in the place of work of the representative’s employer; and

“(b) has brought the hazard to the attention of the employer; and

“(c) has discussed or attempted to discuss with the employer steps for dealing with the hazard.

“(3) The representative may give the employer a hazard notice if—

“(a) the employer refuses to discuss, or take steps to deal with, the hazard; or

“(b) the employer and representative do not agree on the steps that must be taken or the time within which the steps must be taken to deal with the hazard; or

“(c) the representative believes on reasonable grounds that the employer has failed to meet the requirements of section 6 in relation to the hazard within a time agreed during the discussion.

“(4) If a hazard notice has been given by a health and safety representative, the representative may notify an inspector of that fact.

“(5) To avoid doubt, where this section applies, the employer and health and safety representative must deal with each other in good faith.”

19 Offences likely to cause serious harm

Section 49(3) of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

“(a) imprisonment for a term of not more than 2 years; or

“(b) a fine of not more than \$500,000; or”.

20 Other offences

The principal Act is amended by repealing section 50(1), and substituting the following subsection:

- “(1) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$250,000, who fails to comply with the requirements of—
- “(a) a provision of Part II other than section 16(3); or
 - “(b) **section 19A, section 19F**, section 25, section 26, section 37(2), section 39(5), section 42(1), section 43, section 47, section 48, **section 56I(2)**, or section 58 of this Act; or
 - “(c) a provision of any regulations made under this Act, or continued in force by section 24, declared by the regulations to be a provision to which this section applies.”

21 Section 52 repealed

Section 52 of the principal Act is repealed.

22 New sections 53 to 54D substituted

The principal Act is amended by repealing sections 53 and 54, and substituting the following sections:

“**53 Proof of intention not required**

In a matter involving an infringement notice or in a prosecution for an offence against section 50, it is not necessary to prove that the defendant—

- “(a) intended to take the action alleged to constitute the infringement offence or offence; or
- “(b) intended not to take the action, the failure or refusal to take which is alleged to constitute the infringement offence or offence.

“**54 Notification to Secretary of interest in laying of information or issuing of infringement notice**

- “(1) A person may notify the Secretary in the prescribed manner that the person has an interest in knowing whether a particular matter has been, is, or is to be, subject to either the laying of an information or the issuing of an infringement notice under this Act.
- “(2) The Secretary must ensure that the person who sent the notice is notified of—
 - “(a) any decision already made, or subsequently made, by an inspector as to whether or not to take action in respect of the matter, but not the reasons for the decision; and
 - “(b) any information that the Secretary is aware of relating to

whether an enforcement authority has taken prosecution action as described in **section 54A(2)(b)**.

“(3) In this section and **section 54A**, **enforcement authority** includes the New Zealand Police, the Civil Aviation Authority, the Land Transport Safety Authority, and the Maritime Safety Authority.

“54A **Laying an information**

“(1) An inspector may lay an information in respect of an offence under this Act.

“(2) A person other than an inspector may lay an information in respect of an offence under this Act if—

“(a) an inspector has not laid an information or issued an infringement notice against a possible defendant in respect of the same matter; and

“(b) an enforcement authority has not taken prosecution action under any Act against a possible defendant in respect of the same incident, situation, or set of circumstances; and

“(c) any person has received notification from the Secretary under **section 54(2)** that an inspector has not and will not lay an information or issue an infringement notice against a possible defendant in respect of the same matter.

“(3) Despite **subsection (2)(b)**, a person may lay an information even though an enforcement authority has taken prosecution action if—

“(a) the person has leave of the Court to lay the information; and

“(b) **subsection (2)(a) and (c)** is complied with.

“54B **Time limit for laying information**

“(1) An information in respect of an offence against this Act may be laid at any time within 6 months after the earlier of—

“(a) the date when the offence first became known to an inspector; or

“(b) the date when the offence should reasonably have become known to an inspector.

“(2) This section is subject to **sections 54C and 54D**.

“54C Extension of time for person other than inspector to lay information

- “(1) This section applies if—
- “(a) an inspector has not laid an information or issued an infringement notice in respect of a matter; and
 - “(b) the Secretary has notified relevant persons under **section 54(2)(a)** that an inspector has not and will not lay an information or issue an infringement notice against a possible defendant in respect of the matter.
- “(2) On application, the District Court may extend the time for a person other than an inspector to lay an information.
- “(3) An application under **subsection (2)** must be made within 1 month after receiving notice from the Secretary under **subsection (1)(b)**.
- “(4) The Court must not grant an extension of time unless it is satisfied—
- “(a) that another person wishes to decide whether to lay an information in respect of that matter; and
 - “(b) it is unreasonable, having regard to the time taken by an inspector to respond to the matter, to expect, or to have expected, the person to make that decision before the 6-month period referred to in **section 54B** expires; and
 - “(c) an application under **section 54D** has not been made.
- “(5) The Court must give the following persons an opportunity to be heard:
- “(a) the person seeking the extension:
 - “(b) any proposed defendant:
 - “(c) any other person who has an interest in whether or not an information should be laid, being a person described in **section 54(1)**.

“54D Extension of time if inspector needs longer to decide whether to lay information

- “(1) This section applies if an inspector considers that he or she will not be able to lay an information by the end of the 6-month period referred to in **section 54B**.
- “(2) On application, the District Court may extend the time for laying an information.

- “(3) An application under **subsection (2)** must be made within the 6-month period.
- “(4) The Court must not grant an extension unless it is satisfied that—
- “(a) an inspector reasonably requires longer than the 6-month period to decide whether to lay an information; and
 - “(b) the reason for requiring the longer period is that the investigation of the events and issues surrounding the alleged offence is complex or time consuming; and
 - “(c) it is in the public interest in the circumstances that an information is able to be laid after the 6-month period expires; and
 - “(d) laying the information after the 6-month period expires will not unfairly prejudice the proposed defendant in defending the charge.
- “(5) The Court must give the following persons an opportunity to be heard:
- “(a) the person seeking the extension:
 - “(b) the proposed defendant:
 - “(c) any other person who has an interest in whether or not an information should be laid, being a person described in **section 54(1).**”

23 New sections 56A to 56I inserted

The principal Act is amended by inserting, after section 56, the following headings and sections:

Infringement offences

“**56A Infringement offences**

In **sections 56B to 56 H, an infringement offence** means an offence described in section 50(1).

“**56B Infringement notices**

An inspector may issue an infringement notice if—

- “(a) the inspector believes on reasonable grounds that the person is committing, or has committed, an infringement offence; and
- “(b) the person has had prior warning of the infringement offence under **section 56C.**

“56C Prior warning of infringement offence

A person has had prior warning of an infringement offence if the person has been the subject of 1 or more of the following for an infringement offence arising out of, or relating to, the same or a similar matter:

- “(a) a written warning from an inspector:
- “(b) an improvement notice:
- “(c) a prohibition notice:
- “(d) an infringement notice:
- “(e) a conviction for an offence under this Act:
- “(f) a hazard notice.

“56D Inspector may require information

“(1) If an inspector is considering issuing to a natural person an infringement notice, the inspector may require the person to provide all or any of the following details:

- “(a) the person’s full name:
- “(b) whether, in relation to the place of work, the person is 1 or more of the following:
 - “(i) an employer:
 - “(ii) an employee:
 - “(iii) a self-employed person:
 - “(iv) a principal:
 - “(v) a contractor:
 - “(vi) a subcontractor:
 - “(vii) a person who controls the place of work:
- “(c) the person’s date of birth:
- “(d) the person’s residential address and, if different, postal address.

“(2) If an inspector is considering issuing an infringement notice to a person that is a body corporate, the inspector may require a person who appears to represent the body corporate to provide all or any of the following details:

- “(a) the body corporate’s legal name:
- “(b) whether, in relation to the place of work, the body corporate is 1 or more of the following:
 - “(i) an employer:
 - “(ii) a principal:

- “(iii) a contractor:
- “(iv) a subcontractor:
- “(v) a person who controls the place of work:
- “(c) the postal address of the body corporate.

“56E Procedural requirements for infringement notices

- “(1) An infringement notice may not be issued after the close of the 14th day after the inspector becomes aware of the alleged infringement offence.
- “(2) An infringement notice may be served on a person—
 - “(a) by delivering it personally to the person who appears to have committed the infringement offence; or
 - “(b) by sending it by post, addressed to the person at the person’s last known place of residence or business.
- “(3) For the purposes of the Summary Proceedings Act 1957, an infringement notice must be treated as having been served on the person on the date it was posted.
- “(4) An infringement notice must be in the prescribed form and must contain—
 - “(a) details of the alleged infringement offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged infringement offence; and
 - “(b) the amount of the infringement fee; and
 - “(c) an address at which the infringement fee may be paid; and
 - “(d) the time within which the infringement fee must be paid; and
 - “(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
 - “(f) a statement that the person served with the notice has a right to request a hearing; and
 - “(g) a statement of what will happen if the person served with the notice does not pay the fee and does not request a hearing; and
 - “(h) any other prescribed matters.
- “(5) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case,—

- “(a) reminder notices may be prescribed under regulations made under this Act; and
- “(b) in all other respects, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.

“56F **Infringement fees**

- “(1) The fee to be specified by an inspector in an infringement notice must be in accordance with the following table:

| | Individual (\$) | Body corporate (\$) |
|-------------------------------------|------------------------|--------------------------------|
| No harm | 100 | 500 |
| Harm | 300 | 1,500 |
| Serious harm | 600 | 3,000 |
| Failure to comply with section 7(1) | 800 | 4,000 |

- “(2) In **subsection (1)**,—

“**harm** means that the infringement offence has caused harm that is not serious harm to 1 or more persons

“**serious harm** means that the infringement offence has caused serious harm to 1 or more persons.

“56G **Payment of infringement fee**

The Secretary must pay all infringement fees received into the Crown Bank Account.

“56H **Effect of infringement notice**

- “(1) If an infringement notice has been issued in respect of a matter, no person may lay an information under this Act in respect of the matter.
- “(2) **Subsection (1)** does not prevent the laying of an information if the infringement offence is continuing or repeated.
- “(3) If an infringement notice is issued, a criminal record must not be created in respect of the infringement offence.
- “(4) **Subsection (3)** does not prevent a court being told, for the purpose of sentencing a person convicted of an offence under this Act, that the person has paid, or is obliged to pay, an infringement fee for a particular infringement offence.

“Insurance against fines unlawful and of no effect

“56I Insurance against fines unlawful and of no effect

- “(1) To the extent that an insurance policy or contract of insurance indemnifies or purports to indemnify a person for the person’s liability to pay a fine or an infringement fee under this Act,—
- “(a) the policy or contract is of no effect; and
 - “(b) no court or tribunal has jurisdiction to grant relief in respect of the policy or contract, whether under section 7 of the Illegal Contracts Act 1970 or otherwise.
- “(2) A person must not—
- “(a) enter into, or offer to enter into, a policy or contract described in **subsection (1)**; or
 - “(b) indemnify, or offer to indemnify, another person for the other person’s liability to pay a fine or an infringement fee under this Act; or
 - “(c) be indemnified, or agree to be indemnified, by another person for that person’s liability to pay a fine or an infringement fee under this Act; or
 - “(d) pay to another person, or receive from another person, an indemnity for a fine or an infringement fee under this Act.
- “(3) If an insurance policy or contract of insurance described in **subsection (1)** exists at the date of commencement of this Act,—
- “(a) **subsections (1) and (2)(c) and (d)** apply to it from that date; and
 - “(b) this section does not prevent the parties to it agreeing to the refund of an amount of the premium.”

Consequential amendments

24 Employment Relations Act 2000 amended

Section 104 of the Employment Relations Act 2000 is amended by inserting, after the words “indirectly of that employee’s”, the words “refusal to do work under **section 28A** of the Health and Safety in Employment Act 1992, or”.

25 Hazardous Substances and New Organisms Act 1996 amended

Section 2(1) of the Hazardous Substances and New Organisms

Act 1996 is amended by inserting in the definition of the term **place of work**, after the expression “2(1)”, the words “and **(2A)**”.

26 Maritime Transport Act 1994 amended

- (1) The Maritime Transport Act 1994 is amended by—
 - (a) repealing paragraph (e) of the Title:
 - (b) repealing, from section 2(1), the definitions of the terms **all practicable steps and significant hazard**:
 - (c) repealing Part II:
 - (d) repealing sections 61 to 63:
 - (e) repealing section 72:
 - (f) repealing sections 80 and 81.
- (2) Section 43I(1)(h) of the Maritime Transport Act 1994 is amended by adding the words “in accordance with the Health and Safety in Employment Act 1992”.

27 Transport Services Licensing Act 1989 amended

Section 6H of the Transport Services Licensing Act 1989 is repealed.

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