

**Reprint
as at 4 April 2016**

Health and Safety in Employment Amendment Act 2002

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Health and Safety in Employment Amendment Act 2002: repealed, on 4 April 2016, pursuant to section 231(1) of the Health and Safety at Work Act 2015 (2015 No 70).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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Schedule
New Schedule 1A inserted in principal Act

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Health and Safety in Employment Amendment Act 2002.
- (2) In this Act, the Health and Safety in Employment Act 1992 is called “the principal Act”.

Part 1
Preliminary provisions

2 Commencement

This Act comes into force on 5 May 2003.

3 Purpose

The purpose of this Act is to—

- (a) make the principal Act more comprehensive in its coverage, in particular by—
 - (i) including the maritime, rail, and air industries; and
 - (ii) confirming that persons who are mobile while they work are covered; and
 - (iii) providing protection to volunteers, persons receiving on the job training or gaining work experience, and employees on loan; and
 - (iv) confirming that harm can be caused by work-related stress; and
 - (v) confirming that certain temporary conditions may cause a person’s behaviour to be hazardous; and
- (b) include provisions in the principal Act requiring good faith co-operation between employers and employees in relation to health and safety; and
- (c) provide for more effective enforcement of the principal Act; and
- (d) prohibit persons from being indemnified and from indemnifying others against the cost of fines and infringement fees for failing to comply with the principal Act; and
- (e) promote compliance with International Labour Convention 155 concerning Occupational Safety and Health and the Working Environment.

Part 2

Amendments to principal Act

4 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definition of the term **all practicable steps**.
- (2) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **approved code of practice**, the following definition:

Armed Forces has the same meaning as in section 2(1) of the Defence Act 1990.
- (3) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **at work**, the following definition:

coastal cargo has the same meaning as in section 198(6) of the Maritime Transport Act 1994.
- (4) Section 2(1) of the principal Act is amended by repealing the definition of the term **crew**, and substituting the following definitions:

compliance order means an order made under section 137 of the Employment Relations Act 2000

demise charter has the same meaning as in section 2(1) of the Ship Registration Act 1992.
- (5) Section 2(1) of the principal Act is amended by repealing the definition of the term **employee**, and substituting the following definition:

employee, subject to sections 3C to 3F, means any person of any age employed by an employer to do any work (other than residential work) for hire or reward under a contract of service and, in relation to any employer, means an employee of the employer
- (6) Section 2(1) of the principal Act is amended by inserting in the definition of the term **employer**, after the word “employer”, the words, “subject to sections 3C to 3F,”
- (7) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **employer**, the following definition:

enforcement action means,—

 - (a) in relation to an inspector,—
 - (i) the laying of an information under this Act; or
 - (ii) the issuing of an infringement notice under this Act; or
 - (iii) the making of an application for a compliance order; and
 - (b) in relation to a person other than an inspector,—
 - (i) the laying of an information under this Act; or
 - (ii) the making of an application for a compliance order.

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

harm —

- (a) means illness, injury, or both; and
- (b) includes physical or mental harm caused by work-related stress

hazard —

- (a) means an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation, or substance (whether arising or caused within or outside a place of work) that is an actual or potential cause or source of harm; and
- (b) includes—
 - (i) a situation where a person's behaviour may be an actual or potential cause or source of harm to the person or another person; and
 - (ii) without limitation, a situation described in subparagraph (i) resulting from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person's behaviour

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

health and safety committee means a committee established to support the ongoing improvement of health and safety in a place of work

health and safety representative means an employee elected, as an individual or as a member of a health and safety committee or both, to represent the views of employees in relation to health and safety at work.

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

infringement notice means a notice given under section 56B

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

matter, in sections 54, 54A, 54C, 54E, 56B, and 56C, means—

- (a) a failure to comply with this Act or regulations made under this Act; or
- (b) a series of such associated failures arising out of, or relating to, the same incident, situation, or set of circumstances.

- (11) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **Minister**, the following definitions:

New Zealand includes all airspace within the territorial limits of New Zealand

New Zealand ship has the same meaning as in section 2(1) of the Ship Registration Act 1992.

- (12) Section 2(1) of the principal Act is amended by omitting from the definition of the term **place of work** the words “or structure”, and substituting the words “, structure, or vehicle”.
- (13) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **serious harm**, the following definition:
- ship** has the same meaning as in section 2(1) of the Ship Registration Act 1992
- (14) Section 2(1) of the principal Act is amended by adding the following definitions:
- trained health and safety representative** has the meaning set out in section 46A(1)
- union** has the same meaning as in section 5 of the Employment Relations Act 2000
- volunteer** —
- (a) means a person who—
- (i) does not expect to be rewarded for work to be performed as a volunteer; and
- (ii) receives no reward for work performed as a volunteer; and
- (b) does not include a person who is in a place of work for the purpose of receiving on the job training or gaining work experience.
- (15) Section 2 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
- (3) To avoid doubt, a person is in a place of work whenever and wherever the person performs work including in a place that—
- (a) the person moves through; or
- (b) itself moves.

5 New section 2A inserted

The principal Act is amended by inserting, after section 2, the following section:

2A All practicable steps

- (1) In this Act, all practicable steps, in relation to achieving any result in any circumstances, means all steps to achieve the result that it is reasonably practicable to take in the circumstances, having regard to—
- (a) the nature and severity of the harm that may be suffered if the result is not achieved; and
- (b) the current state of knowledge about the likelihood that harm of that nature and severity will be suffered if the result is not achieved; and
- (c) the current state of knowledge about harm of that nature; and

- (d) the current state of knowledge about the means available to achieve the result, and about the likely efficacy of each of those means; and
 - (e) the availability and cost of each of those means.
- (2) To avoid doubt, a person required by this Act to take all practicable steps is required to take those steps only in respect of circumstances that the person knows or ought reasonably to know about.

6 New sections 3A to 3F inserted

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

3A Application of Act to aircraft

- (1) This Act applies to—
- (a) a person employed or engaged to work on board an aircraft; and
 - (b) the person who employs or engages the person specified in paragraph (a); and
 - (c) the aircraft as a place of work.
- (2) However, this Act applies only while an aircraft is—
- (a) operating on a flight beginning at a place in New Zealand and ending at that same place; or
 - (b) operating between 2 places in New Zealand (not as part of a flight beginning or ending outside New Zealand); or
 - (c) operating outside New Zealand, and the person is employed or engaged under an employment agreement or contract for services governed by New Zealand law.
- (3) For the purposes of subsection 2(c), an aircraft operating in New Zealand as part of a flight beginning or ending outside New Zealand must be treated as operating outside New Zealand.
- (4) Section 16 does not apply to an aircraft while it is taking off, flying, or landing.
- (5) To avoid doubt, where this Act applies outside New Zealand, the provisions relating to offences apply even though an act or omission that constitutes an offence occurred in respect of an aircraft outside New Zealand.

3B Application of Act to ships

- (1) This Act applies—
- (a) to a person—
 - (i) employed or engaged under an employment agreement or contract for services governed by New Zealand law to work on board a New Zealand ship or on board a foreign ship carrying coastal car-

- go while the foreign ship is on demise charter to a New Zealand-based operator; or
- (ii) performing work on a foreign ship while it is carrying out petroleum operations in New Zealand continental waters (as defined in section 222(1) of the Maritime Transport Act 1994); and
- (b) to the person who employs or engages the person described in paragraph (a); and
 - (c) to the ship as a place of work.
- (2) Where this Act applies in respect of a New Zealand ship, it applies whether the ship is operating inside or outside New Zealand.
 - (3) Section 16 does not apply to a ship while it is at sea.
 - (4) To avoid doubt, where this Act applies outside New Zealand, the provisions relating to offences apply even though an act or omission that constitutes an offence occurred in respect of a ship outside New Zealand.

3C Application of certain provisions to volunteers doing regular work

- (1) This section applies if—
 - (a) a volunteer does work for another person (being an employer or self-employed person) with the knowledge or consent of the other person; and
 - (b) the volunteer does the work on an ongoing and regular basis for that other person; and
 - (c) the work is an integral part of the business of the employer or self-employed person.
- (2) When this section applies, sections 6 to 12, 19, and Part IV apply with all necessary modifications,—
 - (a) as if the volunteer were an employee of the other person; and
 - (b) as if the other person were the volunteer's employer; and
 - (c) as if the volunteer were at work when doing work for the other person.
- (3) This section does not apply in respect of a volunteer doing any of the following voluntary work activities:
 - (a) participation in a fundraising activity; or
 - (b) assistance with sports or recreation for—
 - (i) a sports club;
 - (ii) a recreation club;
 - (iii) an educational institution; or
 - (c) assistance with activities for an educational institution outside the premises of the educational institution; or
 - (d) providing care for another person in the volunteer's home.

3D Protections for other volunteers

- (1) This section applies in respect of all volunteers doing any voluntary work activity in respect of whom section 3C does not apply.
- (2) The person for whom such a volunteer does the work activity should take all practicable steps to ensure the health and safety of the volunteer while he or she is doing the work activity, in particular by taking hazards into account when planning the work activity.
- (3) If an inspector becomes aware of a significant hazard relating to the work activity, the inspector must, as soon as practicable, contact the person for whom the volunteer is doing the work activity (or the person's representative) to discuss means of eliminating, isolating, or minimising the hazard.
- (4) If this section applies, sections 39, 41, and 49 do not apply.

3E Application of Act to persons receiving on the job training or gaining work experience

- (1) This Act, except for Part 2A, applies when a person who is not an employee is in a place of work for the purpose of receiving on the job training or gaining work experience (**person A**).
- (2) For the purposes of this Act,—
 - (a) person A must be treated as if he or she were an employee of the person who has agreed to provide the on the job training or work experience (**person B**); and
 - (b) person B must be treated as if that person were person A's employer; and
 - (c) person A must be treated as if he or she were at work when in the place of work for the purposes set out in subsection (1).

3F Application of Act to loaned employees

- (1) This Act, except for Part 2A, applies when—
 - (a) an employer or principal (**person A**) places an employee (the **loaned employee**) at the disposal of another person (**person B**, being an employer or a self-employed person) to do work for person B; and
 - (b) there is no contractual relationship between person A and person B regarding the work to be performed by the loaned employee.
- (2) For the purposes of this Act,—
 - (a) a loaned employee must be treated as if he or she were an employee of person B (instead of person A) while the loaned employee is working for person B; and
 - (b) person A has a duty to ensure that the loaned employee is capable of doing the proposed work safely and that person B is aware of person B's duties under this Act; and

- (c) person B must be treated as if person B were the employer of the loaned employee (instead of person A) while the loaned employee is working for person B; and
- (d) the loaned employee must be treated as if he or she were at work when doing work for person B.

7 New section 5 substituted

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

5 Object of Act

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

- (a) promoting excellence in health and safety management, in particular through promoting the systematic management of health and safety; and
- (b) defining hazards and harm in a comprehensive way so that all hazards and harm are covered, including harm caused by work-related stress and hazardous behaviour caused by certain temporary conditions; and
- (c) imposing various duties on persons who are responsible for work and those who do the work; and
- (d) setting requirements that—
 - (i) relate to taking all practicable steps to ensure health and safety; and
 - (ii) are flexible to cover different circumstances; and
- (e) recognising that volunteers doing work activities for other persons should have their health and safety protected because their well-being and work are as important as the well-being and work of employees; and
- (f) recognising that successful management of health and safety issues is best achieved through good faith co-operation in the place of work and, in particular, through the input of the persons doing the work; and
- (g) providing a range of enforcement methods, including various notices and prosecution, so as to enable an appropriate response to a failure to comply with the Act depending on its nature and gravity; and
- (h) prohibiting persons from being indemnified or from indemnifying others against the cost of fines and infringement fees for failing to comply with the Act.

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

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

substituting the words “to provide, make accessible to, and ensure the use by the employees of”.

- (2) Section 10 of the principal Act is amended by adding the following subsections:
- (3) An employer does not comply with subsection (2)(b) by—
 - (a) paying an employee an allowance or extra salary or wages instead of providing the protective clothing or equipment; or
 - (b) requiring an employee to provide his or her own protective clothing or equipment as a pre-condition of employment or as a term or condition in an employment agreement.
- (4) However, an employer does not have to comply with subsection (2)(b) in relation to protective clothing if—
 - (a) an employee genuinely and voluntarily chooses to provide his or her own protective clothing for reasons of his or her comfort or convenience; and
 - (b) the employer is satisfied that the protective clothing is suitable in terms of subsection (2)(b).
- (5) An employee who has chosen to provide his or her own protective clothing under subsection (4) may, after giving reasonable notice to the employer, choose that the employer provide protective clothing under subsection (2)(b) instead of providing it himself or herself.
- (6) Nothing in subsections (4) or (5) derogates from the responsibility of the employer under subsection (2)(b).

9 Information for employees generally

- (1) The heading to section 12 of the principal Act is amended by adding the words “and health and safety representatives”.
- (2) Section 12 of the principal Act is amended by omitting the words “in such a form and manner that the employee is reasonably likely to understand it, information”, and substituting the words “and is provided with ready access to, information in a form and manner that the employee is reasonably likely to understand”.
- (3) Section 12 of the principal Act is amended by adding, as subsection (2), the following subsection:
 - (2) An employer must ensure that all health and safety representatives in a place of work have ready access to sufficient information about health and safety systems and health and safety issues in the place of work to enable the representatives to perform their functions effectively.

10 Section 14 repealed

Section 14 of the principal Act is repealed.

11 New section 18A inserted

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

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

- (1) A person who hires, leases, or loans to another person plant that can be used in a place of work must—
 - (a) ascertain from the other person (so far as is practicable) before hiring, leasing, or loaning the plant—
 - (i) whether the plant is to be used in a place of work; and
 - (ii) if so, the intended use of the plant; and
 - (b) if he or she ascertains that it is to be used in a place of work, take all practicable steps to ensure that the plant is designed and made, and has been maintained, so that it is safe for its intended use.
- (2) A person who sells or supplies (other than in a situation covered by subsection (1)) to another person plant that can be used in a place of work must take all practicable steps to ensure that the plant is designed and made, and has been maintained, so that it is safe for any known intended use or any use of that plant that the person could reasonably expect.
- (3) In addition to the other obligations in this section, if a person who hires, leases, sells, or otherwise supplies to another person plant to be used in a place of work agrees to install or arrange the plant, the person must take all practicable steps to install or arrange the plant so that it is safe for its intended use.
- (4) This section does not apply to the sale of plant, whether or not in trade, if the plant—
 - (a) is secondhand; and
 - (b) is sold as is.
- (5) In subsection (4)(b), as is means that the plant is sold without any representations or warranties about its quality, durability, or fitness, and with the entire risk in those respects to be borne by the buyer.
- (6) This section does not limit the Consumer Guarantees Act 1993.

12 Duties of employees

Section 19(a) of the principal Act is amended by inserting, after the word “work”, the words “(including by using suitable protective clothing and suitable protective equipment provided by the employer or, if section 10(4) applies, suitable protective clothing provided by the employee himself or herself)”.

13 New Part 2A inserted

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

Part 2A

Employee participation

19A Purpose of Part 2A

The purpose of this Part is to require the participation of employees in processes relating to health and safety in the place of work so that—

- (a) all persons with relevant knowledge and expertise can help make the place of work healthy and safe; and
- (b) when making decisions that affect employees and their work, an employer has information from employees who face the health and safety issues in practice.

19B General duty to involve employees in health and safety matters

- (1) Every employer must provide reasonable opportunities for the employer's employees to participate effectively in ongoing processes for improvement of health and safety in the employees' places of work.
- (2) Without limiting subsection (1), ongoing processes for improvement of health and safety include the matters referred to in sections 6 to 13.
- (3) In complying with this Part, an employer must take into account any approved code of practice for employee participation in workplace health and safety.
- (4) If a health and safety committee or a health and safety representative makes a recommendation regarding health and safety in a place of work, the employer must either adopt the proposal or provide a written statement to the health and safety committee or health and safety representative setting out the reasons for not adopting the proposal.
- (5) In subsection (1), reasonable opportunities means opportunities that are reasonable in the circumstances, having regard to relevant matters such as—
 - (a) the number of employees employed by the employer; and
 - (b) the number of different places of work for the employees and the distance between them; and
 - (c) the likely potential sources or causes of harm in the place of work; and
 - (d) the nature of the work that is performed and the way that it is arranged or managed by the employer; and
 - (e) the nature of the employment arrangements, including the extent and regularity of employment of seasonal or temporary employees; and
 - (f) the willingness of employees and unions to develop employee participation systems; and
 - (g) the overriding duty to act in good faith.

19C Development of employee participation system

- (1) This section applies if an employer employs—
 - (a) fewer than 30 employees, whether or not at a single location, and 1 or more of the employees, or a union representing them, requires the development of a system for employee participation; or
 - (b) 30 or more employees, whether or not at a single location.
- (2) The following persons must co-operate in good faith to seek to develop, agree, implement, and maintain a system that sets out the ways in which the employer must seek to comply with section 19B(1):
 - (a) the employer;
 - (b) the employees who wish to be involved;
 - (c) a union or unions representing any of the employees.
- (3) A system must specify a process by which it must be reviewed, but otherwise may include any matters on which the employer, employees, and any union representing them, agree complies with this Part; provided that in doing so they must take into account Part 1 of Schedule 1A and Part 2 of Schedule 1A; and provided further that, at any time after the expiry of 12 months from the date the system is agreed, 1 or more employees or a union on their behalf may initiate the development of a new employee participation system in accordance with this Act.
- (4) A system may include a provision increasing or decreasing the maximum—
 - (a) number of days' paid leave that the employer is required to allow a health and safety representative to take for health and safety training under section 19E(1);
 - (b) total number of days' paid leave that the employer is required to allow health and safety representatives to take for health and safety training under sections 19E(2) and 19F.
- (5) A system may allow for more than 1 health and safety representative or health and safety committee and, in that case, each representative or committee may represent a particular type of work, or place of work of the employer, or another grouping.
- (6) Subsection (2) is complied with if a system of employee participation in health and safety in the place of work is in existence that was implemented before the commencement of this section and if—
 - (a) it complies with section 19B or is amended to comply with section 19B; and
 - (b) it specifies a process for its review or is amended to specify a process for its review; and
 - (c) it is acceptable to the persons referred to in subsection (2).

- (7) If a system is no longer in place, or functioning, a new system must be developed, agreed, implemented, and maintained in accordance with this section.

19D Provisions that apply if employer and employees fail to develop system for employee participation

Part 3 of Schedule 1A applies if an employer is required to seek to develop a system for employee participation under section 19C and a system is not developed within the relevant time period set out in Part 3 of Schedule 1A.

19E Training of health and safety representatives

- (1) An employer must allow a health and safety representative 2 days' paid leave each year to attend health and safety training approved under section 19G.
- (2) The number of days' paid leave that an employer must allow a health and safety representative to take in a year is subject to the maximum total number of days' paid leave that that employer is required to allow under section 19F.
- (3) Sections 78 and 79 of the Employment Relations Act 2000 apply when a health and safety representative is proposing to take, and is taking, the leave as if—
- (a) the representative were an eligible employee; and
 - (b) the leave were employment relations education leave.
- (4) In this section and section 19F, **year** —
- (a) means a period of 12 months beginning on 1 April and ending on the close of 31 March; and
 - (b) includes the period beginning on 5 May 2003 and ending on the close of 31 March 2004.
- (5) Subsections (1) and (2) are subject to section 19C(4).

19F Calculation of maximum total number of days' paid leave for health and safety training

- (1) The maximum total number of days' paid leave that an employer is required to allow in a year under section 19E is based on the number of employees employed by the employer as at the specified date in the year, and is determined in accordance with the following table:

| Employees as at the specified date in a year | Maximum total number of days' paid leave that employer is required to allow to be taken |
|---|--|
| 1–5 | 2 |
| 6–50 | 6 |
| 51–280 | 1 day for every 8 employees or part of that number |
| 281 or more | 35 days plus 5 days for every 100 employees or part of that number |

- (2) In this section, **specified date** —

- (a) means 1 April; and
 - (b) for the period beginning on 5 May 2003 and ending on the close of 31 March 2004, includes 5 May 2003.
- (3) This section is subject to section 19C(4)(b).

19G Minister may approve occupational health and safety training

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

19H System for employee participation in Armed Forces

- (1) This Part does not apply to members of the Armed Forces.
- (2) The Chief of Defence Force must develop and implement a system for employee participation in workplace health and safety for members of the Armed Forces.
- (3) The system must be consistent with section 19B.
- (4) The Chief of Defence Force must consult with the Secretary when developing the system.

19I Meaning of employee in sections 19C(1) and 19F(1)

In sections 19C(1) and 19F(1), an employee means an employee who has worked for his or her employer for at least 180 hours over the previous 12-month period.

14 Codes of practice

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

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

- (2) Section 20(1) of the principal Act is amended by inserting, after paragraph (ac), the following paragraph:

- (ad) a statement of preferred practices or arrangements relating to employee participation in health and safety in the place of work; or.

15 Regulations

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

- (iv) principals, or self-employed persons:

16 Recording and notification of accidents and serious harm

- (1) Section 25 of the principal Act is amended by inserting, after subsection (1), the following subsections:

- (1A) Every self-employed person must maintain (in the prescribed form) a register of accidents and serious harm, and must record in the register the prescribed particulars relating to—
- (a) every accident that harmed (or, as the case may be, might have harmed) the self-employed person at work; and
 - (b) every accident resulting from the work of the self-employed person that harmed (or, as the case may be, might have harmed) any person; and
 - (c) every occurrence of serious harm to the self-employed person—
 - (i) while at work; or
 - (ii) as a result of any hazard to which the self-employed person was exposed while at work.
- (1B) Every principal must maintain (in the prescribed form) a register of accidents and serious harm, and must record in the register the prescribed particulars relating to—
- (a) every accident that the principal becomes aware of that harmed (or, as the case may be, might have harmed) a self-employed person while at work and contracted to the principal; and
 - (b) every accident that the principal becomes aware of—
 - (i) resulting from the work of a self-employed person while at work and contracted to the principal; and
 - (ii) that harmed (or, as the case may be, might have harmed) any person; and
 - (c) every occurrence of serious harm to a self-employed person—
 - (i) while at work and contracted to the principal, or
 - (ii) as a result of any hazard to which the self-employed person was exposed while at work and contracted to the principal.
- (1C) Subsection (1B) does not require the occupier of a home to maintain a register or record accidents or serious harm that occur to self-employed persons at work in the home.

- (2) Section 25(2)(a) of the principal Act is amended by omitting the words “is required by subsection (1)(b) of this section”, and substituting the words “, self-employed person, or principal is required by this section”.
- (3) Section 25 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
 - (3) If there occurs any serious harm or accident to which this subsection applies, the employer, self-employed person, or principal concerned must,—
 - (a) as soon as possible after the occurrence becomes known to the employer, self-employed person, or principal, notify the Secretary of the occurrence; and
 - (b) within 7 days after the occurrence, or, if the occurrence is not known to the employer, self-employed person, or principal within that period, as soon as possible after it becomes known, give the Secretary written notice, in the prescribed manner, of the circumstances of the occurrence.

17 New headings and sections 28A and 28B inserted

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

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

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

- (1) An employee may refuse to do work if the employee believes that the work that the employee is required to perform is likely to cause serious harm to him or her.
- (2) An employee who, under subsection (1), is refusing to do work may continue to refuse to do the work if—
 - (a) the employee attempts to resolve the matter with the employer as soon as practicable after first refusing to do the work; and
 - (b) the matter is not resolved; and
 - (c) the employee believes on reasonable grounds that the work is likely to cause serious harm to him or her.
- (3) Without limiting subsection (2)(c), reasonable grounds exist for the purpose of that paragraph if a health and safety representative has advised the employee that the work that the employee is required to perform is likely to cause serious harm to the employee.
- (4) A health and safety representative must not give advice under subsection (3) unless he or she has reasonable grounds for believing that the work that the employee is required to perform is likely to cause serious harm to the employee.

- (5) An employee may not refuse to do work that, because of its nature, inherently or usually carries an understood risk of serious harm unless the risk has materially increased beyond the understood risk.
- (6) An employee who refuses to do work must do any other work within the scope of the employee's employment agreement that the employer reasonably requests.
- (7) This section does not limit an employee's right to refuse to do work under another enactment or the general law.
- (8) To avoid doubt—
 - (a) in situations to which this section applies, the employer, employee, and health and safety representative must deal with each other in good faith; and
 - (b) a question about the application of this section to a particular situation is an employment relationship problem for the purposes of the Employment Relations Act 2000.
- (9) Subsection (8)(b) does not apply to members of the Armed Forces.

Enforcement by other agencies

28B Enforcement by other agencies

- (1) The Prime Minister may, having regard to the specialist knowledge of relevant agencies, by notice in the *Gazette*, designate an agency to administer this Act for a particular industry, sector, or type of work.
- (2) In carrying out functions under this Act, the chief executive of the agency must comply with policy directions on occupational safety and health given to him or her and signed by the Minister and the Minister responsible for that agency.
- (3) A copy of the policy direction must be presented to the House of Representatives within 10 working days after the date that it is given to the chief executive.
- (4) This Act applies as if references to the Secretary were references to the chief executive of the agency.
- (5) In this section,—

agency means—

 - (a) a government department;
 - (b) a Crown entity within the meaning of section 2(1) of the Public Finance Act 1989;
 - (c) the New Zealand Police;
 - (d) the New Zealand Defence Force

chief executive includes the Commissioner of Police and the Chief of Defence Force.

18 Functions of inspectors

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

19 Powers of entry and inspection

(1) Section 31 of the principal Act is amended by inserting, after subsection (1), the following subsection:

(1A) An inspector may do any of the things referred to in subsection (1), whether or not—

- (a) the inspector or the person whom the inspector is dealing with is in the place of work; or
- (b) the place of work is still a place of work; or
- (c) the employer’s employees work in the place of work; or
- (d) the person who was in control of the place of work is still in control of it; or
- (e) the employer’s employees are still employed by the employer; or
- (f) in respect of a document or information, the document or information is—
 - (i) in the place of work; or
 - (ii) in the place where the inspector is; or
 - (iii) in another place.

(2) Section 31(2) of the principal Act is amended by inserting, after the expression “subsection (1)”, the words “or subsection (1A)”.

20 Powers to take samples and other objects and things

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

(1) An inspector who enters a place of work or a former place of work under section 31 may take or remove a sample of a substance or thing for analysis, or seize and retain any material, substance, or thing, for the purpose of—

- (a) monitoring conditions in the place; or
- (b) determining the nature of any material or substance in the place; or
- (c) determining whether or not this Act has been, is being, or is likely to be complied with; or
- (d) gathering evidence to support the taking of enforcement action.

(2) Section 33 of the principal Act is amended by adding the following subsection:

(3) This section does not allow an inspector to take a sample from a person’s body unless the inspector has that person’s informed consent to the taking of the sample.

21 Matters may be completed by different inspectors

Section 45 of the principal Act is amended by adding, as subsection (2), the following subsection:

- (2) This section does not apply to an infringement notice.

22 New heading and section 46A inserted

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

Hazard notices

46A Trained health and safety representatives may issue hazard notices

- (1) In this section,—
- hazard notice** means a notice that—
- (a) describes a hazard identified in a place of work; and
 - (b) is in the prescribed form; and
 - (c) may set out suggested steps to deal with the hazard
- trained health and safety representative** means a health and safety representative who has achieved a level of competency in health and safety practice specified by the Minister by notice in the *Gazette* or who has completed an appropriate course approved under section 19G.
- (2) Subsection (3) applies if a trained health and safety representative—
- (a) believes on reasonable grounds that there is a hazard in the place of work of the representative's employer; and
 - (b) has brought the hazard to the attention of the employer; and
 - (c) has discussed or attempted to discuss with the employer steps for dealing with the hazard.
- (3) The trained health and safety representative may give the employer a hazard notice if—
- (a) the employer refuses to discuss, or take steps to deal with, the hazard; or
 - (b) the employer and representative do not agree on the steps that must be taken or the time within which the steps must be taken to deal with the hazard; or
 - (c) the representative believes on reasonable grounds that the employer has failed to meet the requirements of section 6 in relation to the hazard within a time agreed during the discussion.
- (4) If a hazard notice has been given by a trained health and safety representative, the representative may notify an inspector of that fact.
- (5) To avoid doubt, where this section applies, the employer and trained health and safety representative must deal with each other in good faith.

(6) In this section, **employer** includes a representative of the employer.

23 Offences likely to cause serious harm

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

- (a) imprisonment for a term of not more than 2 years; or
- (b) a fine of not more than \$500,000; or.

24 Other offences

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

- (1) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$250,000, who fails to comply with the requirements of—
 - (a) a provision of Part 2 other than section 16(3); or
 - (b) section 19B, section 25, section 26, section 37(2), section 39(5), section 42(1), section 43, section 47, section 48, section 56I(2), section 58, or clause 6 of Schedule 1A; or
 - (c) a provision of any regulations made under this Act, or continued in force by section 24, declared by the regulations to be a provision to which this section applies.

25 New section 51A inserted

The principal Act is amended by inserting, after section 51, the following section:

51A Sentencing criteria

- (1) This section applies when the Court is determining how to sentence or otherwise deal with a person convicted of an offence under this Act.
- (2) The Court must apply the Sentencing Act 2002 and must have particular regard to—
 - (a) sections 7 to 10 of that Act; and
 - (b) the requirements of sections 35 and 40 of that Act relating to the financial capacity of the person to pay any fine or sentence of reparation imposed; and
 - (c) the degree of harm, if any, that has occurred; and
 - (d) the safety record of the person (which includes but is not limited to warnings and notices referred to in section 56C) to the extent that it shows whether any aggravating factor is absent; and
 - (e) whether the person has—
 - (i) pleaded guilty:

- (ii) shown remorse for the offence and any harm caused by the offence;
 - (iii) co-operated with the authorities in relation to the investigation and prosecution of the offence;
 - (iv) taken remedial action to prevent circumstances of the kind that led to the commission of the offence occurring in the future.
- (3) This section does not limit the Sentencing Act 2002.

26 Section 52 repealed

Section 52 of the principal Act is repealed.

27 New sections 53 to 54E substituted

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

53 Proof of intention not required

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

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

54 Notification to Secretary of interest in knowing of enforcement action taken by inspector

- (1) A person may notify the Secretary in the prescribed manner that the person has an interest in knowing whether a particular matter has been, is, or is to be, subject to the taking of enforcement action by an inspector.
- (2) The Secretary must ensure that the person who sent the notice is notified of—
 - (a) any decision already made, or subsequently made, by an inspector as to whether or not to take enforcement action in respect of the matter, but not the reasons for the decision; and
 - (b) any information that the Secretary is aware of relating to whether an enforcement authority has taken prosecution action as described in section 54A(2)(b).
- (3) In this section and section 54A, **enforcement authority** includes the New Zealand Police, the Civil Aviation Authority, the Land Transport Safety Authority, and the Maritime Safety Authority.

54A Laying information

- (1) An inspector may lay an information in respect of an offence under this Act unless an infringement notice has been issued to the same defendant in respect of the same matter.
- (2) A person other than an inspector may lay an information in respect of an offence under this Act only if—
 - (a) an inspector or another person has not taken enforcement action against any possible defendant in respect of the same matter; and
 - (b) an enforcement authority has not taken prosecution action under any other Act against any possible defendant in respect of the same incident, situation, or set of circumstances; and
 - (c) any person has received notification from the Secretary under section 54(2) that an inspector has not and will not take enforcement action against any possible defendant in respect of the same matter.
- (3) Despite subsection (2)(b), a person may lay an information even though an enforcement authority has taken prosecution action if—
 - (a) the person has leave of the Court to lay the information; and
 - (b) subsection (2)(a) and (c) is complied with.

54B Time limit for laying information

- (1) An information in respect of an offence against this Act may be laid at any time within 6 months after the earlier of—
 - (a) the date when the incident, situation, or set of circumstances to which the offence relates first became known to an inspector; or
 - (b) the date when the incident, situation, or set of circumstances to which the offence relates should reasonably have become known to an inspector.
- (2) This section is subject to sections 54C and 54D.

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

- (1) This section applies if—
 - (a) an inspector or another person has not taken enforcement action in respect of a matter; and
 - (b) the Secretary has notified relevant persons under section 54(2)(a) that an inspector has not and will not take enforcement action against any possible defendant in respect of the matter.
- (2) On application, the District Court may extend the time for a person other than an inspector to lay an information.
- (3) An application under subsection (2) must be made within 1 month after receiving notice from the Secretary under subsection (1)(b).

- (4) The Court must not grant an extension of time unless it is satisfied—
- (a) that another person wishes to decide whether to lay an information in respect of that matter; and
 - (b) it is unreasonable, having regard to the time taken by an inspector to respond to the matter, to expect, or to have expected, the person to make that decision before the 6-month period referred to in section 54B expires; and
 - (c) an application under section 54D has not been made.
- (5) The Court must give the following persons an opportunity to be heard:
- (a) the person seeking the extension;
 - (b) any proposed defendant;
 - (c) any other person who has an interest in whether or not an information should be laid, being a person described in section 54(1).

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

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

54E Continuing or repeated matters

Nothing in this Act prevents the taking of enforcement action by an inspector or another person in respect of a matter, despite enforcement action having been taken in respect of the matter, if the matter is continuing or repeated.

28 Other provisions relating to offences

- (1) Section 55 of the principal Act is amended by adding the following subsections:
 - (5) An inspector may lay an information for an offence against the Department of Labour, or any other agency designated under section 28B to administer this Act, only with the authority of the Solicitor-General.
 - (6) If the Solicitor-General gives authority under subsection (5), the inspector must be represented in the proceedings by the Crown Solicitor.
- (2) Section 25 of the Crown Organisations (Criminal Liability) Act 2002 is consequentially repealed.

29 New headings and sections 56A to 56I inserted

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

Infringement offences

56A Infringement offences

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

56B Infringement notices

- (1) An inspector may issue an infringement notice if—
 - (a) the inspector believes on reasonable grounds that the person is committing, or has committed, an infringement offence; and
 - (b) the person has had prior warning of the infringement offence under section 56C; and
 - (c) an inspector or another person has not taken enforcement action against the same defendant in respect of the same matter.
- (2) An inspector may revoke an infringement notice before the infringement fee is paid, or an order for payment of a fine is made or deemed to be made by a Court under section 21 of the Summary Proceedings Act 1957.
- (3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.

56C Prior warning of infringement offence

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

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

56D Inspector may require information

- (1) If an inspector is considering issuing to a natural person an infringement notice, the inspector may require the person to provide all or any of the following details:
 - (a) the person's full name:
 - (b) whether, in relation to the place of work, the person is 1 or more of the following:
 - (i) an employer:
 - (ii) an employee:
 - (iii) a self-employed person:
 - (iv) a principal:
 - (v) a contractor:
 - (vi) a subcontractor:
 - (vii) a person who controls the place of work:
 - (c) the person's date of birth:
 - (d) the person's residential address and, if different, postal address.
- (2) If an inspector is considering issuing an infringement notice to a person that is a body corporate, the inspector may require a person who appears to represent the body corporate to provide all or any of the following details:
 - (a) the body corporate's legal name:
 - (b) whether, in relation to the place of work, the body corporate is 1 or more of the following:
 - (i) an employer:
 - (ii) a principal:
 - (iii) a contractor:

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

56E Procedural requirements for infringement notices

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

56F Infringement fees

- (1) The fee to be specified by an inspector in an infringement notice for any infringement offence except for a failure to comply with section 7(1) must be not less than \$100 and not more than \$3,000 (as a multiple of \$100).
- (2) In determining the amount of a fee under subsection (1), an inspector must take into account—
 - (a) whether or not harm resulted from the offence; and
 - (b) if harm resulted from the offence, the extent of the harm; and
 - (c) what potential harm could have resulted from the offence; and
 - (d) in the case of an employer, principal, or contractor, the size of the business of the employer, principal, or contractor; and
 - (e) the financial circumstances of the person; and
 - (f) the safety record of the person (which includes but is not limited to warnings and notices referred to in section 56C).
- (3) The fee to be specified by an inspector in an infringement notice for a failure to comply with section 7(1) must be not less than \$800 and not more than \$4,000 (as a multiple of \$100).
- (4) In determining the amount of a fee under subsection (3), an inspector must take into account—
 - (a) the size of the business of the employer; and
 - (b) the financial circumstances of the employer; and
 - (c) the safety record of the employer (which includes but is not limited to warnings and notices referred to in section 56C).

56G Payment of infringement fee

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

56H Effect of infringement notice

- (1) If an infringement notice is issued, a criminal record must not be created in respect of the infringement offence.
- (2) Subsection (1) does not prevent a court being told, for the purpose of sentencing a person convicted of an offence under this Act, that the person has paid, or is obliged to pay, an infringement fee for a particular infringement offence.

*Insurance against fines unlawful and of no effect***56I Insurance against fines unlawful and of no effect**

- (1) To the extent that an insurance policy or contract of insurance indemnifies or purports to indemnify a person for the person's liability to pay a fine or an infringement fee under this Act,—

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

30 New Schedule 1A inserted

The principal Act is amended by inserting, after the Schedule 1, the Schedule 1A set out in the Schedule.

31 General transitional provision

The principal Act continues to apply as if this Act had not been passed in respect of an incident, situation, or set of circumstances occurring before the commencement of this section.

32 Transitional provision for ships at sea

- (1) The Director of the Maritime Safety Authority is responsible for administering the principal Act for ships at sea until any designation regarding the maritime industry is made under section 28B of the principal Act.
- (2) While subsection (1) applies, the Director must be treated as if he or she were an inspector appointed under section 29(1) of the principal Act.
- (3) This section is subject to section 31.

*Consequential amendments***33 Employment Relations Act 2000 amended**

- (1) Section 104 of the Employment Relations Act 2000 is amended by inserting, after the words “indirectly of that employee’s”, the words “refusal to do work under section 28A of the Health and Safety in Employment Act 1992, or”.
- (2) Section 107 of the Employment Relations Act 2000 is amended by adding, as subsection (2), the following subsection:
 - (2) An employee who is representing employees under the Health and Safety in Employment Act 1992, whether as a health and safety representative (as the term is defined in that Act) or otherwise, is to be treated as if he or she were a delegate of other employees for the purposes of subsection (1)(g).
- (3) Section 137(1)(a) of the Employment Relations Act 2000 is amended by adding the following subparagraph:
 - (xi) Part 2A (other than section 19K) and Schedule 1A of the Health and Safety in Employment Act 1992; or.
- (4) Section 137 of the Employment Relations Act 2000 is amended by repealing subsection (4), and substituting the following subsection:
 - (4) The following persons may take action against another person by applying to the Authority for an order of the kind described in subsection (2):
 - (a) any person (being an employee, employer, union, or employer organisation) who alleges that that person has been affected by non-observance or non-compliance of the kind described in subsection (1):
 - (b) a health and safety inspector appointed under section 29 of the Health and Safety in Employment Act 1992 who alleges that there has been non-observance or non-compliance of the kind described in subsection (1)(a)(xi).
- (5) Section 138(1) of the Employment Relations Act 2000 is amended by repealing paragraph (b), and substituting the following paragraph:
 - (b) on the application of—
 - (i) any party to the matter; or
 - (ii) in the case of section 137(4)(b), a health and safety inspector.

34 Hazardous Substances and New Organisms Act 1996 amended

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

35 Maritime Transport Act 1994 amended

- (1) The Maritime Transport Act 1994 is amended by—
 - (a) repealing paragraph (e) of the Long Title:

- (b) repealing, from section 2(1), the definitions of the terms **all practicable steps** and **significant hazard**:
 - (c) repealing Part 2:
 - (d) repealing sections 61 to 63:
 - (e) repealing section 72:
 - (f) repealing sections 80 and 81.
- (2) Section 198(2) of the Maritime Transport Act 1994 is amended by inserting, after the word “appropriate”, the words “(including any conditions relating to occupational safety and health)”.
- (3) Section 431(1)(h) of the Maritime Transport Act 1994 is repealed.
- 36 Transport Services Licensing Act 1989 amended**
Section 6H of the Transport Services Licensing Act 1989 is repealed.

Schedule
New Schedule 1A inserted in principal Act

s 30

Schedule 1A
Employee participation system

ss 19C(3), 19D

1

**Examples of matters that may be included in agreed system for
employee participation**

1 Examples of matters that may be included in agreed system for employee participation

The following matters are examples of matters that the parties may wish to consider including in an employee participation system developed under section 19C:

- (a) electing health and safety representatives, whether to act independently or as members of a health and safety committee:
- (b) processes for ensuring regular and co-operative interaction between representatives of the employer and employees on health and safety issues generally or on particular issues.

2**Functions of health and safety representatives****2 Functions of health and safety representatives**

The following functions of health and safety representatives are examples of functions that the parties may wish to consider including in an agreed employee participation system developed under section 19C but are mandatory functions for a health and safety representative elected under Part 3 of this schedule:

- (a) to foster positive health and safety management practices in the place of work:
- (b) to identify and bring to the employer's attention hazards in the place of work and discuss with the employer ways that the hazards may be dealt with:
- (c) to consult with inspectors on health and safety issues:
- (d) to promote the interests of employees in a health and safety context generally and in particular those employees who have been harmed at work, including in relation to arrangements for rehabilitation and return to work:
- (e) to carry out any functions conferred on the representative by—
 - (i) a system of employee participation (if a system is developed under section 19C); or
 - (ii) the employer with the agreement of the representative or a union representing the representative, including any functions referred to in a code of practice.

3**Provisions that apply if failure to develop system for employee participation****3 Effect of failure to develop system if fewer than 30 employees**

- (1) This clause applies if—
 - (a) 1 or more employees, or a union representing them, requires the development of a system for employee participation under section 19C(1)(a); and
 - (b) a system is not agreed and implemented within 6 months after the employees request it to be developed.
- (2) The employees, together with any unions representing them, must hold an election for at least 1 health and safety representative to carry out the functions in Part 2 of this schedule.

(3) This clause is subject to clauses 6 and 7.

4 Effect of failure to develop system if 30 employees or more

(1) This clause applies if—

- (a) the development of a system for employee participation is required under section 19C(1)(b); and
- (b) a system is not agreed and implemented within 6 months after the later of—
 - (i) the date of the commencement of this schedule; or
 - (ii) the date when the employer first employs 30 or more employees.

(2) The employees, together with any unions representing them, must hold an election for—

- (a) at least 1 health and safety representative (which may include 1 or more health and safety representatives elected for each particular type of work, or place of work of the employer, or other grouping referred to in section 19C(5)) to carry out the functions in Part 2 of this schedule independently; or
- (b) up to a maximum of 5 health and safety representatives to be members of a health and safety committee (and the representatives must comprise at least half of the committee).

(3) This clause is subject to clauses 6 and 7.

5 Filling vacancy for health and safety representative

(1) The employees, together with any unions representing them, must hold an election if a vacancy arises in a position of health and safety representative.

(2) This clause is subject to clauses 6 and 7.

6 Employees or union may require employer to hold election for health and safety representative

(1) Instead of holding an election as required by clause 3, clause 4, or clause 5, the employees, together with any unions representing them, may notify the employer that they require the employer to hold the election.

(2) The employer must hold the election within 2 months of receiving notification.

(3) This clause is subject to clause 7.

7 Method of electing health and safety representative

(1) An election for a health and safety representative must—

- (a) involve candidates who—
 - (i) work sufficiently regularly and for a sufficient duration to enable them to carry out their functions effectively; and

- (ii) are willing to take on the position; and
 - (b) be conducted through a secret ballot; and
 - (c) give all employees, or all employees in a relevant grouping for the purposes of section 19C(5), a reasonable opportunity to vote; and
 - (d) be determined by the wishes of the majority of those who vote.
- (2) An election is not required if—
- (a) there is only 1 candidate for a position, in which case the candidate automatically fills the position; or
 - (b) there are no candidates for a position, in which case the position is not filled.

Eprint notes

1 *General*

This is an eprint of the Health and Safety in Employment Amendment Act 2002 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this eprint*

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this eprint*

Health and Safety at Work Act 2015 (2015 No 70): section 231(1)