

# DRAFT FOR CONSULTATION

## **Health and Safety Reform Bill**

Government Bill

Consultation draft



*Hon Simon Bridges*

# **Health and Safety Reform Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Health and Safety Reform Act 2013.

**2 Commencement**

This Act comes into force on 1 April 2015.



## **Part 1**

### **Health and Safety at Work**

#### Subpart 1—Preliminary provision

#### **3 Purpose**

- (1) The main purpose of this Act is to provide for a balanced framework to secure the health and safety of workers and workplaces by—
  - (a) protecting workers and other persons against harm to their health, safety, and welfare through the elimination or minimisation of risks arising from work or from specified types of plant; and
  - (b) providing for fair and effective workplace representation, consultation, cooperation, and resolution of issues in relation to work health and safety; and
  - (c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and
  - (d) promoting the provision of advice, information, education, and training in relation to work health and safety; and
  - (e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and
  - (f) ensuring appropriate scrutiny and review of actions taken by persons performing functions or exercising powers under this Act; and
  - (g) providing a framework for continuous improvement and progressively higher standards of work health and safety.
- (2) In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety, and welfare from hazards and risks arising from work or from specified types of plant as is reasonably practicable.

Compare: Model Work Health and Safety Act (Aust) s 3

## Subpart 2—Interpretation

### *General*

#### **4 Interpretation**

In this Act, unless the context otherwise requires,—

**adverse conduct** has the meaning given in section 108

**approved code of practice** means a code of practice approved under section 00

**authorised** has the meaning given in section 43

**cease work** has the meaning given in section 90

**construct** includes assemble, erect, reconstruct, reassemble, and re-erect

**demolition** includes deconstruction

**design**, in relation to plant, a substance or a structure includes—

(a) design of part of the plant, substance or structure; and

(b) redesign or modify a design

**employee** means a person of any age employed by an employer to do work for hire or reward under a contract of service

**engage in conduct** means doing an act or omitting to do an act

**handle** includes transport

**hazardous substance** has the same meaning as in section 2(1) of the Hazardous Substances and New Organisms Act 1996

**health** means physical and mental health

**health and safety duty** means a duty imposed on a person under subpart 1 or 2 of Part 2

**health and safety representative**, in relation to a worker, means the health and safety representative elected under subpart 2 of Part 3 for the work group of which the worker is a member

**homeworker** has the same meaning as in section 5 of the Employment Relations Act 2000

**importation** has the same meaning as in section 2(1) of the Customs and Excise Act 1996; and **to import** has a corresponding meaning

**notifiable event** has the meaning given in section 12

**notifiable incident** has the meaning given in section 11

**notifiable injury or illness** has the meaning given in section 10

**officer**, in relation to a PCBU,—

- (a) means, if the PCBU is—
  - (i) a company, any person occupying the position of a director of the company by whatever name called;
  - (ii) a partnership (other than a limited partnership), any partner;
  - (iii) a limited partnership, any general partner;
  - (iv) a body corporate or unincorporated body, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company;
- (b) includes any other person, who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the PCBU (for example, the chief executive or a chief financial officer); but
- (c) does not include a Minister of the Crown acting in that capacity

**person conducting a business or undertaking** or **PCBU** has the meaning given in section 5

**personal information** has the same meaning as in section 2(1) of the Privacy Act 1993

**plant** includes—

- (a) any machinery, vehicle, equipment, appliance, container, implement, or tool; and
- (b) any component of any of those things; and
- (c) anything fitted or connected to any of those things

**prohibited health and safety reason** has the meaning given in section 109

**reasonably practicable**, in relation to the duty to ensure the health and safety, has the meaning given in section 9

**relevant health and safety legislation** has the meaning given in section 3 of the Health and Safety (Pike River Implementation) Bill 2013

**representative**, in relation to a worker, means—

- (a) the health and safety representative for the worker; or
- (b) a union representing the worker; or
- (c) any other person the worker authorises to represent the worker

**residential work** means work done by a person employed or engaged by the occupier of a home of either or both of the following kinds:

- (a) domestic work done or to be done in the home; or
- (b) work done or to be done in respect of the home

**structure**—

- (a) means anything that is constructed, whether fixed or moveable, temporary, or permanent; and
- (b) includes—
  - (i) buildings, masts, towers, framework, pipelines, transport infrastructure, and underground works (including shafts or tunnels); and
  - (ii) any component of a structure; and
  - (iii) part of a structure

**substance**—

- (a) means any natural or artificial substance in any form (for example, a solid, liquid, gas, or vapour);
- (b) includes a hazardous substance

**supply** has the meaning given in section 8

**union** has the same meaning as in section 5 of the Employment Relations Act 2000

**volunteer** means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses)

**worker** has the meaning given in section 6

**work group** means a work group determined under section 57

**workplace** has the meaning given in section 7

**WorkSafe** means WorkSafe New Zealand established by section 5 of the Health and Safety (Pike River Implementation) Bill 2013.

Compare: Model Work Health and Safety Act (Aust) s 4

*Key terms***5 Meaning of PCBU**

- (1) In this Act, unless the context otherwise requires, a **person conducting a business or undertaking** or **PCBU**—
- (a) means a person who conducts a business or undertaking—
    - (i) whether the person conducts a business or undertaking alone or with others; and
    - (ii) whether or not the business or undertaking is conducted for profit or gain; but
  - (b) does not include—
    - (i) a person who conducts a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, the business or undertaking;
    - (ii) a volunteer association;
    - (iii) an occupier of a home to the extent that the occupier engages or employs another person solely to do residential work in relation to the home;
    - (iv) a person, or class of persons, who is declared not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act by the regulations.
- (2) In subsection (1)(b)(ii), **volunteer association** means a group of volunteers working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

Compare: Model Work Health and Safety Act (Aust) s 5

**6 Meaning of worker**

- (1) In this Act, unless the context otherwise requires, a **worker** means a person who carries out work in any capacity for a PCBU, including work as—
- (a) an employee; or
  - (b) a contractor or subcontractor; or
  - (c) an employee of a contractor or subcontractor; or

- (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or
  - (e) a homeworker; or
  - (f) an apprentice or trainee; or
  - (g) a person gaining work experience (for example, undertaking a work trial); or
  - (h) a volunteer; or
  - (i) a person of a prescribed class.
- (2) For the purposes of subsection (1), a PCBU is also worker if the person is an individual who carries out work in that business or undertaking.
- Compare: Model Work Health and Safety Act (Aust) s 7

## **7 Meaning of workplace**

- (1) In this Act, unless the context otherwise requires, a **workplace**—
- (a) means a place where work is carried out for a business or undertaking; and
  - (b) includes any place where a worker goes, or is likely to be, while at work.
- (2) In subsection (1), **place** includes—
- (a) a vehicle, vessel, aircraft, or other mobile structure; and
  - (b) any waters and any installation on land, on the bed of any waters, or floating on any waters.
- Compare: Model Work Health and Safety Act (Aust) s 8

## **8 Meaning of supply**

- (1) In this Act, unless the context otherwise requires, **supply**, in relation to a thing,—
- (a) includes the supply (or resupply) of the thing—
    - (i) by way of sale, exchange, lease, hire, or hire purchase; and
    - (ii) whether as a principal or an agent; but
  - (b) does not include—
    - (i) the return of possession of a thing to the owner of the thing at the end of a lease or other agreement; or
    - (ii) a prescribed supply.

- (2) The supply of a thing occurs on the passing of possession of the thing to the person or an agent of the person to be supplied.
- (3) For the purposes of this section, a person must not be treated as having supplied any plant, substance, or structure for the purposes of this Act if—
  - (a) the person (A) has, in the course of the A's business acquired ownership of, or another right in, the plant, substance, or structure on behalf of a customer of A; and
  - (b) the action by A, that would be a supply but for this subsection, is taken by A for, or on behalf of, that customer.
- (4) If subsection (3) applies, the person (other than A) who had possession of the plant, substance or structure immediately before A's customer obtained possession of the plant, substance, or structure is to be treated for the purposes of this Act to have supplied the plant, substance, or structure to A's customer.

Compare: Model Work Health and Safety Act (Aust) s 6

## 9 Meaning of reasonably practicable

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

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

ing the risk, including whether the cost is grossly disproportionate to the risk.

Compare: Model Work Health and Safety Act (Aust) s 18

## **10 Meaning of notifiable injury or illness**

- (1) In this Act, unless the context otherwise requires, a **notifiable injury or illness** in relation to a person, means—
- (a) any infection to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to carrying out work—
    - (i) with micro-organisms; or
    - (ii) that involves providing treatment or care to a person; or
    - (iii) that involves contact with human blood or bodily substances; or
    - (iv) that involves handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products;
  - (b) the following occupational zoonoses contracted in the course of work involving handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products:
    - (i) leptospirosis:
    - (ii) anthrax:
    - (iii) brucellosis:
    - (iv) avian influenza:
    - (v) psittacosis:
  - (c) an injury or illness requiring the person to have immediate treatment—
    - (i) as an in-patient in a hospital; or
    - (ii) for any of the following:
      - (A) the amputation of any part of his or her body; or
      - (B) a serious head injury; or
      - (C) a serious eye injury; or
      - (D) a serious burn; or
      - (E) the separation of his or her skin from an underlying tissue (such as degloving or scalping); or



- (F) a spinal injury; or
  - (G) the loss of a bodily function; or
  - (H) serious lacerations; or
  - (d) an injury or illness requiring the person to have medical treatment within 48 hours of exposure to a substance.
- (2) **Notifiable illness or injury** includes any other injury or illness prescribed by the regulations
- (3) Despite subsections (1) and (2), **notifiable illness or injury** does not include an illness or injury of a prescribed kind.
- Compare: Model Work Health and Safety Act (Aust) s 36

## 11 Meaning of notifiable incident

In this Act, unless the context otherwise requires, a **notifiable incident**—

- (a) means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to that person's health or safety arising from an immediate or imminent exposure to—
- (i) an uncontrolled escape, spillage, or leakage of a substance; or
  - (ii) an uncontrolled implosion, explosion, or fire; or
  - (iii) an uncontrolled escape of gas or steam; or
  - (iv) an uncontrolled escape of a pressurised substance; or
  - (v) electric shock; or
  - (vi) the fall or release from a height of any plant, substance, or thing; or
  - (vii) the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with the regulations; or
  - (viii) the collapse or partial collapse of a structure; or
  - (ix) the collapse or failure of an excavation or any shoring supporting an excavation; or
  - (x) the inrush of water, mud, or gas in workings in an underground excavation or tunnel; or
  - (xi) the interruption of the main system of ventilation in an underground excavation or tunnel; and

- (b) includes any other incident prescribed by the regulations; but
- (c) does not include an incident of a prescribed kind.

Compare: Model Work Health and Safety Act (Aust) s 37

## **12 Meaning of notifiable event**

In this Act, unless the context otherwise requires, a **notifiable event** means—

- (a) the death of a person; or
- (b) a notifiable injury or illness of a person; or
- (c) a notifiable incident.

Compare: Model Work Health and Safety Act (Aust) s 35

### Subpart 3—Key principles relating to health and safety duties

## **13 Duty to manage risk**

A duty imposed on a person under this Act to ensure health and safety requires the person—

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

Compare: Model Work Health and Safety Act (Aust) s 17

## **14 Duties not transferable**

A duty under this Act may not be transferred to another person.

Compare: Model Work Health and Safety Act (Aust) s 14

## **15 Person may have more than 1 duty**

A person may have more than 1 duty under this Act because the person is in more than 1 class of duty holder.

Compare: Model Work Health and Safety Act (Aust) s 15

## **16 More than 1 person can have same duty**

- (1) More than 1 person may have the same duty under this Act at the same time.

- 
- (2) Each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.
  - (3) If more than 1 person has a duty for the same matter, each person—
    - (a) retains responsibility for that person’s duty in relation to the matter; and
    - (b) must discharge that person’s duty to the extent to which the person has the capacity to influence or control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

Compare: Model Work Health and Safety Act (Aust) s 16

#### **17 Duty to consult other duty holders**

- (1) If more than 1 person has a duty in relation to the same matter under this Act, each person with the duty must, so far as is reasonably practicable, consult, cooperate, and coordinate activities with all other persons who have a duty in relation to the same matter.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$20,000;
  - (b) for a body corporate, to a fine not exceeding \$100,000.

Compare: Model Work Health and Safety Act (Aust) s 46

#### **18 PCBU must not levy workers**

- (1) A PCBU must not impose a levy or charge on a worker (or permit a levy or charge to be imposed on a worker) for anything done, or provided, in relation to work health and safety.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$5,000;
  - (b) for a body corporate, to a fine not exceeding \$25,000.

Compare: Model Work Health and Safety Act (Aust) s 273

**19 No contracting out**

A term of any agreement or contract that purports to exclude, limit, or modify the operation of this Act, any duty owed under this Act, or to transfer to another person any duty owed under this Act—

- (a) has no effect to the extent that it does so; but
- (b) is not an illegal contract under the Illegal Contracts Act 1970.

Compare: Model Work Health and Safety Act (Aust) s 272

## **Part 2 Health and safety duties**

### Subpart 1—Duties of persons conducting business or undertaking

**20 Primary duty of care**

- (1) A PCBU must ensure, so far as is reasonably practicable, the health and safety of—
  - (a) workers engaged, or caused to be engaged, by the PCBU while the workers are at work in the business or undertaking; and
  - (b) workers whose activities in carrying out work are influenced or directed by the PCBU, while the workers are carrying out the work.
- (2) A PCBU must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
- (3) Without limiting subsection (1) or (2), a PCBU must ensure, so far as is reasonably practicable,—
  - (a) the provision and maintenance of a work environment without risks to health and safety; and
  - (b) the provision and maintenance of safe plant and structures; and
  - (c) the provision and maintenance of safe systems of work; and
  - (d) the safe use, handling, and storage of plant, structures, and substances; and

- (e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and
  - (f) the provision of any information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and
  - (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.
- (4) A PCBU must, so far as is reasonably practicable, maintain any premises so that a worker occupying the premises is not exposed to risks to health and safety if—
- (a) a worker occupies accommodation that is owned by or under the management or control of the PCBU; and
  - (b) the occupancy is necessary for the purposes of the worker's engagement because other accommodation is not reasonably available.

Compare: Model Work Health and Safety Act (Aust) s 19(1)–(4)

## **21 Duty of PCBU who manages or controls workplace**

- (1) A person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace, and anything arising from the workplace are without risks to the health and safety of any person.
- (2) In subsection (1), a **person with management or control of a workplace**—
- (a) means a PCBU to the extent that the business or undertaking involves the management or control (in whole or in part) of the workplace; but
  - (b) does not include—
    - (i) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or

- (ii) a prescribed person.

Compare: Model Work Health and Safety Act (Aust) s 20

## **22 Duty of PCBU who manages or controls fixtures, fittings, or plant at workplaces**

- (1) A person with management or control of fixtures, fittings, or plant at a workplace must, so far as is reasonably practicable, ensure that the fixtures, fittings, and plant are without risks to the health and safety of any person.
- (2) In subsection (1), a **person with management or control of fixtures, fittings, or plant at a workplace**—
  - (a) means a PCBU to the extent that the business or undertaking involves the management or control of fixtures, fittings, or plant (in whole or in part) at a workplace; but
  - (b) does not include—
    - (i) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or
    - (ii) a prescribed person.

Compare: Model Work Health and Safety Act (Aust) s 21

## **23 Duty of PCBU who designs plant, substances, or structures**

- (1) This section applies to a person (a **designer**) who conducts a business or an undertaking that designs—
  - (a) plant that is to be used, or could reasonably be expected to be used, as or at a workplace; or
  - (b) a substance that is to be used, or could reasonably be expected to be used at a workplace; or
  - (c) a structure that is to be used, or could reasonably be expected to be used, as or at a workplace.
- (2) The designer must, so far as is reasonably practicable, ensure that the plant, substance, or structure is designed to be without risks to the health and safety of persons—
  - (a) who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed; or
  - (b) who handle the substance at a workplace; or
  - (c) who store the plant or substance at a workplace; or
  - (d) who construct the structure at a workplace; or

- 
- (e) who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to—
    - (i) the manufacture, assembly, or use of the plant for a purpose for which it was designed, or the proper storage, decommissioning, dismantling, or disposal of the plant; or
    - (ii) the manufacture or use of the substance for a purpose for which it was designed or the proper handling, storage, or disposal of the substance; or
    - (iii) the manufacture, assembly, or use of the structure for a purpose for which it was designed or the proper demolition or disposal of the structure; or
  - (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose health or safety may be affected by a use or activity referred to in any of paragraphs (a) to (e).
- (3) The designer must carry out, or arrange the carrying out of, any calculations, analysis, testing, or examination that may be necessary for the performance of the duty imposed by subsection (2).
- (4) The designer must give to each person who is provided with the design for the purpose of giving effect to it adequate information concerning—
- (a) each purpose for which the plant, substance, or structure was designed; and
  - (b) the results of any calculations, analysis, testing, or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and
  - (c) any conditions necessary to ensure that the plant, substance, or structure is without risks to health and safety when used for a purpose for which it was designed or when carrying out any activity referred to in subsection (2)(a) to (e).
- (5) The designer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry

out, any of the activities referred to in subsection (2)(a) to (e).

Compare: Model Work Health and Safety Act (Aust) s 22

## **24 Duty of PCBU who manufactures plant, substances, or structures**

- (1) This section applies to a person (a **manufacturer**) who conducts a business or an undertaking that manufactures—
- (a) plant that is to be used, or could reasonably be expected to be used, as or at a workplace; or
  - (b) a substance that is to be used, or could reasonably be expected to be used at a workplace; or
  - (c) a structure that is to be used, or could reasonably be expected to be used, as or at a workplace.
- (2) The manufacturer must, so far as is reasonably practicable, ensure that the plant, substance, or structure is manufactured to be without risks to the health and safety of persons—
- (a) who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed or manufactured; or
  - (b) who handle the substance at a workplace; or
  - (c) who store the plant or substance at a workplace; or
  - (d) who construct the structure at a workplace; or
  - (e) who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to—
    - (i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling, or disposal of the plant; or
    - (ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage, or disposal of the substance; or
    - (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure; or
  - (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the



workplace or whose health or safety may be affected by a use or activity referred to in any of paragraphs (a) to (e).

- (3) The manufacturer must carry out, or arrange the carrying out of, any calculations, analysis, testing, or examination that may be necessary for the performance of the duty imposed by subsection (2).
- (4) The manufacturer must give to each person to whom the manufacturer provides the plant, substance, or structure adequate information concerning—
  - (a) each purpose for which the plant, substance, or structure was designed or manufactured; and
  - (b) the results of any calculations, analysis, testing, or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and
  - (c) any conditions necessary to ensure that the plant, substance, or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2)(a) to (e).
- (5) The manufacturer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2)(a) to (e).

Compare: Model Work Health and Safety Act (Aust) s 23

## **25 Duty of PCBU who imports plant, substances, or structures**

- (1) This section applies to a person (an **importer**) who conducts a business or an undertaking that imports—
  - (a) plant that is to be used, or could reasonably be expected to be used, as or at a workplace; or
  - (b) a substance that is to be used, or could reasonably be expected to be used at a workplace; or
  - (c) a structure that is to be used, or could reasonably be expected to be used, as or at a workplace.

- (2) The importer must, so far as is reasonably practicable, ensure that the plant, substance, or structure is without risks to the health and safety of persons—
- (a) who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed or manufactured; or
  - (b) who handle the substance at a workplace; or
  - (c) who store the plant or substance at a workplace; or
  - (d) who construct the structure at a workplace; or
  - (e) who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to—
    - (i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling, or disposal of the plant; or
    - (ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage, or disposal of the substance; or
    - (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure; or
  - (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose health or safety may be affected by a use or activity referred to in any of paragraphs (a) to (e).
- (3) The importer must—
- (a) carry out, or arrange the carrying out of, any calculations, analysis, testing, or examination that may be necessary for the performance of the duty imposed by subsection (2); or
  - (b) ensure that the calculations, analysis, testing, or examination have been carried out.
- (4) The importer must give to each person to whom the importer provides the plant, substance, or structure adequate information concerning—

- (a) each purpose for which the plant, substance, or structure was designed or manufactured; and
  - (b) the results of any calculations, analysis, testing, or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and
  - (c) any conditions necessary to ensure that the plant, substance, or structure is without risks to health and safety when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2)(a) to (e).
- (5) The importer, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2)(a) to (e).

Compare: Model Work Health and Safety Act (Aust) s 24

## **26 Duty of PCBU who supplies plant, substances, or structures**

- (1) This section applies to a person (a **supplier**) who conducts a business or an undertaking that supplies—
- (a) plant that is to be used, or could reasonably be expected to be used, as or at a workplace; or
  - (b) a substance that is to be used, or could reasonably be expected to be used at a workplace; or
  - (c) a structure that is to be used, or could reasonably be expected to be used, as or at a workplace.
- (2) The supplier must, so far as is reasonably practicable, ensure that the plant, substance, or structure is without risks to the health and safety of persons—
- (a) who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed or manufactured; or
  - (b) who handle the substance at a workplace; or
  - (c) who store the plant or substance at a workplace; or
  - (d) who construct the structure at a workplace; or

- (e) who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to—
    - (i) the assembly or use of the plant for a purpose for which it was designed or manufactured or the proper storage, decommissioning, dismantling, or disposal of the plant; or
    - (ii) the use of the substance for a purpose for which it was designed or manufactured or the proper handling, storage, or disposal of the substance; or
    - (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured or the proper demolition or disposal of the structure; or
  - (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose health or safety may be affected by a use or activity referred to in any paragraphs (a) to (e).
- (3) The supplier must—
- (a) carry out, or arrange the carrying out of, any calculations, analysis, testing, or examination that may be necessary for the performance of the duty imposed by subsection (2); or
  - (b) ensure that the calculations, analysis, testing, or examination have been carried out.
- (4) The supplier must give to each person to whom the supplier supplies the plant, substance, or structure adequate information concerning—
- (a) each purpose for which the plant, substance, or structure was designed or manufactured; and
  - (b) the results of any calculations, analysis, testing, or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and
  - (c) any conditions necessary to ensure that the plant, substance, or structure is without risks to health and safety when used for a purpose for which it was designed or

manufactured or when carrying out any activity referred to in subsection (2)(a) to (e).

- (5) The supplier, on request, must, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2)(a) to (e).

Compare: Model Work Health and Safety Act (Aust) s 25

## **27 Duty of PCBU who installs, constructs, or commissions plant or structures**

- (1) This section applies to a PCBU that installs, constructs, or commissions plant or a structure that is to be used, or could reasonably be expected to be used, as or at a workplace.
- (2) The person must, so far as is reasonably practicable, ensure that the way in which the plant or structure is installed, constructed, or commissioned ensures that the plant or structure is without risks to the health and safety of persons—
- (a) who install or construct the plant or structure at a workplace; or
  - (b) who use the plant or structure at a workplace for a purpose for which it was installed, constructed, or commissioned; or
  - (c) who carry out any reasonably foreseeable activity at a workplace in relation to the proper use, decommissioning, or dismantling of the plant or demolition or disposal of the structure; or
  - (d) who are at or in the vicinity of a workplace and whose health or safety may be affected by a use or activity referred to in any of paragraphs (a) to (c).

Compare: Model Work Health and Safety Act (Aust) s 26

## **28 Duty of self-employed persons**

A self-employed person must, so far as is reasonably practicable, ensure his or her own health and safety while at work.

Compare: Model Work Health and Safety Act (Aust) s 19(5)

## Subpart 2—Duties of officers, workers, and other persons

### 29 Duty of officers

- (1) If a PCBU has a duty or an obligation under this Act, an officer of the PCBU must exercise due diligence to ensure that the PCBU complies with that duty or obligation.
- (2) In this section, **due diligence** includes taking reasonable steps—
  - (a) to acquire and keep up-to-date knowledge of work health and safety matters; and
  - (b) to gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations; and
  - (c) to ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
  - (d) to ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and responding in a timely way to that information; and
  - (e) to ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and
  - (f) to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

Compare: Model Work Health and Safety Act (Aust) s 27(1), (5)

### 30 Duties of workers

While at work, a worker must—

- (a) take reasonable care for his or her own health and safety; and
- (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and

- (c) comply, as far as the worker is reasonably able, with any reasonable instruction that is given by the PCBU to allow the person to comply with this Act; and
- (d) co-operate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers.

Compare: Model Work Health and Safety Act (Aust) s 28

### **31 Duties of other persons at workplace**

A person at a workplace (whether or not the person has another duty under this Part) must—

- (a) take reasonable care for the person's own health and safety; and
- (b) take reasonable care that the person's acts or omissions do not adversely affect the health and safety of other persons; and
- (c) comply, as far as the person is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with this Act.

Compare: Model Work Health and Safety Act (Aust) s 29

## **Subpart 3—Offences relating to health and safety duties**

### **32 Offence of reckless conduct in respect of health and safety duty**

- (1) A person commits an offence against this section if the person—
  - (a) has a health and safety duty under subpart 1 or 2; and
  - (b) without reasonable excuse, engages in conduct that exposes any individual to whom that duty is owed to a risk of death or serious injury or illness; and
  - (c) is reckless as to the risk to an individual of death or serious injury or illness.
- (2) For the purposes of subsection (1), if the person is an officer of a PCBU, the individual to whom the duty is owed is the individual to whom the PCBU owes the duty.
- (3) A person who commits an offence against subsection (1) is liable on conviction,—

- (a) for an individual who is not a PCBU or an officer of a PCBU, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$300,000, or both:
- (b) for an individual who is a PCBU or an officer of a PCBU, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$600,000, or both:
- (c) for a body corporate, to a fine not exceeding \$3 million.

Compare: Model Work Health and Safety Act (Aust) s 31

**33 Offence of failing to comply with health and safety duty that exposes individual to risk of death or serious illness or injury**

- (1) A person commits an offence against this section if the person—
  - (a) has a health and safety duty under subpart 1 or 2; and
  - (b) fails to comply with that duty and the failure exposes any individual to a risk of death or serious injury or illness.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
  - (a) for an individual who is not a PCBU or an officer of a PCBU, to a fine not exceeding \$150,000:
  - (b) for an individual who is a PCBU or an officer of a PCBU, to a fine not exceeding \$300,000:
  - (c) for a body corporate, to a fine not exceeding \$1.5 million.

Compare: Model Work Health and Safety Act (Aust) s 32

**34 Offence of failing to comply with health and safety duty**

- (1) A person commits an offence against this section if the person—
  - (a) has a health and safety duty under subpart 1 or 2; and
  - (b) fails to comply with that duty.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
  - (a) for an individual who is not a PCBU or an officer of a PCBU, to a fine not exceeding \$50,000:
  - (b) for individual who is a PCBU or an officer of a PCBU, to a fine not exceeding \$100,000:



- (c) for a body corporate, to a fine not exceeding \$500,000.
- (3) Despite subsection (2), if the duty or obligation of a PCBU is imposed under a provision other than a provision of subpart 1 or 2 of this Part, the maximum penalty under subsection (2) for an offence by an officer against subsection (1) in relation to the duty or obligation is the maximum penalty fixed under the provision creating the duty or obligation for an individual who fails to comply with the duty or obligation.
- Compare: Model Work Health and Safety Act (Aust) ss 27(3), 33

*Specific provisions relating to liability of  
officers, volunteers, and unincorporated  
associations*

**35 Liability of officers**

An officer of a PCBU may be convicted or found guilty of an offence under this Act in relation to a duty under section 29 whether or not the PCBU has been convicted or found guilty of an offence under this Act relating to the duty or obligation.

Compare: Model Work Health and Safety Act (Aust) s 27(4)

**36 Liability of volunteers**

A volunteer does not commit an offence under section 32, 33, or 34 for a failure to comply with a health and safety duty imposed under subpart 1 or 2, except a duty under—

(a) section 30 (which relates to the duties of workers); or

(b) section 31 (which relates to the duties of other persons at workplaces).

Compare: Model Work Health and Safety Act (Aust) s 34

**37 Liability of unincorporated associations**

- (1) An unincorporated association does not commit an offence under this Act for a failure to comply with a duty or an obligation imposed on the unincorporated association under this Act.
- (2) However,—
- (a) an officer of an unincorporated association (other than a volunteer) may be liable for a failure to comply with

a duty under section 29 (which relates to duties of officers); and

- (b) a member of an unincorporated association may be liable for failure to comply with a duty under section 30 or 31.

Compare: Model Work Health and Safety Act (Aust) s 34

*Other matters relating to offences*

**38 Actions taken to prevent harm**

Where a person (**person A**) harms another person (**person B**) by taking any action necessary to protect person B from harm,—

- (a) person A does not commit an offence against this Part; and
- (b) if person A is a worker, the PCBU for whom A carries out work does not commit an offence against this Part.

Compare: 1992 No 96 ss 51

**39 Proof of intention not required**

In a matter involving a prosecution for an offence against this Part, it is not necessary to prove that the defendant—

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

Compare: 1992 No 96 s 53

**Subpart 4—Event notification**

**40 Duty to notify notifiable event**

- (1) A PCBU must, immediately after becoming aware that a notifiable event arising out of the conduct of the business or undertaking has occurred, ensure that the regulator is notified of the event.
- (2) A notification under subsection (1)—
  - (a) may be given by telephone or in writing (including by fax, email, or other electronic means); and
  - (b) must be given by the fastest possible means in the circumstances.

- (3) For the purposes of subsection (2) a person giving notice by telephone must—
  - (a) give the details of the incident requested by the regulator; and
  - (b) if required by the regulator, give a written notice of the incident within 48 hours of being informed of the requirement.
- (4) Notice given in writing under subsection (2) or (3) must be in a form, or contain the details, approved by the regulator.
- (5) If the regulator receives a notice by telephone and a written notice is not required, the regulator must give the PCBU—
  - (a) details of the information received; or
  - (b) an acknowledgement of receiving the notice.
- (6) A person who contravenes this section commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for a body corporate, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Act (Aust) s 38(1)–(6)

#### **41 Requirement to keep records**

- (1) A PCBU must keep a record of each notifiable event for at least 5 years from the date on which notice of the incident is given to the regulator under section 40.
- (2) A record kept under subsection (1) must contain the particulars prescribed by the regulations.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$5,000;
  - (b) for a body corporate, to a fine not exceeding \$25,000.

Compare: Model Work Health and Safety Act (Aust) s 38(7)

#### *Duty to preserve incident sites*

#### **42 Duty to preserve incident sites**

- (1) A person with management or control of a workplace at which a notifiable event has occurred must, so far as is reasonably practicable, ensure that the site where the incident occurred is not disturbed until—
  - (a) an inspector arrives at the site; or

- (b) any earlier time that an inspector directs.
- (2) Subsection (1) does not prevent any action—
  - (a) to assist an injured person; or
  - (b) to remove a deceased person; or
  - (c) that is essential to make the site safe or to minimise the risk of a further notifiable incident; or
  - (d) done by, or under the direction of, a constable; or
  - (e) for which an inspector or the regulator has given permission.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for a body corporate, to a fine not exceeding \$50,000.
- (4) For the purposes of this section, a **site**—
  - (a) includes any plant, substance, structure, or thing associated with the notifiable event; but
  - (b) does not include any particular site in prescribed circumstances.

Compare: Model Work Health and Safety Act (Aust) s 39

### Subpart 5—Authorisations

#### 43 Meaning of authorised

In this subpart, **authorised** means authorised by a licence, permit, registration, or other authority (however described) as required by the regulations.

Compare: Model Work Health and Safety Act (Aust) s 40

#### 44 Requirements for authorisation of workplaces

- (1) A person must not conduct a business or an undertaking at a workplace or direct or allow a worker to carry out work at a workplace if—
  - (a) the regulations require the workplace, or class of workplaces, to be authorised; and
  - (b) the workplace is not authorised in accordance with the regulations.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$50,000;

- (b) for a body corporate, to a fine not exceeding \$250,000.

Compare: Model Work Health and Safety Act (Aust) s 41

#### **45 Requirements for authorisation of plant or substance**

- (1) A person must not use plant or a substance at a workplace if—
- (a) the regulations require the plant or substance or its design to be authorised; and
  - (b) the plant or substance or its design is not authorised in accordance with the regulations.
- (2) A PCBU must not direct or allow a worker to use the plant or substance at a workplace if—
- (a) the regulations require the plant or substance or its design to be authorised; and
  - (b) the plant or substance or its design is not authorised in accordance with the regulations.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$20,000;
  - (b) for a body corporate, to a fine not exceeding \$100,000.

Compare: Model Work Health and Safety Act (Aust) s 42

#### **46 Requirements for authorisation of work**

- (1) A PCBU must not carry out work at a workplace if—
- (a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and
  - (b) the person, or the person on whose behalf the work is carried out, is not authorised in accordance with the regulations.
- (2) A PCBU must not direct or allow a worker to carry out work at a workplace if—
- (a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and
  - (b) the person, or the person on whose behalf the work is to be carried out, is not authorised in accordance with the regulations.

- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$20,000;
  - (b) for a body corporate, to a fine not exceeding \$100,000.
- Compare: Model Work Health and Safety Act (Aust) s 43

**47 Requirements for prescribed qualifications or experience**

- (1) A person must not carry out work at a workplace if the regulations require the work, or class of work, to be carried out—
- (a) by a person who has prescribed qualifications or experience and the person does not have the prescribed qualifications or experience;
  - (b) under the supervision of a person who has prescribed qualifications or experience and the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.
- (2) A PCBU must not direct or allow a worker to carry out work at a workplace if the regulations require the work, or class of work, to be carried out—
- (a) by a worker who has prescribed qualifications or experience and the worker does not have the prescribed qualifications or experience;
  - (b) under the supervision of a person who has prescribed qualifications or experience and the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$20,000;
  - (b) for a body corporate, to a fine not exceeding \$100,000.
- Compare: Model Work Health and Safety Act (Aust) s 44

**48 Requirement to comply with conditions of authorisation**

- (1) A person must comply with the conditions of any authorisation given to that person prescribed in the regulations.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$20,000;

- (b) for a body corporate, to a fine not exceeding \$100,000.

Compare: Model Work Health and Safety Act (Aust) s 45

### **Part 3**

## **Consultation, representation, and participation**

### **Subpart 1—Consultation and resolution of issues**

#### **49 Duty to consult workers**

- (1) A PCBU must, so far as is reasonably practicable, consult workers—
- (a) who carry out work for the business or undertaking; and
  - (b) who are, or are likely to be, directly affected by a matter relating to work health or safety.
- (2) If the PCBU and the workers have agreed to procedures for consultation, the consultation must be in accordance with those procedures.
- (3) The agreed procedures must not be inconsistent with section 50.
- (4) A person who contravenes this section commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$20,000;
  - (b) for a body corporate, to a fine not exceeding \$100,000.

Compare: Model Work Health and Safety Act (Aust) s 47

#### **50 Nature of consultation**

- (1) Consultation under this subpart requires—
- (a) that relevant information about the matter is shared with workers; and
  - (b) that workers be given a reasonable opportunity—
    - (i) to express their views and to raise work health or safety issues in relation to the matter; and
    - (ii) to contribute to the decision-making process relating to the matter; and
  - (c) that the views of workers are taken into account by the PCBU; and

- (d) that the workers consulted are advised of the outcome of the consultation in a timely manner.
- (2) If the workers are represented by a health and safety representative, the consultation must involve that representative.
- (3) If there is a health and safety committee for the business or undertaking, the consultation must involve that committee.

Compare: Model Work Health and Safety Act (Aust) s 48

### **51 When consultation is required**

Consultation under this subpart is required in relation to the following work health and safety matters:

- (a) when identifying hazards and assessing risks to work health and safety arising from the work carried out or to be carried out by the business or undertaking:
- (b) when making decisions about ways to eliminate or minimise those risks:
- (c) when making decisions about the adequacy of facilities for the welfare of workers:
- (d) when proposing changes that may affect the health or safety of workers:
- (e) when making decisions about the procedures for—
  - (i) consulting workers; or
  - (ii) monitoring the health of workers; or
  - (iii) monitoring the conditions at any workplace under the management or control of the PCBU;or
  - (iv) providing information and training for workers:
- (f) when making decisions about the procedures (if any) for resolving work health or safety issues at the workplace:
- (g) when developing worker participation practices:
- (h) when carrying out any other activity prescribed by the regulations for the purposes of this section.

Compare: Model Work Health and Safety Act (Aust) s 49

### **52 Resolution of health and safety issues**

If an issue about work health and safety arises at a workplace, the parties to the issue (including any representative of the parties) must make reasonable efforts to achieve a timely, final,



and effective resolution of the issue in accordance with any relevant procedure for resolving work health and safety issues.

Compare: Model Work Health and Safety Act (Aust) s 81

## Subpart 2—Worker participation and health and safety representatives

### *Worker participation practices*

#### **53 Duty to provide worker participation practices**

- (1) A PCBU must have practices that provide reasonable opportunities for workers to participate effectively in improving work health and safety in the business or undertaking on an ongoing basis.
- (2) In complying with subsection (1), the PCBU must—
  - (a) comply with prescribed requirements relating to a particular industry, sector, or kind of workplace;
  - (b) take into account any relevant approved code of practice.
- (3) A PCBU is to be treated as having complied with subsection (1) if, in respect of workplace there is—
  - (a) a health and safety representative who has been elected to represent workers who carry out work for the business or undertaking under this subpart; or
  - (b) a health and safety committee that has been established for the business or undertaking (or part of the business or undertaking) under subpart 3.
- (4) In subsection (1), **reasonable opportunities** means opportunities that are reasonable in the circumstances, having regard to relevant matters including—
  - (a) the number of workers working in the business or undertaking; and
  - (b) the number of different places of work of the business or undertaking, and the distance between them; and
  - (c) the likely risks to work health and safety in the business or undertaking and the level of those risks; and
  - (d) the nature of the work that is performed and the way that it is arranged or managed; and

- (e) the nature of the employment arrangements or contracting arrangements, including the extent and regularity of employment or engagement of temporary workers; and
  - (f) the willingness of workers and their representatives to develop worker participation practices; and
  - (g) in relation to employers and employees, the duty to act in good faith as required by section 4 of the Employment Relations Act 2000.
- (5) A person who contravenes subsection (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000.
  - (b) for a body corporate, to a fine not exceeding \$50,000.

*Request for health and safety representative*

**54 Request for election of health and safety representatives**

A worker who carries out work for a business or undertaking may ask the PCBU to facilitate the conduct of an election for 1 or more health and safety representatives to represent workers who carry out work for that business or undertaking.

Compare: Model Work Health and Safety Act (Aust) s 50

*Determination of work groups*

**55 Requirement of PCBU to determine work groups**

- (1) If a worker makes a request under section 54, the PCBU must facilitate the representation of workers by the determination of 1 or more work groups.
- (2) A work group may be determined for workers at 1 or more workplaces.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000.
  - (b) for a body corporate, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Act (Aust) s 51(1), (3)

**56 Purpose of work groups**

- (1) The purpose of determining a work group is to decide—
  - (a) the number and composition of work groups to be represented by health and safety representatives; and

- (b) the number of health and safety representatives and deputy health and safety representatives (if any) to be elected; and
  - (c) the workplace or workplaces to which the work groups will apply.
- (2) If a work group is determined for workers carrying out work for 2 or more PCBUs, the purpose of determining work groups also includes deciding the businesses or undertakings to which the work groups will apply.

Compare: Model Work Health and Safety Act (Aust) s 51(2)

### **57 Procedure of determining work groups**

- (1) A work group is to be determined by agreement between—
- (a) the PCBU; and
  - (b) the workers who will form the work group and any representative representing the workers.
- (2) In determining work groups, the parties must—
- (a) comply with any prescribed requirements relating to work groups; and
  - (b) take into account—
    - (i) the matters specified in subsection (3); and
    - (ii) any relevant approved code of practice.
- (3) For the purposes of subsection (2)(b)(i), the matters are—
- (a) the number of workers working in the business or undertaking; and
  - (b) the number of different places of work for the workers and the distance between them; and
  - (c) the nature of the work that is performed and the way that it is arranged or managed by the PCBU; and
  - (d) the nature of the employment arrangements or contracting arrangements, including the extent and regularity of employment or engagement of temporary workers.
- (4) As soon as practicable after a work group has been determined under this subpart, the PCBU must notify the workers and any representative representing the workers of the determination.
- (5) A person who contravenes subsection (4) commits an offence and is liable on conviction,—

- (a) for an individual, to a fine not exceeding \$2,000.
- (b) for a body corporate, to a fine not exceeding \$10,000.

Compare: Model Work Health and Safety Act (Aust) s 53

### **58 Variation of agreement relating to work group**

The parties to an agreement relating to the determination of a work group or groups may, at any time, negotiate a variation of the agreement and section 57 applies with, any necessary modifications, to the variation.

### **59 Determination of work groups for multiple businesses**

- (1) Work groups may be determined for workers carrying out work for 2 or more PCBUs at 1 or more workplaces.
- (2) Section 57 applies, with any necessary modifications, to the determination of a work group under subsection (1).
- (3) The determination of 1 or more work groups under this section does not—
  - (a) prevent the determination of any other work group under this subpart; or
  - (b) affect any work groups of those workers that have already been determined under this subpart.

#### *Election of health and safety representatives*

### **60 Eligibility to be elected**

- (1) A worker is eligible to be elected as a health and safety representative for a work group only if the worker—
  - (a) is a member of that work group; and
  - (b) works sufficiently regularly and for a sufficient duration to enable the worker to carry out his or her functions effectively; and
  - (c) is willing to take on the position.
- (2) A worker is not eligible to be elected as a health and safety representative if the worker has been removed as a health and safety representative by the regulator under section 66.

Compare: Model Work Health and Safety Act (Aust) s 60; 1992 No 96 Schedule 1A

**61 Procedure for electing health and safety representative**

- (1) The workers in a work group may determine how an election of a health and safety representative for the work group is to be conducted.
- (2) However, an election must comply with the procedures (if any) prescribed by the regulations.
- (3) If a majority of the workers in a work group so determine, the election may be conducted with the assistance of a union or other person or organisation.
- (4) A PCBU to which the work group applies must provide any resources, facilities, or assistance that is prescribed by regulations or reasonably necessary to enable elections to be conducted.
- (5) A person who contravenes subsection (4) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for a body corporate, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Act (Aust) s 61

**62 Eligibility to vote**

- (1) A health and safety representative for a work group is to be elected by members of that work group.
- (2) All workers in a work group may vote for the election of a health and safety representative for that work group.

Compare: Model Work Health and Safety Act (Aust) s 62

**63 When election not required**

- (1) Despite section 61, the election of a health and safety representative for a work group need not be conducted if the number of candidates for election equals the number of vacancies.
- (2) If subsection (1) applies, each candidate is to be treated as having been elected as a health and safety representative for the work group.

Compare: Model Work Health and Safety Act (Aust) s 63

**64 Term of office of health and safety representative**

- (1) A health and safety representative for a work group holds office for 3 years.

- (2) However, a person ceases to hold office as a health and safety representative for a work group if—
- (a) the person resigns as a health and safety representative for the work group by written notice given to the PCBU; or
  - (b) the person ceases to be a worker in the work group for which he or she was elected as a health and safety representative; or
  - (c) the person has been removed from that position—
    - (i) by the regulator under section 66; or
    - (ii) by a majority of the members of the work group in accordance with the regulations.
- (3) If a person ceases to hold office as a health and safety representative, the workers in a work group may, in accordance with sections 60 to 63, elect a replacement health and safety representative.
- (4) A health and safety representative may be re-elected.

Compare: Model Work Health and Safety Act (Aust) s 64

#### **65 Deputy health and safety representatives**

- (1) A deputy health and safety representative for a work group is to be elected and may be removed or cease to hold office in the same way as a health and safety representative for the work group.
- (2) If the health and safety representative for a work group is removed from office under section 66 or is unable (because of absence or any other reason) to perform his or her functions or exercise his or her powers under this Act, a deputy health and safety representative may perform or exercise those functions or powers as if the deputy health and safety representative were the health and safety representative elected under this subpart.

Compare: Model Work Health and Safety Act (Aust) s 67

*Removal of health and safety representatives***66 Regulator may remove health and safety representative**

- (1) The regulator may, by notice in writing, remove a health and safety representative from office if the regulator considers that the representative has—
  - (a) exercised a power or performed a function as a health and safety representative for an improper purpose; or
  - (b) used or disclosed any information he or she acquired as a health and safety representative for a purpose other than in connection with the role of health and safety representative.
- (2) The notice under subsection (1) must state—
  - (a) the reasons for the regulator's decision; and
  - (b) whether the removal from office is for a specified period or indefinite.

Compare: Health and Safety (Pike River Implementation) Bill, cl 19ZM

**67 Appeal against removal from office**

- (1) A health and safety representative may appeal to the District Court against a decision of the regulator to remove him or her from office.
- (2) The appeal must be brought within 28 days of the date of the notice under section 66(1).

Compare: Health and Safety (Pike River Implementation) Bill, cl 19ZO

*Functions and powers of health and safety representatives***68 Functions of health and safety representatives**

- The functions of a health and safety representative for a work group are—
- (a) to represent the workers in the work group in matters relating to health and safety; and
  - (b) to monitor the measures taken by the PCBU or the PCBU's representative in compliance with this Act in relation to workers in the work group; and
  - (c) to investigate complaints from members of the work group relating to health and safety; and

- (d) to inquire into anything that appears to be a risk to the health or safety of workers in the work group arising from the conduct of the business or undertaking; and
- (e) to promote the interests of workers who have been harmed at work, including in relation to arrangements for rehabilitation and return to work.

Compare: Model Work Health and Safety Act (Aust) s 68

**69 Power to request establishment of health and safety committee**

A health and safety representative may request the establishment of a health and safety committee.

Compare: Model Work Health and Safety Act (Aust) s 68(2)(e)

**70 Power of health and safety representative to attend interview**

- (1) With the consent of the worker concerned, a health and safety representative may attend an interview concerning work health and safety between a worker that the health and safety representative represents and—
  - (a) an inspector; or
  - (b) the PCBU at that workplace or the PCBU's representative.
- (2) With the consent of all the workers concerned, a health and safety representative may attend an interview concerning work health and safety between a group of workers that the health and safety representative represents and—
  - (a) an inspector; or
  - (b) the PCBU at that workplace or the PCBU's representative.
- (3) If subsection (1)(a) or (2)(a) applies, an inspector may refuse to allow a health and safety representative to be present—
  - (a) during any discussion in which personal information may be disclosed (unless the person who is the subject of the information has expressly consented to the health and safety representative being present);
  - (b) if the inspector believes that the presence of the health and safety representative would prejudice the mainten-



ance of the law, including the investigation and prosecution of offences.

Compare: Health and Safety (Pike River Implementation) Bill, cl 19X

**71 Power of health and safety representative to enter and inspect workplace**

- (1) A health and safety representative may, at any reasonable time, enter and inspect any area of a workplace to perform the functions, or exercise the powers, of the health and safety representative.
- (2) Before exercising the power under subsection (1), the health and safety representative must give reasonable notice to the PCBU at that workplace.
- (3) In exercising the power under this section, the health and safety representative must comply with any reasonable procedures and requirements that relate to work health and safety.
- (4) Despite subsections (1) and (2), a health and safety representative may, at any time and without notice, enter and inspect any area of a workplace in the event of an incident, or any situation involving a serious risk to the health or safety of a person arising from an immediate or imminent exposure to a hazard.

Compare: Health and Safety (Pike River Implementation) Bill, cl 19Y

**72 Power of health and safety representative to request information**

- (1) A health and safety representative may request a PCBU to provide information necessary to enable the health and safety representative to perform his or her functions or exercise his or her powers, including information relating to—
  - (a) hazards (including associated risks) at the workplace affecting workers in the work group; and
  - (b) subject to section 78, the health and safety of workers in the work group.
- (2) The health and safety representative may retain and copy any document containing information provided by the PCBU following a request under subsection (1).

**73 Power to require assistance**

A health and safety representative may, when performing his or her functions or exercising his or her powers under this Act, be accompanied or assisted by another person.

Compare: Model Work Health and Safety Act (Aust) s 68(2)(g)

**74 Power to accompany inspector**

- (1) A health and safety representative may accompany an inspector who has, under section [00], entered a workplace.
- (2) An inspector may refuse to allow a health and safety representative accompanying the inspector under this section to be present—
  - (a) during any discussion in which personal information may be disclosed (unless the person who is the subject of the information has expressly consented to the health and safety representative being present):
  - (b) if the inspector believes that the presence of the health and safety representative would prejudice the maintenance of the law, including the investigation and prosecution of offences.

Compare: Health and Safety (Pike River Implementation) Bill, cl 19ZB

**75 Health and safety representative may consult regulator or inspector**

A health and safety representative may consult the regulator or an inspector on any work health and safety issue.

Compare: Health and Safety (Pike River Implementation) Bill, cl 19ZC

**76 Functions and powers of health and safety representative generally limited to particular work group**

- (1) A health and safety representative for a work group may perform his or her functions and exercise his or her powers under this Act only in relation to matters that affect, or may affect, workers in that work group.
- (2) Subsection (1) does not apply if—
  - (a) there is a serious risk to health or safety arising from an immediate or imminent exposure to a hazard that affects or may affect a member of another work group; or

- (b) a member of another work group asks for the representative's assistance, and the health and safety representative (and any deputy health and safety representative) for that other work group is found, after reasonable inquiry, to be unavailable.
- (3) In this section, **another work group** means—
  - (a) another work group of workers carrying out work for a business or undertaking to which the work group that the health and safety representative represents relates:
  - (b) for a multiple PCBU arrangement, another work group within that arrangement.

Compare: Model Work Health and Safety Act (Aust) s 69

*Obligations of persons conducting business or undertaking to health and safety representatives*

**77 General obligations of PCBU**

- (1) The PCBU must—
  - (a) consult, so far as is reasonably practicable, on health and safety matters with any health and safety representative for a work group of workers carrying out work for the business or undertaking; and
  - (b) confer with a health and safety representative for a work group, whenever reasonably requested by the representative, for the purpose of ensuring the health and safety of the workers in the work group; and
  - (c) provide any health and safety representative for the work group with any information necessary to enable the health and safety representative to perform his or her functions or exercise his or her powers, including information relating to—
    - (i) hazards (including associated risks) at the workplace affecting workers in the work group; and
    - (ii) the health and safety of the workers in the work group; and
  - (d) allow the health and safety representative to be present at an interview relating to health and safety between the worker and—
    - (i) an inspector; or

- (ii) the PCBU at that workplace or the person's representative; and
  - (e) allow the health and safety representative to be present at an interview concerning health and safety between a group of workers and—
    - (i) an inspector; or
    - (ii) the PCBU at that workplace or the person's representative; and
  - (f) provide any resources, facilities, and assistance to a health and safety representative for the work group that are reasonably necessary or prescribed by the regulations to enable the representative to exercise his or her powers or perform his or her functions under this Act; and
  - (g) allow a person assisting a health and safety representative for the work group to have access to the workplace if that is necessary to enable the assistance to be provided; and
  - (h) permit a health and safety representative for the work group to accompany an inspector during an inspection of any part of the workplace where a worker in the work group works; and
  - (i) provide any other assistance to the health and safety representative for the work group that may be required by the regulations.
- (2) The PCBU must allow a health and safety representative to spend as much time as is reasonably necessary to perform or exercise his or her functions or powers under this Act.
- (3) Any time that a health and safety representative spends for the purposes of performing or exercising his or her functions or powers under this Act must be paid at the rate that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.
- (4) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for a body corporate, to a fine not exceeding \$50,000.
- Compare: Model Work Health and Safety Act (Aust) s 70

**78 Exceptions to sections 72(1) and 77(1)**

- (1) Despite sections 72(1) and 77(1), a PCBU—
- (a) must not allow a health and safety representative to have access to any personal information concerning a worker without the worker's consent unless the information is in a form that—
    - (i) does not identify the worker; and
    - (ii) could not reasonably be expected to identify the worker; and
  - (b) is not required to give financial assistance to a health and safety representative for the purpose of the assistance referred to in section 73; and
  - (c) may refuse on reasonable grounds to grant access to the workplace to a person assisting a health and safety representative for a work group.
- (2) A person who contravenes subsection (1)(a) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for a body corporate, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Act (Aust) s 71

**79 Requirement to allow health and safety representatives to attend certain training**

- (1) A PCBU must, if requested by a health and safety representative for a work group for that business or undertaking, allow the health and safety representative to attend a training course in workplace health and safety that is—
- (a) a course that the health and safety representative is entitled under the regulations to attend; and
  - (b) chosen by the health and safety representative in consultation with the PCBU.
- (2) A PCBU must,—
- (a) as soon as practicable within the period of 3 months after the request is made, allow the health and safety representative time off work to attend the training course; and
  - (b) pay the course fees and any other reasonable costs associated with the health and safety representative's attendance at the training course.

- (3) Subsection (4) applies if a health and safety representative represents a work group of workers of more than 1 business or undertaking.
- (4) Each PCBU is to be treated as having complied with subsection (1) in relation to a representative if at least 1 of the PCBUs has complied with this section in relation to the representative.
- (5) Any time that a health and safety representative is given off work to attend a training course must be with the pay that the representative would have otherwise be entitled to receive for performing his or her normal duties during that period.
- (6) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for a body corporate, to a fine not exceeding \$50,000.
- (7) In this section and section 80, **health and safety representative** includes a deputy health and safety representative (if any).  
Compare: Model Work Health and Safety Act (Aust) s 72(1)–(4)

### **80 Obligation to share costs if multiple businesses or undertakings**

- (1) This section applies if a health and safety representative represents a work group of workers carrying out work for 2 or more PCBUs.
- (2) The following costs must be apportioned equally between each of the PCBUs:
  - (a) the costs of the health and safety representative performing functions or exercising powers under this Act;
  - (b) the costs of the health and safety representative attending a training course referred to in section 79(2)(b).
- (3) However, subsection (2) does not prevent the PCBUs from agreeing to apportion the costs another way.  
Compare: Model Work Health and Safety Act (Aust) s 73

### **81 List of health and safety representatives**

- (1) A PCBU must ensure that—
  - (a) a list of each health and safety representative and deputy health and safety representative (if any) for each work

- group of workers carrying out work for the business or undertaking is prepared and kept up to date; and
- (b) a copy of the up-to-date list is displayed, in a manner that is readily accessible to workers in the relevant work group or work groups,—
- (i) at the principal place of business of the business or undertaking; and
- (ii) at any other workplace that is appropriate, taking into account the constitution of the relevant work group or work groups.
- (2) A PCBU must, if requested by the regulator, provide a copy of the up-to-date list to the regulator as soon as practicable after the request.
- (3) A person who contravenes this section commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$2,000;
- (b) for a body corporate, to a fine not exceeding \$10,000.
- Compare: Model Work Health and Safety Act (Aust) s 74

### *Other matters*

- 82 Functions and powers for health and safety purposes only**  
A health and safety representative must not perform a function or exercise a power under this Part for a purpose other than a health and safety purpose.  
Compare: Health and Safety (Pike River Implementation) Bill, cl 19ZK
- 83 No duty on health and safety representative**  
Nothing in this Act imposes or is taken to impose a duty on a health and safety representative in that capacity.  
Compare: Model Work Health and Safety Act (Aust) s 68(4); Health and Safety (Pike River Implementation) Bill, cl 19W
- 84 Protection from civil and criminal liability**  
No civil or criminal proceedings may be brought against a health and safety representative for any act done or omitted to be done in good faith in the performance or exercise, or intended performance or exercise, of his or her functions or powers under this Act.  
Compare: Health and Safety (Pike River Implementation) Bill, cl 19ZLA

### Subpart 3—Health and safety committees

#### **85 Health and safety committees**

- (1) A PCBU at a workplace must establish a health and safety committee for the business or undertaking or part of the business or undertaking—
  - (a) within 2 months after being requested to do so by—
    - (i) a health and safety representative for a work group of workers carrying out work at that workplace; or
    - (ii) 5 or more workers at that workplace; or
  - (b) if required by the regulations, within the time prescribed by the regulations.
- (2) A PCBU at a workplace may establish a health and safety committee for the workplace or part of the workplace on the person's own initiative.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$5,000;
  - (b) for a body corporate, to a fine not exceeding \$25,000.

Compare: Model Work Health and Safety Act (Aust) s 75

#### **86 Constitution of health and safety committee**

- (1) Subject to subsections (2) to (4), the constitution of a health and safety committee is to be agreed between the PCBU and the workers at the workplace.
- (2) If there is a health and safety representative at a workplace, that representative, if he or she consents, is a member of the committee.
- (3) If there are 2 or more health and safety representatives at a workplace, those representatives may choose 1 or more of their number (who consent) to be members of the committee.
- (4) At least half of the members of the committee must be workers who are not nominated by the PCBU.

Compare: Model Work Health and Safety Act (Aust) s 76(1)–(4)

#### **87 Functions of health and safety committee**

The functions of a health and safety committee are—



- (a) to facilitate co-operation between the PCBU and workers in instigating, developing, and carrying out measures designed to ensure the workers' health and safety at work; and
- (b) to assist in developing standards, rules, and procedures relating to health and safety that are to be followed or complied with at the workplace; and
- (c) any other functions that are—
  - (i) agreed between the PCBU and the committee; or
  - (ii) prescribed by the regulations.

Compare: Model Work Health and Safety Act (Aust) s 77

### **88 Meetings of health and safety committee**

- (1) A health and safety committee must meet on a basis agreed by the committee.
- (2) If agreement cannot be reached under subsection (1), a health and safety committee must meet—
  - (a) at least once every 3 months; and
  - (b) at any reasonable time at the request of at least half of the members of the committee.

Compare: Model Work Health and Safety Act (Aust) s 78

### **89 Duties of PCBU in relation to committee**

- (1) A PCBU must allow each member of the health and safety committee to spend the time that is reasonably necessary to attend meetings of the committee or to carry out functions as a member of the committee.
- (2) Any time that a member of a health and safety committee spends for the purposes set out in subsection (1) must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.
- (3) A PCBU must allow the health and safety committee for a workplace to have access to information that the PCBU has relating to—
  - (a) hazards (including associated risks) at the workplace; and
  - (b) the health and safety of the workers at the workplace.

- (4) Despite subsection (3), the PCBU must not allow the health and safety committee to have access to any personal information concerning a worker without the worker's consent unless the information is in a form that—
- (a) does not identify the worker; and
  - (b) could not reasonably be expected to identify the worker.
- (5) A person who contravenes subsection (1), (3), or (4) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for a body corporate, to a fine not exceeding \$50,000.
- Compare: Model Work Health and Safety Act (Aust) s 79

#### Subpart 4—Right to cease or direct cessation of unsafe work

##### **90 Meaning of cease work**

In this subpart, unless the context otherwise requires, **cease work** means—

- (a) to cease, or refuse, to carry out work under section 91;  
or
- (b) to cease work on a direction under section 92.

Compare: Model Work Health and Safety Act (Aust) s 83

##### **91 Right of worker to cease unsafe work**

- (1) A worker may cease, or refuse to carry out, work if the worker believes that carrying out the work would expose the worker, or any other person, to a serious risk to the worker's or other person's health or safety arising from an immediate or imminent exposure to a hazard.
- (2) A worker may continue to refuse to carry out the work if—
- (a) the worker attempts to resolve the matter with the PCBU as soon as practicable after first refusing to do the work; and
  - (b) the matter is not resolved; and
  - (c) the worker believes on reasonable grounds that carrying out the work would expose the worker or any other person to a serious risk to the worker's or other person's health or safety, arising from an immediate or imminent exposure to a hazard.

- (3) For the purposes of subsection (2)(c), **reasonable grounds** exist if a health and safety representative has advised the worker of the matter described in that subsection.
- (4) A worker who ceases work under subsection (1) must, as soon as practicable, notify the PCBU that the worker has ceased work.
- (5) Subsection (1) does not authorise a worker to refuse to do work that, because of its nature, inherently or usually carries an understood risk to the worker's health and safety, unless that risk has materially increased beyond the understood risk.
- (6) To avoid doubt, nothing in this section limits an employee's right to refuse to do work under any other enactment or the general law.

Compare: Model Work Health and Safety Act (Aust) s 84; 1992 No 96 s 28A

## **92 Health and safety representative may direct unsafe work to cease**

- (1) A health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative has a reasonable concern that carrying out the work would expose the worker, or any other person, to a serious risk to the worker's or other person's health or safety, arising from an immediate or imminent exposure to a hazard.
- (2) The health and safety representative must not give a direction under subsection (1) unless the matter is not resolved after consulting about the matter with the PCBU for whom the workers are carrying out work.
- (3) Despite subsection (2), the health and safety representative may direct the worker to cease work without carrying out that consultation if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.
- (4) The health and safety representative must carry out the consultation as soon as practicable after giving a direction under subsection (3).

- (5) The health and safety representative must inform the PCBU of any direction given by the health and safety representative to a worker under subsection (1).
- (6) Subsection (1) does not authorise a health and safety representative to give a direction to a worker to cease work that, because of its nature, inherently or usually carries an understood risk to health and safety unless the risk has materially increased beyond the understood risk.
- (7) A health and safety representative must not give a direction to cease work under subsection (1) unless the representative has—
  - (a) completed training prescribed by or under the regulations; or
  - (b) previously completed the training when acting as a health and safety representative for another work group.

Compare: Model Work Health and Safety Act (Aust) s 85(1), (2), (4),(5); 1992 No 96 s 28A

### **93 Alternative work**

- (1) If a worker ceases work under this subpart, the PCBU may direct the worker to carry out alternative work at the same or another workplace if that work is safe and appropriate for the worker to carry out until the worker can resume normal duties.
- (2) A worker who ceases work under this subpart must remain available to carry out alternative work as directed by the PCBU under subsection (1).
- (3) For the purposes of this section, **alternative work** means—
  - (a) for a worker who is an employee, work within the scope of the person's employment agreement;
  - (b) for a worker who is not an employee, work within the scope of the worker's contract.
- (4) In addition, a worker may agree (but cannot be directed) to do other work that is safe and appropriate for the worker.

Compare: Model Work Health and Safety Act (Aust) s 87

**94 Regulator may assist to resolve issues relating to cessation of work**

The health and safety representative, the PCBU, or the worker may ask the regulator to assist in resolving an issue relating to the cessation of work.

Compare: Model Work Health and Safety Act (Aust) s 89

**Subpart 5—Provisional improvement notices****95 Provisional improvement notices**

- (1) This section applies if a health and safety representative reasonably believes that a PCBU is contravening, or is likely to contravene, a provision of this Act or the regulations.
- (2) The health and safety representative may issue a provisional improvement notice requiring the person to—
  - (a) remedy the contravention; or
  - (b) prevent a likely contravention from occurring; or
  - (c) remedy the things or operations causing the contravention or likely contravention.
- (3) However, the health and safety representative must not issue a provisional improvement notice to a person unless he or she has first consulted the person.
- (4) A health and safety representative must not issue a provisional improvement notice in relation to a matter if an inspector has already issued an improvement notice or prohibition notice in relation to the same matter.

Compare: Model Work Health and Safety Act (Aust) s 90

**96 Competency requirements**

A health and safety representative must not issue a provisional improvement notice unless the representative has—

- (a) completed training prescribed by or under the regulations; or
- (b) previously completed that training when acting as a health and safety representative for another work group.

Compare: Model Work Health and Safety Act (Aust) s 90(4)

**97 Requirements relating to provisional improvement notices**

- (1) A provisional improvement notice must be in writing.

- (2) A provisional improvement notice must state—
- (a) that the health and safety representative believes the person is contravening, or is likely to contravene, a provision of this Act or the regulations (as the case may be); and
  - (b) the provision the representative believes is being, or is likely to be, contravened; and
  - (c) briefly, how the provision is being, or is likely to be contravened; and
  - (d) the day, at least 8 days after the notice is issued, by which the person is required to remedy the contravention or likely contravention.

Compare: Model Work Health and Safety Act (Aust) ss 91, 92

**98 Provisional notice may give directions to remedy contravention**

- (1) A provisional improvement notice may include directions relating to—
- (a) the measures to be taken to remedy the contravention or prevent the likely contravention; or
  - (b) the matters or activities causing the contravention or likely contravention to which the notice relates.
- (2) A direction included in a provisional improvement notice may—
- (a) refer to an approved code of practice;
  - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention or prevent the likely contravention.
- (3) Subsection (2) does not limit subsection (1).

Compare: Model Work Health and Safety Act (Aust) s 93

**99 Minor changes to provisional improvement notice**

A health and safety representative may make minor changes to a provisional improvement notice—

- (a) for clarification; or
- (b) to correct errors or references; or
- (c) to reflect changes of address or other circumstances.

Compare: Model Work Health and Safety Act (Aust) s 94

**100 Issue of provisional improvement notice**

A provisional improvement notice may be issued to a person in accordance with section 00.

Compare: Model Work Health and Safety Act (Aust) s 95

**101 Cancellation of provisional improvement notice**

(1) The health and safety representative may, at any time, cancel a provisional improvement notice issued to a person by written notice given to that person.

(2) A cancellation must be notified in the same way that the notice was issued.

Compare: Model Work Health and Safety Act (Aust) s 96

**102 Display of provisional improvement notice**

(1) A person to whom a provisional improvement notice is issued must, as soon as practicable, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice.

(2) A person must not intentionally remove, destroy, damage, or deface a notice displayed under subsection (1) during the period that the notice is in force.

(3) A person who contravenes this subsection (1) or (2) commits an offence and is liable on conviction,—

(a) for an individual, to a fine not exceeding \$5,000;

(b) for a body corporate, to a fine not exceeding \$25,000.

Compare: Model Work Health and Safety Act (Aust) s 97

**103 Irregularities or defects in notice**

A provisional improvement notice is not invalid merely because of—

(a) a defect, irregularity, omission, or want of form unless the defect, irregularity, omission, or want of form causes or is likely to cause substantial injustice; or

(b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person.

Compare: Model Work Health and Safety Act (Aust) s 98

**104 Offence relating to breach of provisional improvement notice**

- (1) This section applies if a provisional improvement notice has been issued to a person and an inspector has not been required under section 106 to review the notice.
- (2) The person must comply with the provisional improvement notice within the time specified in the notice by remedying the contravention or avoiding any likely contravention (as the case may be).
- (3) For the purposes of subsection (2), the person may comply with the notice in a different way from that directed by the health and safety representative as long the person substantially complies with the requirement to remedy the contravention or avoid any likely contravention.
- (4) A person who contravenes subsection (2) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$50,000;
  - (b) for a body corporate, to a fine not exceeding \$250,000.

Compare: Model Work Health and Safety Act (Aust) s 99

**105 Review of provisional improvement notice**

- (1) A person specified in subsection (2) may, within 7 days after a provisional improvement notice is issued to the person, ask the regulator to appoint an inspector to review the notice.
- (2) The persons are—
  - (a) the person to whom the notice was issued; and
  - (b) if the person is a worker, the PCBU at the workplace at which the worker carries out work.
- (3) If a request is made under subsection (1), the provisional improvement notice is stayed until the inspector makes a decision on the review.

Compare: Model Work Health and Safety Act (Aust) s 100

**106 Regulator must ensure inspector reviews notice**

- (1) The regulator must ensure that, as soon as practicable after a request is made under section 105, an inspector—
  - (a) reviews the provisional improvement notice; and



- (b) inquires into the circumstances that are the subject of the provisional improvement notice.
- (2) An inspector may review a provisional improvement notice even if the period for compliance with the notice has expired.  
Compare: Model Work Health and Safety Act (Aust) s 101

**107 Decision of inspector on review of provisional improvement notice**

- (1) After reviewing the provisional improvement notice, the inspector must—
  - (a) confirm the provisional improvement notice; or
  - (b) confirm the provisional improvement notice with changes; or
  - (c) cancel the provisional improvement notice.
- (2) The inspector must give a copy of his or her decision to—
  - (a) the applicant for the review of the provisional improvement notice; and
  - (b) the health and safety representative who issued the notice.
- (3) A provisional improvement notice that is confirmed (with or without changes) by an inspector must be treated as an improvement notice issued by the inspector under this Act.  
Compare: Model Work Health and Safety Act (Aust) s 102

**Subpart 6—Prohibition of adverse, coercive,  
or misleading conduct**

**108 Meaning of adverse conduct**

- (1) For the purposes of this subpart, a person engages in **adverse conduct** if—
  - (a) the person—
    - (i) dismisses a worker who is an employee; or
    - (ii) terminates a contract for services with a worker; or
    - (iii) refuses or omits to employ or engage any person on work of any description that is available and for which that person is qualified; or
    - (iv) refuses or omits to offer or afford to the worker the same terms of employment or engagement,

- conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other workers of the same or substantially similar qualifications, experience, or skills employed or engaged in the same or substantially similar circumstances; or
- (v) subjects the worker to any detriment, in circumstances in which other workers employed or engaged by the person on work of that description are not or would not be subjected to such detriment; or
  - (vi) retires the worker, or requires or causes the worker to retire or resign or terminate a contract for services; or
- (b) the person terminates a commercial arrangement with another person; or
  - (c) the person refuses or fails to enter into a commercial arrangement with another person.
- (2) For the purposes of this subpart, a person also engages in adverse conduct if the person organises to take any action referred to in subsection (1) or threatens to organise or take that action.
- (3) For the purposes of subsection (1)(a)(v), **detriment** includes anything that has a detrimental effect on the worker's employment or engagement, job performance, or job satisfaction.
- Compare: Model Work Health and Safety Act (Aust) s 105

### 109 Meaning of prohibited health and safety reason

For the purposes of this subpart, adverse conduct is engaged in for a **prohibited health and safety reason** if it is engaged in because the worker or prospective worker or the person referred to in section 108(1)(b) or (c) (as the case requires)—

- (a) is, has been, or proposes to be, a health and safety representative or a member of a health and safety committee; or
- (b) undertakes, has undertaken, or proposes to undertake, another role under this Act; or
- (c) performs, has performed, or proposes to perform a function—

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- (i) as a health and safety representative or as a member of a health and safety committee; or
  - (ii) under this Act; or
  - (iii) under this Act in a particular way; or
  - (d) refrains from, has refrained from, or proposes to refrain from, performing a function under this Act or under this Act in a particular way; or
  - (e) exercises, has exercised, or proposes to, exercise a power—
    - (i) as a health and safety representative or as a member of a health and safety committee; or
    - (ii) under this Act; or
    - (iii) under this Act in a particular way; or
  - (f) refrains from, has refrained from, or proposes to refrain from, exercising a power under this Act or under this Act in any particular way; or
  - (g) assists, has assisted, or proposes to assist, or gives, has given, or proposes to give any information to any person performing a function or exercising a power under this Act; or
  - (h) raises, has raised, or proposes to raise, an issue or concern about health and safety with—
    - (i) the PCBU; or
    - (ii) the regulator or an inspector; or
    - (iii) a worker's representative; or
    - (iv) another worker; or
    - (v) a health and safety representative; or
    - (vi) a member of a health and safety committee; or
    - (vii) any other person who has a duty under this Act in relation to the matter; or
    - (viii) any other person performing a function or exercising a power under this Act; or
  - (i) is involved in, has been involved in, or proposes to be involved in, resolving a health and safety issue under this Act; or
  - (j) is taking action, has taken action, or proposes to take action, to seek compliance by any person with any duty or obligation under this Act; or

(k) has ceased work under section 91 or 92.

Compare: Model Work Health and Safety Act (Aust) s 106

#### **110 Prohibition on adverse conduct**

- (1) A person must not engage in adverse conduct for a prohibited health and safety reason.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$100,000;
  - (b) for a body corporate, to a fine not exceeding \$500,000.
- (3) However, a person commits an offence under subsection (1) only if the prohibited health and safety reason was the dominant reason for the adverse conduct.

Compare: Model Work Health and Safety Act (Aust) s 104

#### **111 Prohibition on requesting, instructing, inducing, encouraging, authorising, or assisting adverse conduct**

- (1) A person must not request, instruct, induce, encourage, authorise, or assist another person to engage in adverse conduct in contravention of section 110.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$100,000;
  - (b) for a body corporate, to a fine not exceeding \$500,000.

Compare: Model Work Health and Safety Act (Aust) s 107

#### **112 Prohibition on coercion or inducement**

- (1) A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce or induce the other person, or a third person,—
  - (a) to perform or not to perform, or to propose to perform or not to perform, a function under this Act or a function under this Act in a particular way; or
  - (b) to exercise or not to exercise, or propose to exercise or not to exercise, a power under this Act or a power under this Act in a particular way; or
  - (c) to refrain from seeking, or continuing to undertake, a role under this Act.

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- (2) For the purposes of subsection (1), the following are not to be treated as an action with intent to coerce or induce a person:
- (a) a reasonable direction given by a constable:
  - (b) a reasonable direction given by an emergency services worker in an emergency.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$100,000:
  - (b) for a body corporate, to a fine not exceeding \$500,000.
- (4) In this section,—
- emergency services worker** includes a person who has a legal duty (under any enactment, employment agreement, other binding agreement or arrangement, or other source) to, at the scene of an emergency, provide 1 or more of the following services:
- (a) ambulance services, first aid, or medical or paramedical care:
  - (b) services provided by or on behalf of a fire brigade (within the meaning of section 2(1) of the Fire Service Act 1975) to save life or property

**taking action or threatening to take action** against a person includes not taking a particular action or threatening not to take a particular action in relation to that person.

Compare: Model Work Health and Safety Act (Aust) s 108

### 113 Misrepresentation

- (1) A person must not knowingly or recklessly make a false or misleading representation to another person about that other person's—
- (a) rights or obligations under this Act; or
  - (b) ability to initiate, or participate in, a process or proceedings under this Act; or
  - (c) ability to make a complaint or an inquiry to a person or body empowered under this Act to seek compliance with this Act.
- (2) Subsection (1) does not apply if the person to whom the representation is made would not be expected to rely on it.

- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$100,000;
  - (b) for a body corporate, to a fine not exceeding \$500,000.
- Compare: Model Work Health and Safety Act (Aust) s 109

#### **114 Proof of adverse conduct**

- (1) This section applies if, in proceedings for an offence of contravening section 110 or 111, the prosecution—
- (a) proves that the adverse conduct was engaged in; and
  - (b) proves that a prohibited health and safety reason existed at the time the adverse conduct was engaged in; and
  - (c) adduces evidence that the adverse conduct was engaged in for a prohibited health and safety reason.
- (2) The prohibited health and safety reason alleged for the adverse conduct is presumed to be the dominant reason for that conduct unless the accused proves, on the balance of probabilities, that the reason was not the dominant reason for the conduct.
- Compare: Model Work Health and Safety Act (Aust) s 110(1), (2)

### Subpart 7—Civil proceedings in relation to adverse or coercive conduct

#### *Civil proceedings in relation to adverse or coercive conduct*

#### **115 Civil proceedings in relation to engaging in or inducing adverse or coercive conduct**

- (1) An eligible person may apply to the District Court for 1 or more orders specified in subsection (2) in relation to a person who has—
- (a) engaged in adverse conduct for a prohibited health and safety reason; or
  - (b) requested, instructed, induced, encouraged, authorised, or assisted another person to engage in adverse conduct for a prohibited health and safety reason; or
  - (c) breached section 112 (which relates to the prohibition on coercion or inducement).
- (2) The orders are—

- (a) an injunction restraining the person from engaging in conduct described in subsection (1); or
  - (b) for conduct referred to in subsection (1)(a) or (b), an order that the person pay compensation that the court considers appropriate to the person who was the subject of the adverse conduct; or
  - (c) any other order that the court considers appropriate.
- (3) The District Court may grant an interim injunction restraining a person from engaging in conduct described in subsection (1) if, in its opinion, it is desirable to do so.
- (4) For the purposes of this section, a person may be found to have engaged in adverse conduct for a prohibited health and safety reason only if a prohibited health and safety reason was a substantial reason for the conduct.
- (5) For the purposes of this section, **eligible person** means—
- (a) a person affected by conduct described in subsection (1) or the person’s representative; but
  - (b) does not include an employee (or that employee’s representative) in relation to conduct of that employee’s employer or former employer.

Compare: Model Work Health and Safety Act (Aust) s 112

### **116 Procedure for civil proceedings for adverse conduct**

- (1) A proceeding brought under section 115 must be commenced not more than 1 year after the date on which the action or conduct occurred or came to the notice of the worker, whichever is the later.
- (2) In a proceeding under section 115 in relation to conduct referred to in section 115(1)(a) or (b), if a prohibited health and safety reason is alleged for adverse conduct, that reason is presumed to be a substantial reason for that conduct unless the defendant proves, on the balance of probabilities, that the reason was not a substantial reason for the conduct.
- (3) It is a defence to a proceeding under section 115 in relation to conduct referred to in section 115(1)(a) or (b) if the defendant proves that—
- (a) the conduct was reasonable in the circumstances; and

- (b) a substantial reason for the conduct was to comply with the requirements of this Act or the relevant health and safety legislation.

Compare: Model Work Health and Safety Act (Aust) s 113

### *General provisions*

#### **117 General provisions**

- (1) Subject to subsections (2) and (3), the bringing of a prosecution under section 110, 111, or 112 does not prevent, in respect of the same conduct,—
  - (a) the bringing of a civil proceeding under section 115; or
  - (b) a personal grievance being raised under the Employment Relations Act 2000.
- (2) If the District Court orders reparation to be paid under the Sentencing Act 2002 following conviction of a person under section 110, 111, or 112—
  - (a) the District Court may not order compensation to be payable in respect of the same losses in a civil proceeding under section 115:
  - (b) the Employment Relations Authority may not order compensation to be payable in respect of the same losses in relation to a personal grievance under the Employment Relations Act 2000.
- (3) If, in respect of an action referred to in subsection (1)(a) or (b), the District Court or the Employment Relations Authority orders compensation to be payable for the conduct, the same losses cannot be the subject to an order of reparation under the Sentencing Act 2002.

Compare: Model Work Health and Safety Act (Aust) s 114

#### **118 Part does not apply to prisoners**

- (1) Nothing in this Part applies to a worker who is a prisoner in custody who is carrying out work inside a prison.
- (2) In subsection (1), **prison** and **prisoner** have the same meanings as in section 3(1) of the Corrections Act 2004.

Compare: Model Work Health and Safety Act (Aust) s 103



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**Part 4**  
**Amendments to Employment Relations**  
**Act 2000**

**119 Principal Act**

This part amends the Employment Relations Act 2000 (the **principal Act**).

**120 Section 67B amended (Effect of trial provision under section 67A)**

In subsection (3), replace “section 103(1)(b) to (g)” with “section 105(1)(b) to (h)”.

**121 Section 103 amended (Personal grievance)**

In section 103(1), add:

- “(h) that the employee’s employer has, in relation to the employee,—
  - “(i) engaged in adverse conduct for a prohibited health and safety reason; or
  - “(ii) has contravened section 112 of the Health and Safety Reform Act 2013 (which prohibits coercion or inducement).”

**122 Section 104 amended (Discrimination)**

In section 104, omit “or by reason directly or indirectly of that employee’s refusal to do work under section 28A of the Health and Safety in Employment Act 1992,”.

**123 Section 107 amended (Definition of involvement in activities of union for purposes of section 104)**

Repeal section 107(2).

**124 New section 110A inserted**

After section 110, insert:

**“110A Adverse conduct for prohibited health and safety reason**

- “(1) For the purposes of this Part, an employer engages in adverse conduct for a prohibited health and safety reason if the employer or a representative of the employer, for a prohibited health and safety reason,—

- “(a) dismisses an employee; or
  - “(b) refuses or omits to offer or afford to the employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or
  - “(c) subjects the employee to any detriment, in circumstances in which other employees employed by the employer on work of that description are not or would not be subjected to such detriment; or
  - “(d) retires the employee, or requires or causes the employee to retire or resign.
- “(2) For the purposes of subsection (1), conduct described in that section is engaged in for a prohibited health and safety reason if it is engaged in for a reason described in section 109 of Health and Safety Reform Act 2013.
- “(3) An employer may be found to have engaged in adverse conduct for a prohibited health and safety reason only if the prohibited health and safety reason was a substantial reason for the conduct.
- “(4) For the purposes of subsection (3), a prohibited health and safety reason is presumed to be a substantial reason for the conduct unless the employer proves, on the balance of probabilities, that the reason was not a substantial reason for the conduct.
- “(5) It is a defence to an action for a personal grievance under section 103(1)(h)(i) if the employer proves that—
- “(a) the conduct was reasonable in the circumstances;
  - “(b) a substantial reason for the conduct was to comply with the requirements of the Health and Safety at Work Act or other relevant health and safety legislation (within the meaning of section 3 of the Health and Safety (Pike River Implementation) Act 2013).
- “(6) For the purposes of this section—
- “(a) an employer also engages in adverse conduct if the employer or a representative of the employer, in relation to the employee—

- “(i) organises to take any action referred to in subsection (1) or threatens to organise or take that action; or
  - “(ii) requests, instructs, induces, encourages, authorises, or assists another person to engage in adverse conduct for a prohibited health and safety reason:
- “(b) **detriment** includes anything that has a detrimental effect on the employee’s employment or engagement, job performance, or job satisfaction. ”

**125 Section 111 amended (Definitions relating to personal grievances)**

In section 111, replace “duress” with “duress, adverse conduct, and prohibited health and safety reason”.