

**Reprint
as at 4 April 2016**



Health and Safety in Employment Amendment Act 2013

Public Act 2013 No 95
Date of assent 18 November 2013
Commencement see section 2

Health and Safety in Employment Amendment Act 2013: repealed, on 4 April 2016, pursuant to section 231(1) of the Health and Safety at Work Act 2015 (2015 No 70).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 official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Health and Safety in Employment Amendment Act 2013.

2 Commencement

This Act comes into force on 16 December 2013.

3 Principal Act

This Act amends the Health and Safety in Employment Act 1992 (the **principal Act**).

4 Section 2 amended (Interpretation)

- (1) In section 2(1), insert in their appropriate alphabetical order:

Board means the New Zealand Mining Board of Examiners established under section 20D

coal has the meaning given to it in section 19L

industry health and safety representative has the meaning given to it in section 19L

mine operator has the meaning given to it in section 19L

mine worker has the meaning given to it in section 19L

mineral has the meaning given to it in section 19L

mining operation has the meaning given to it in section 19L

permit operator has the meaning given to it in section 19L

quarrying operation has the meaning given to it in section 19N

site health and safety committee has the meaning given to it in section 19L

site health and safety representative has the meaning given to it in section 19L

site senior executive has the meaning given to it in section 19L

tourist mining operation has the meaning given to it in section 19L

tunnelling operation has the meaning given to it in section 19O

WorkSafe means WorkSafe New Zealand established by section 5 of the WorkSafe New Zealand Act 2013

- (2) In section 2(1), replace the definition of **approved code of practice** with:

approved code of practice means a code of practice for the time being approved under section 20A; but where any amendment of the code of practice has been approved under that section, means the code of practice as amended

- (3) In section 2(1), replace the definition of **hazard notice** with:

hazard notice has the meaning given to it in section 19ZF(1) or 46A(1), as applicable

- (4) In section 2(1), replace the definition of **improvement notice** with:

improvement notice means a notice under section 39(1) or (2) or 39A

- (5) In section 2(1), replace the definition of **prohibition notice** with:

prohibition notice means a notice under section 41(1) or 41A

5 New section 3G inserted (Provisions affecting application of amendments to this Act)

After section 3F, insert:

3G Provisions affecting application of amendments to this Act

Schedule 1AA contains application, transitional, and savings provisions that affect other provisions of this Act as from time to time amended, repealed, or repealed and replaced (*see* section 63).

6 Section 11 amended (Employees to be given results of monitoring)

After section 11(3), insert:

- (4) An employer is not required under this section to give an employee the results of monitoring to the extent that those results have already been provided to the employee under section 12A.

7 New sections 12A and 12B and cross-heading inserted

After section 12, insert:

Duties of mine operators in relation to information

12A Mine workers to be given results of monitoring

- (1) This section applies to the results of any monitoring of any mine worker or any mining operation undertaken in compliance with this Act or regulations made under this Act if the monitoring was—
- (a) undertaken by or on behalf of a mine operator; or
 - (b) undertaken by or on behalf of a department (within the meaning of the State Sector Act 1988) or WorkSafe and the results have been given to a mine operator.
- (2) Subject to subsection (3), every mine operator must ensure that—
- (a) every mine worker is given all results to which this section applies of monitoring of the mine worker (whether as an individual or as one of a number of mine workers) in relation to health or safety; and
 - (b) all mine workers are given all results to which this section applies of general monitoring of—
 - (i) conditions in the mining operation; or
 - (ii) the health or safety of mine workers there.
- (3) Every mine operator must ensure that—
- (a) there are omitted from all results to which this section applies given to any individual mine worker all information that identifies, or discloses anything about, any other individual mine worker; and

- (b) there are omitted from all results to which this section applies given to any group of mine workers all information that identifies, or discloses anything about, any individual mine worker.

12B Information for site health and safety representatives

A mine operator must ensure that all site health and safety representatives in the mining operation have ready access to sufficient information about health and safety systems and health and safety issues in the mining operation to enable the representatives to perform their functions and exercise their powers effectively.

8 New section 13AA and cross-heading inserted

After section 13, insert:

Duties of mine operators in relation to training and supervision

13AA Training and supervision of mine workers

Every mine operator must take all practicable steps to ensure that every mine worker who does work of any kind, or uses plant of any kind, or deals with a substance of any kind, in a mining operation—

- (a) has, or is so supervised by a person who has, such knowledge and experience of similar places, and work, plant, or substances of that kind, as to ensure that the mine worker's doing the work, using the plant, or dealing with the substance is not likely to cause harm to the mine worker or other people; and
- (b) is adequately trained in the safe use of all plant, objects, substances, and protective clothing and equipment that the mine worker is or may be required to use or handle.

9 Section 19G amended (Minister may approve occupational health and safety training)

After section 19G(4), insert:

- (5) For the purposes of Part 2B, the reference to a health and safety representative in section 19G(2)(b) means a site health and safety representative.

10 New section 19J inserted (Relationship of this Part with Part 2B)

After section 19I, insert:

19J Relationship of this Part with Part 2B

Except as provided in this Part or Part 2B, nothing in this Part applies to a mining operation.

11 New Part 2B inserted

After Part 2A, insert:

Part 2B

Worker participation in health and safety in mining sector

19K Purpose of Part

The purpose of this Part is to require the participation of mine workers in processes relating to health and safety in a mining operation so that—

- (a) all persons with relevant knowledge and expertise can help make the mining operation healthy and safe; and
- (b) when making decisions that affect mine workers and their work, a mine operator has information from mine workers who face the health and safety issues in practice.

19L Interpretation

In this Act,—

alluvial mining operation means a mining operation carried out above ground and associated with—

- (a) the extraction of gold from river deposits of sand or gravel;
- (b) the extraction of ironsand from sand or gravel

coal means anthracite, bituminous coal, sub-bituminous coal, and lignite, and—

- (a) includes every other substance worked or normally worked with coal; but
- (b) does not include coal in the form of peat

industry health and safety representative means a person appointed in accordance with section 19ZU

licence or other permission means a lease, licence, or other instrument under which a person with an interest in land (including, for example, the owner of the land) permits another person to carry out a mining operation on the land

mine operator means,—

- (a) in respect of a mining operation carried out under a permit granted under the Crown Minerals Act 1991,—
 - (i) the person appointed by the permit operator to manage and control the mining operation; or
 - (ii) the permit operator, if no such person has been appointed;
- (b) in respect of a mining operation (not being a mining operation described in paragraph (a)) carried out under a licence or other permission,—
 - (i) the person appointed to manage and control the mining operation by the person who holds the licence or other permission to carry out mining operations; or

- (ii) the person who holds the licence or other permission to carry out mining operations, if no such person has been appointed:
- (c) in any other case,—
 - (i) the person appointed to manage and control the mining operation by the owner of the land where the mining operation is being carried out; or
 - (ii) the owner of the land where the mining operation is being carried out, if no such person has been appointed

mine worker means a person who works in a mining operation, either as an employee or as a self-employed person

mineral means a naturally occurring inorganic substance beneath or at the surface of the earth, and—

- (a) includes metallic minerals, non-metallic minerals, and precious stones; but
- (b) does not include clay, coal, gravel, limestone, sand, or stone

mining operation has the meaning given to it in section 19M

peat means combustible, soft, porous, or compressed sedimentary deposit of plant origin with a high water content

permit operator has the same meaning as in section 2 of the Crown Minerals Act 1991

quarrying operation has the meaning given to it in section 19N

site health and safety committee means a committee established to support the ongoing improvement of health and safety in a mining operation

site health and safety representative means a mine worker elected as a site health and safety representative, as an individual or as a member of a site health and safety committee, or both

site senior executive means the person appointed as the site senior executive by the mine operator

tourist mining operation means an operation that has the purpose of—

- (a) mine education; or
- (b) mine research; or
- (c) mine tourism

tunnelling operation has the meaning given to it in section 19O.

19M Meaning of mining operation

In this Act, **mining operation**—

- (a) means the extraction of coal and minerals and the place at which the extraction is carried out; and

- (b) includes any of the following activities and the place at which they are carried out:
 - (i) exploring for coal:
 - (ii) mining for coal or minerals:
 - (iii) processing coal or minerals associated with a mine:
 - (iv) producing or maintaining tailings, spoil heaps, and waste dumps:
 - (v) the excavation, removal, handling, transport, and storage of coal, minerals, substances, contaminants, and wastes at the place where the activities described in subparagraphs (i) to (iv) are carried out:
 - (vi) the construction, operation, maintenance, and removal of plant and buildings at the place where the activities described in subparagraphs (i) to (iv) are carried out:
 - (vii) preparatory, maintenance, and repair activities associated with the activities described in subparagraphs (i) to (iv); and
- (c) includes—
 - (i) a tourist mining operation:
 - (ii) a tunnelling operation; but
- (d) does not include—
 - (i) exploring for minerals:
 - (ii) an alluvial mining operation:
 - (iii) a mining operation wholly on or under the seabed on the seaward side of the mean high-water mark:
 - (iv) a quarrying operation.

19N Meaning of quarrying operation

- (1) In this Act, **quarrying operation**—
 - (a) means an activity carried out above ground for the purpose of—
 - (i) extracting any material, other than any coal or any mineral, from the earth; or
 - (ii) processing any material, other than any coal or any mineral, at the place where the material is extracted; and
 - (b) includes the place where an activity described in paragraph (a) is carried out; and
 - (c) includes any place in which any material extracted or processed in a quarry is crushed or screened.
- (2) Subsection (1) applies whether or not the material is to be extracted or processed for commercial gain and whether or not the material is extracted or processed by the use of explosives.

19O Meaning of tunnelling operation

In this Act, **tunnelling operation**—

- (a) means an operation involving extraction of fill with the purpose of creating a tunnel or shaft or enlarging or extending any tunnel or shaft; and
- (b) includes the place where an operation described in paragraph (a) is carried out; but
- (c) excludes any tunnelling operation of a kind declared under section 19P not to be a tunnelling operation.

19P Governor-General may, by Order in Council, exclude operations from section 19O

The Governor-General may, by Order in Council made on the recommendation of the Minister, declare that certain operations or classes of operation are not tunnelling operations for the purposes of section 19O.

19Q General duty to involve mine workers in health and safety matters

- (1) Every mine operator must ensure that there is, for a mining operation, a documented worker participation system that provides reasonable opportunities for the mine workers to participate effectively in ongoing processes for the improvement of health and safety in the mining operation.
- (2) Without limiting subsection (1), **ongoing processes for the improvement of health and safety** include the matters referred to in sections 6 to 13AA.
- (3) In complying with this Part, a mine operator must take into account any relevant approved code of practice.
- (4) If a site health and safety committee or a site health and safety representative makes a recommendation regarding health and safety in a mining operation, the mine operator must either adopt the proposal or provide a written statement to the site health and safety committee or site 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 mine workers in the mining operation; and
 - (b) the likely potential sources or causes of harm in the mining operation; and
 - (c) the nature of the work that is performed and the way that it is arranged or managed by the mine operator; and
 - (d) the nature of the employment arrangements or contracting arrangements, including the extent and regularity of employment or engagement of temporary mine workers; and
 - (e) the willingness of mine workers and unions to develop worker participation systems; and

- (f) in relation to employers and employees, the overriding duty to act in good faith.

Worker participation system

19R Development of worker participation system

- (1) The following persons must co-operate in good faith to seek to develop, agree, implement, and maintain a worker participation system that sets out the ways in which the mine operator must seek to comply with section 19Q(1):
- (a) the mine operator;
 - (b) the mine workers who wish to be involved;
 - (c) a union or unions representing any of the mine workers.
- (2) A worker participation system may include any matters that the mine operator, mine workers, and any union representing them, agree comply with this Part.
- (3) If the system includes provision for site health and safety representatives, those representatives must be elected by the mine workers in the mining operation.
- (4) If 1 or more mine workers request that the system include provision for site health and safety representatives, there must be provision for the election of at least 1 site health and safety representative.
- (5) A system may allow for more than 1 site health and safety representative or 1 site health and safety committee and, in that case, each representative or committee may represent a particular type of work of the mine operator, or another grouping agreed in, or determined in accordance with, the system.

19S Training of site health and safety representatives

- (1) Sections 19E to 19G apply to any site health and safety representative under this Part who is an employee.
- (2) A worker participation system may include a provision increasing or decreasing the maximum—
- (a) number of days' paid leave that the employers of mine workers are required to allow site health and safety representatives who are employees to take for health and safety training under section 19E(1) (as applied by subsection (1));
 - (b) total number of days' paid leave that employers of mine workers are required to allow site health and safety representatives and health and safety representatives to take for health and safety training under sections 19E(2) and 19F (as applied by subsection (1)).
- (3) Despite subsection (2) and section 19E(1) and (2) (as applied by subsection (1)), a worker participation system must ensure that every site health and safety representative who is an employee has sufficient paid leave to attend training

reasonably required to attain the competency requirements for site health and safety representatives prescribed by or under regulations made under this Act.

19T Review and replacement of worker participation systems

- (1) A worker participation system must specify a process by which it must be reviewed.
- (2) At any time after the expiry of 12 months from the date the system is agreed, 1 or more mine workers or a union on their behalf may initiate the development of a new system in accordance with this Act.
- (3) If a system is no longer in place, or functioning, a new system must be developed, agreed, implemented, and maintained in accordance with section 19R.

19U Prescribed provisions apply if no scheme in place

- (1) The provisions prescribed in regulations made under this Act apply if a worker participation system is not developed—
 - (a) within 3 months of the date on which a mining operation begins; or
 - (b) if section 19T(3) applies, within 3 months of the date on which any person initiates the development of a new system.
- (2) If the prescribed provisions apply, and have applied continuously for a period of 6 months or more, 1 or more mine workers or a union on their behalf may initiate the development of a new system in accordance with section 19R.

Site health and safety representatives

19V Election of site health and safety representatives

If a worker participation system provides for the election of 1 or more site health and safety representatives, but does not provide for the conduct of those elections, the requirements for the conduct of elections prescribed in regulations made under this Act apply.

19W Functions of site health and safety representatives

The functions of a site health and safety representative are, in relation to the mining operation in respect of which the representative is appointed,—

- (a) to represent mine workers in matters relating to health and safety;
- (b) to investigate complaints from mine workers regarding health and safety;
- (c) if requested by a mine worker, to represent the worker in relation to a matter relating to health and safety (including a complaint);
- (d) to identify hazards in the mining operation and bring them to the attention of the mine operator or site senior executive;
- (e) to monitor measures taken by the mine operator that are relevant to health and safety;

- (f) to provide feedback to the mine operator or site senior executive about whether the requirements of this Act or regulations made under this Act are being complied with:
- (g) to promote the interests of mine workers who have been harmed at work, including in relation to arrangements for harmed workers' rehabilitation and return to work.

19X No duty on site health and safety representatives

Nothing in this Act imposes a duty on a site health and safety representative in that capacity.

Powers of site health and safety representatives

19Y Competency requirements for exercise of certain powers

A site health and safety representative must not exercise any power under section 19ZA, 19ZG, or 19ZH unless he or she meets the competency requirements for site health and safety representatives prescribed by or under regulations made under this Act.

19Z Power of site health and safety representative to attend interview

With the consent of the mine worker, a site health and safety representative may attend any interview relating to health and safety that the worker has with the mine operator, the site senior executive or any other representative of the mine operator, or an inspector.

19ZA Power of site health and safety representative to enter and inspect mining operation

- (1) A site health and safety representative may enter and inspect any area of a mining operation at any reasonable time to perform the functions of the site health and safety representative.
- (2) Before exercising the power under this section, the site health and safety representative must give reasonable notice to the site senior executive.
- (3) In exercising the power under this section, the site health and safety representative must comply with any reasonable procedures and requirements applying in the mining operation that relate to health and safety.

19ZB Power of site health and safety representative to examine and copy documents

A site health and safety representative may examine and copy any documents relevant to health and safety that are held by the mine operator, if the site health and safety representative has reason to believe that the documents contain information required to assess whether procedures at the mining operation are sufficient to achieve compliance with this Act and any regulations made under this Act.

19ZC Power to require assistance

A site health and safety representative may require the site senior executive or person in charge of the relevant part or aspect of a mining operation to give the site health and safety representative reasonable assistance in the exercise of a power under section 19ZA or 19ZB.

19ZD Power of site health and safety representative to accompany inspector

- (1) A site health and safety representative may accompany an inspector who has, under section 31, entered a mining operation.
- (2) An inspector may refuse to allow a site 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 site health and safety representative being present);
 - (b) if the inspector believes that the presence of the site health and safety representative would prejudice the maintenance of the law, including the investigation and prosecution of offences.
- (3) In this section, **personal information** has the meaning given to it in section 2(1) of the Privacy Act 1993.

19ZE Site health and safety representative may consult inspector

A site health and safety representative may consult with an inspector on any health and safety issue.

19ZF Trained site 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 mining operation; and
 - (b) is in the prescribed form; and
 - (c) may set out suggested steps to deal with the hazard

trained site health and safety representative means a site 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 site health and safety representative—
 - (a) believes on reasonable grounds that there is a hazard in the mining operation; and
 - (b) has brought the hazard to the attention of the site senior executive; and
 - (c) has discussed or attempted to discuss with the site senior executive steps for dealing with the hazard.

- (3) The trained site health and safety representative may give the site senior executive on behalf of the mine operator a hazard notice if—
 - (a) the site senior executive refuses to discuss, or take steps to deal with, the hazard; or
 - (b) the site senior executive 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 mine operator or site senior executive has failed to meet the requirements of this Act or regulations made under this Act in relation to the hazard within a time agreed during the discussion.
- (4) If a hazard notice has been given by a trained site health and safety representative, the site senior executive must notify WorkSafe of that fact.

19ZG Power of site health and safety representative to give notice requiring suspension of mining operation

- (1) This section applies if a site health and safety representative—
 - (a) believes on reasonable grounds that the whole, or a part or an aspect, of a mining operation is likely to cause serious harm to any person; and
 - (b) has discussed or attempted to discuss the matter likely to cause serious harm with the site senior executive.
- (2) The site health and safety representative may give a written notice to the site senior executive ordering the suspension of the whole, or a part or an aspect, of the mining operation.
- (3) The notice must set out the reasons for the site health and safety representative's belief.
- (4) If the site senior executive receives a notice under subsection (2), the site senior executive must stop the mining operation, or the part or aspect of the mining operation, mentioned in the notice.
- (5) If a notice ordering the suspension of the whole, or a part or an aspect, of the mining operation has been given by a site health and safety representative, the site senior executive must notify WorkSafe of that fact.

19ZH Power of site health and safety representative to require mining operation to stop in case of imminent serious harm

- (1) This section applies if a site health and safety representative believes on reasonable grounds that serious harm to any person is likely to be caused imminently by the whole, or a part or an aspect, of a mining operation.
- (2) The site health and safety representative may—

- (a) stop the whole, or a part or an aspect, of the mining operation and immediately advise the person in charge of the operation or part or aspect of the operation; or
 - (b) require the person in charge of the operation or part or aspect of the operation to stop the operation.
- (3) If a site health and safety representative requires a person to stop the whole, or a part or an aspect, of a mining operation, that person must do so.
- (4) The site health and safety representative must, as soon as practicable after exercising the power under subsection (2), advise the site senior executive of the action taken under that subsection and the reasons for the action taken.
- (5) If a site health and safety representative has advised the site senior executive of action taken under subsection (2), the site senior executive must notify WorkSafe of that fact.

19ZI Inspector may cancel order to suspend mining operation

An inspector may cancel the whole or part of a notice given under section 19ZG (whether or not mining operations have stopped pursuant to the notice) or an action taken by a site health and safety representative under section 19ZH(2) if the inspector does not consider that the operation or the part or aspect of the mining operation concerned is likely to cause serious harm to any person.

19ZJ Workers must do other work

If the whole or a part or an aspect of a mining operation is stopped under section 19ZG or 19ZH, a mine worker who is an employee and who was working in the operation or part or aspect of the operation must do any other work within the scope of the worker's employment agreement that the employee's employer reasonably requests.

19ZK Work not to restart until no likelihood of serious harm

The site senior executive must ensure that the operation or part or aspect of the mining operation stopped because a notice is given under section 19ZG, or stopped or required to be stopped under section 19ZH, is not restarted until the site senior executive is satisfied that it is not likely to cause serious harm to any person.

19ZL Protection of site health and safety representatives performing functions or exercising powers

A mine operator or site senior executive must not—

- (a) prevent or attempt to prevent a site health and safety representative from performing his or her functions or exercising his or her powers; or
- (b) penalise a site health and safety representative for performing his or her functions or exercising his or her powers.

19ZM Functions and powers for health and safety purposes only

A site 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.

19ZN Information to be used for health and safety purposes only

- (1) This section applies to any information obtained by a site health and safety representative in the performance of the site health and safety representative's functions or the exercise of the site health and safety representative's powers under this Act.
- (2) A site health and safety representative may—
 - (a) disclose or use the information,—
 - (i) if the information is about a person, only with the person's consent:
 - (ii) only to the extent necessary for the performance of the site health and safety representative's functions or the exercise of the site health and safety representative's powers under this Act:
 - (b) disclose the information—
 - (i) to WorkSafe or a person authorised by WorkSafe only if WorkSafe reasonably believes the disclosure is necessary for administering, monitoring, or enforcing compliance with this Act or any relevant health and safety legislation (as defined in section 3 of the WorkSafe New Zealand Act 2013):
 - (ii) only if the disclosure is authorised or required by law.
- (3) In subsection (2), **disclose** includes to give any person access to information.

19ZO Health and safety representative not to unnecessarily impede production

A site health and safety representative must not unnecessarily impede production at a mining operation when performing functions or exercising powers under this Part.

19ZP Protection from civil and criminal liability

A site health and safety representative is protected from civil and criminal liability for any act that he or she does or omits to do—

- (a) in the performance or intended performance of his or her functions or the exercise or intended exercise of his or her powers under this Act; and
- (b) in good faith.

19ZQ Obligations of mine operators

A mine operator must—

- (a) allow a site health and safety representative to spend such time as is reasonably necessary to perform his or her functions and exercise his or her powers; and
- (b) provide a site health and safety representative with such access to facilities that is reasonably necessary or prescribed in regulations made under this Act to enable the representative to perform his or her functions and exercise his or her powers.

Removal of site health and safety representative

19ZR WorkSafe may remove site health and safety representative

- (1) WorkSafe may, by notice in writing, remove a site health and safety representative from office if WorkSafe considers that the site health and safety representative has failed to perform his or her functions or exercise his or her powers satisfactorily (for example, if the representative has exercised his or her powers for an improper purpose in breach of section 19ZM or disclosed information in breach of section 19ZN).
- (2) The notice under subsection (1) must set out the reasons for WorkSafe's opinion.

19ZS Election of another site health and safety representative

- (1) If a site health and safety representative is removed from office by WorkSafe, another site health and safety representative may be elected.
- (2) Except as provided for in subsection (3), no election for a site health and safety representative to replace the representative who has been removed may be held until the expiry of the period for appeal under section 19ZT or, if an appeal is lodged, until a decision is made on the appeal.
- (3) One or more mine workers may initiate the election of a temporary site health and safety representative to replace the representative who has been removed.
- (4) The term of office of any temporary site health and safety representative ends on the expiry of the period for appeal under section 19ZT or, if an appeal is lodged, when a decision is made on the appeal.
- (5) A temporary health and safety representative has the functions and powers set out in sections 19W and 19Z to 19ZH, and those sections and sections 19X, 19Y, and 19ZI to 19ZQ apply with any necessary modifications.

19ZT Site health and safety representative may appeal against removal

- (1) A site health and safety representative may appeal to a District Court against a decision of WorkSafe to remove him or her.
- (2) The appeal must be brought within 28 days of the date of the notice under section 19ZR.

*Industry health and safety representatives***19ZU Appointment of industry health and safety representatives**

- (1) This section and sections 19ZV to 19ZZD apply only to—
 - (a) a mining operation associated with the extraction of coal and where any person works below ground (**underground coal mining operation**):
 - (b) mine workers who work in an underground coal mining operation:
 - (c) any union that represents mine workers who work in an underground coal mining operation.
- (2) A union or group of mine workers may, in any manner determined by the union or group, appoint a person to be an industry health and safety representative.
- (3) The person appointed must meet the competency requirements for industry health and safety representatives prescribed in regulations made under this Act.
- (4) The union or group of mine workers that appoints an industry health and safety representative must meet the costs of the representative.

19ZV Notice to WorkSafe of appointment or cessation of appointment of representative

A union or group of mine workers that appoints an industry health and safety representative must—

- (a) give notice to WorkSafe of that appointment; and
- (b) provide the prescribed information in relation to that appointment, and a photograph of the representative authenticated in accordance with any prescribed requirements; and
- (c) give notice to WorkSafe within 14 days after the date on which the person ceases to be a representative.

19ZW Functions and powers of industry health and safety representatives

- (1) An industry health and safety representative has, in respect of any mining operation and any mine worker, the functions and powers set out in sections 19W and 19Z to 19ZH, and those sections and sections 19X and 19ZI to 19ZP apply with any necessary modifications.
- (2) In addition to the functions and powers referred to in subsection (1), an industry health and safety representative has the following functions:
 - (a) to participate in investigations into accidents in mining operations that resulted, or could have resulted, in serious harm:
 - (b) to assist with industry-wide initiatives to improve health and safety in mining operations.

19ZX Further provision concerning scope of functions and powers of industry health and safety representatives

An industry health and safety representative may perform his or her functions and exercise his or her powers in relation to any mining operation or mine worker whether or not,—

- (a) in the case of a representative appointed by a union, any worker in the mine, or the relevant mine worker, as the case may be, is a member of that union; or
- (b) in the case of a representative appointed by a group of mine workers, any worker in the mine, or relevant mine worker, as the case may be, is a member of that group.

19ZY Identity cards

- (1) WorkSafe must give each industry health and safety representative an identity card.
- (2) The identity card must be in the prescribed form.
- (3) A person who ceases to be an industry health and safety representative must return his or her identity card to WorkSafe as soon as possible, but within 14 days, after the date on which the person ceases to be a representative.

19ZZ Production or display of identity card

- (1) Before an industry health and safety representative exercises a power under this Part in relation to any person, the representative must—
 - (a) produce his or her identity card to the person; or
 - (b) display the identity card so it is clearly visible to that person.
- (2) An industry health and safety representative who exercises a power under section 19ZA must—
 - (a) produce his or her identity card to the person apparently in charge of the part of the mining operation being entered; or
 - (b) display the identity card so it is clearly visible to that person.
- (3) If the representative is unable, despite reasonable efforts, to comply with subsection (2), the representative must, before leaving the mining operation, leave a written notice stating—
 - (a) the representative's identity; and
 - (b) the address of a place where the representative may be contacted; and
 - (c) the date and time of entry onto the mining operation; and
 - (d) the representative's reasons for entering onto the mining operation.

19ZZA Removal of industry health and safety representative

Sections 19ZR and 19ZT apply to an industry health and safety representative with any necessary modifications.

19ZZB Register of industry health and safety representatives

- (1) WorkSafe must keep and maintain a register of industry health and safety representatives.
- (2) The purpose of the register is to enable members of the public to know the names and contact details of industry health and safety representatives.
- (3) The register may be kept in any manner that WorkSafe thinks fit.
- (4) The register must contain the prescribed information.

19ZZC Alterations to register

WorkSafe may at any time make any amendments to the register that are necessary to reflect any changes in the information referred to in section 19ZZB(4).

19ZZD Search of register

- (1) A person may search the register for a purpose set out in section 19ZZB(2).
- (2) WorkSafe must—
 - (a) make the register available for public inspection, without fee, at reasonable hours at the head office of WorkSafe; and
 - (b) supply to any person, on request and on payment of a reasonable charge, a copy of the register or any extract from it.

12 Section 20 replaced (Codes of practice)

Replace section 20 with:

20 Codes of practice

- (1) WorkSafe may from time to time issue any instrument (a **code of practice**) that is—
 - (a) a statement of preferred work practices or arrangements; or
 - (b) a statement of preferred aims, arrangements, practices, or principles (or any 2 or more of those matters) for the design of plant, protective clothing, or protective equipment, of any kind or description; or
 - (c) a statement of preferred arrangements, characteristics, components, configurations, elements, or states (or any 2 or more of those matters) for manufactured plant, manufactured protective clothing, or manufactured protective equipment, of any kind or description; or
 - (d) a statement of preferred characteristics for any manufactured or processed substance used or capable of being used—

- (i) in or in connection with any protective clothing or protective equipment; or
 - (ii) otherwise for or in connection with protecting people from hazards; or
 - (e) a statement of preferred practices or arrangements relating to employee participation in health and safety in the place of work; or
 - (f) a statement of preferred practices or arrangements relating to worker participation in a mining operation.
- (2) WorkSafe may issue any amendment or revocation of a code of practice.
- (3) Subject to subsection (4), a code of practice may incorporate, adopt, or apply, with or without modification, all or any part of any other document prepared or issued by any body or authority, including the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011.
- (4) WorkSafe must not issue or amend a code of practice in a way that adopts with modification any document previously approved by another Minister of the Crown or any compliance document (within the meaning of the Building Act 2004) without the consent of the other Minister or the chief executive of the department of State responsible for the administration of the Building Act 2004 (as relevant).

20A Code to be approved by Minister

- (1) A code of practice, an amendment to a code of practice, or a revocation of a code of practice has no force or effect until it has been approved by the Minister.
- (2) The Minister must not approve any code, amendment, or revocation, unless—
- (a) at least 28 days have passed since the publication in the *Gazette* of a notice of the intention of WorkSafe to apply for approval; and
 - (b) the Minister has consulted any persons that will be affected by the code, amendment, or revocation (or representatives of those persons), and they have had the opportunity to consider its possible effects and to comment on the effects to the Minister; and
 - (c) the Minister has considered any comments made to the Minister concerning the effects.
- (3) However, the Minister may approve a code, amendment, or revocation without complying with the requirements of subsection (2)(a) or (b) if the Minister is satisfied that sufficient consultation has already taken place in respect of the matters in the code, amendment, or revocation.
- (4) When the Minister approves a code, amendment, or revocation, the Minister must—
- (a) publish a notice of the approval in the *Gazette*; and

- (b) show the date of the approval on the code, amendment, or revocation and publish it in any manner the Minister thinks fit.
- (5) The fact that the Minister has published a notice of approval in the *Gazette* under subsection (4)(a) is conclusive proof that the requirements of this section have been complied with in respect of the approval.

20B Court may have regard to code

- (1) A court may, in determining whether or not a person charged with failing to comply with any provision of this Act has complied with the provision, have regard to any approved code of practice that—
 - (a) was in force at the time of the alleged failure; and
 - (b) in the form in which it was then in force, related to matters of a kind to which the provision relates.
- (2) In any proceedings, a document purporting to be an approved code of practice, or an amendment of an approved code of practice, issued by WorkSafe is, in the absence of proof to the contrary, deemed to be an approved code of practice or an amendment of an approved code of practice.
- (3) Subsection (2) does not affect any other method of proof of an approved code of practice or an amendment of an approved code of practice.

20C Codes to be made available

- (1) WorkSafe must ensure that every approved code of practice is, at all reasonable times, made available to the public for inspection free of charge—
 - (a) in hard copy at every office of WorkSafe; and
 - (b) on an Internet site maintained by, or on behalf of, WorkSafe.
- (2) WorkSafe may charge any person a reasonable fee for—
 - (a) providing the person with a hard copy of an approved code of practice; or
 - (b) allowing the person to use equipment under WorkSafe's control to copy all or any part of an approved code of practice.
- (3) Nothing in this section requires WorkSafe to allow any person to use equipment under WorkSafe's control to copy all or any part of an approved code of practice.

Competencies in mining industry

20D New Zealand Mining Board of Examiners

WorkSafe must establish a board to be known as the New Zealand Mining Board of Examiners.

20E Functions of Board

The Board has the following functions:

- (a) to advise WorkSafe on competency requirements for mine workers:
- (b) to examine applicants, or have applicants examined, for certificates of competence:
- (c) to issue, renew, cancel, and suspend certificates of competence:
- (d) any other function relating to training and competency requirements for participants in the extractives industry conferred on the Board by regulations made under this Act.

20F Membership of Board

- (1) WorkSafe may at any time appoint a member of the Board.
- (2) The appointment of a member of the board must be for a specified period.
- (3) WorkSafe must appoint one of the members of the Board as the chairperson of the board.
- (4) When appointing a member of the Board, WorkSafe must have regard to the need to ensure that the Board has among its members knowledge and experience of—
 - (a) mining operations:
 - (b) health and safety inspection in the mining industry:
 - (c) mining education:
 - (d) mining industry training.
- (5) Without limiting subsection (4), the Board may include 1 or more employees of WorkSafe.
- (6) A member of the board may resign by notice in writing to WorkSafe.
- (7) Clause 15 of Schedule 5 of the Crown Entities Act 2004 (**Schedule 5**) applies to the members of the Board as if they were members of a committee appointed under clause 14 of Schedule 5 by the board of a Crown entity.

20G Proceedings of Board

The Board may determine its own procedure.

20H Board levy

- (1) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, make regulations imposing a levy on mine operators to fund the direct and indirect costs incurred by the Board in performing the Board's functions to the extent they relate to mining operations.
- (2) The regulations must—
 - (a) specify how the levy rate or rates are calculated:

- (b) specify the mine operators or classes of mine operators responsible for paying the levy:
 - (c) specify, if the levy is to be paid at different rates, the mine operators, mining operations, thing being extracted, or other things or the classes of mine operators, mining operations, thing being extracted, or other things to which the different rates apply:
 - (d) specify when and how the levy is to be paid:
 - (e) specify the persons or classes of persons, if any, exempt from paying the levy.
- (3) Without limiting subsections (1) and (2), the regulations may—
- (a) specify the returns to be made to WorkSafe or some other person or body for the purpose of enabling or assisting the determination of amounts of levy payable:
 - (b) specify the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for paying the levy:
 - (c) for the purpose of ascertaining whether the regulations are being complied with,—
 - (i) require the keeping of accounts, statements, and records of a specified class or description by either or both of WorkSafe and the persons responsible for paying the levy; and
 - (ii) require the retention of the accounts, statements, and records for a specified period:
 - (d) provide for the establishment of a dispute resolution process for disputes relating to levies, including—
 - (i) the appointment of persons to resolve the disputes; and
 - (ii) the procedures to be followed by the persons; and
 - (iii) the remuneration of the persons.
- (4) Before making a recommendation under this section, the Minister must—
- (a) receive advice from WorkSafe on the proposed levy; and
 - (b) consult the people responsible for paying the proposed levy.

13 Section 21 amended (Regulations)

Replace section 21(1)(b) with:

- (b) without limiting paragraph (a), imposing duties relating to the health or safety of mine workers on—
 - (i) mine operators:
 - (ii) mine workers:
 - (iii) site senior executives:

- (c) the default worker participation system for the purpose of section 19U:
- (d) the requirements for conducting elections of site health and safety representatives for the purpose of section 19V(1):
- (e) the form of the identity card to be held by an industry health and safety representative:
- (f) prescribing the information to be provided to WorkSafe for the purpose of section 19ZV(b) and any requirements concerning the authentication of any photograph provided under that section:
- (g) prescribing the information to be contained in the register kept under section 19ZZB:
- (h) prescribing functions of the New Zealand Mining Board of Examiners for the purpose of section 20E(d):
- (i) providing for any other matters contemplated by this Act and necessary for its administration or necessary for giving it full effect.

14 Section 22 amended (Application of regulations)

In section 22, insert as subsection (2):

- (2) Regulations under section 21(1)(b) may impose duties—
 - (a) on all mine operators:
 - (b) on mine operators of a particular kind or description:
 - (c) on all site senior executives:
 - (d) on site senior executives of a particular kind or description:
 - (e) on all mine workers:
 - (f) on mine workers of a particular kind or description:
 - (g) in relation to all mining operations:
 - (h) in relation to mining operations of a particular class or description.

15 Section 23 amended (Other provisions relating to regulations)

- (1) In section 23, replace “section 21(1)(a)” with “section 21(1)(a) or (b)” in each place.
- (2) After section 23(1)(e), insert:
 - (ea) the competency requirements to be met by site health and safety representatives and industry health and safety representatives:
- (3) After section 23(1)(f), insert:
 - (fa) the prescribing by WorkSafe, by notice in the *Gazette*, of—
 - (i) requirements to be met for the granting of certificates of competence:

- (ii) other competency requirements for mine workers, site senior executives, site health and safety representatives, and industry health and safety representatives:

16 Section 31 amended (Powers of entry and inspection)

After section 31(6), insert:

- (7) In this section, a reference to an employee includes any mine worker and a reference to an employer includes any mine operator.

17 Section 33 amended (Powers to take samples and other objects and things)

After section 33(3), insert:

- (4) In this section, a reference to an employer includes any mine operator.

18 New section 39A inserted (Inspectors may issue improvement notices in relation to mining operation)

After section 39, insert:

39A Inspectors may issue improvement notices in relation to mining operation

- (1) An inspector may, in relation to a mining operation, give a person written notice to comply with a provision of this Act or of regulations made under this Act, if the inspector believes on reasonable grounds that the person is failing to comply with that provision or is likely to fail to comply with that provision.
- (2) An improvement notice must state that the inspector concerned believes that the person to whom or which it relates is failing, or is likely to fail, to comply with the provision, and must specify—
 - (a) the provision; and
 - (b) the inspector's reasons for believing that the person is failing, or is likely to fail, to comply with the provision; and
 - (c) the nature of the failure or likely failure; and
 - (d) a day before which compliance is to be completed.
- (3) An improvement notice may specify steps that could be taken to ensure compliance with the provision concerned.
- (4) Every person to whom or to which an improvement notice is given or posted must comply with it.
- (5) Nothing in this section limits the power of an inspector under section 39.

19 New section 41A inserted (Inspectors may issue prohibition notices in relation to mining operation)

After section 41, insert:

41A Inspectors may issue prohibition notices in relation to mining operation

- (1) This section applies if, in relation to a mining operation,—
 - (a) an inspector believes that there is a likelihood of serious harm to any person because of a failure to comply with any provision of this Act or of regulations made under this Act; or
 - (b) an inspector believes on reasonable grounds that it is likely that a person will fail to comply with any provision of this Act or of regulations made under this Act and that failure would be likely to cause serious harm to any person.
- (2) The inspector may give written notice to stop, or not start, the carrying on, continuing, operating, storing, transporting, or use of the activity, building, place of work, plant, process, situation, structure, or substance, that the inspector believes to constitute the hazard that is likely to cause serious harm until an inspector is satisfied that measures sufficient to eliminate the hazard, or minimise the likelihood that the hazard will be a source of harm, have been taken.
- (3) A prohibition notice must specify—
 - (a) the hazard to which it relates; and
 - (b) the inspector's reasons for believing that the hazard is likely to cause serious harm.
- (4) A prohibition notice may require the withdrawal of all mine workers of a specified kind or description except such mine workers as may be necessary to deal with the hazard.
- (5) A prohibition notice may specify steps that could be taken to eliminate the hazard or minimise the likelihood that the hazard will be a source of harm.
- (6) Nothing in this section limits the power of an inspector under section 41.

20 Section 42 amended (Service of prohibition notices)

- (1) In section 42(1), after “prohibition notice”, insert “under section 41”.
- (2) In section 42(2), after “notice”, insert “under section 41”.
- (3) After section 42(2) insert:
 - (3) An inspector who gives a prohibition notice under section 41A may—
 - (a) fix the notice to or near the part of the place of work or plant to which it relates and give a copy of it to the site senior executive, or another representative of the mine operator, on behalf of the mine operator; or
 - (b) give the notice to the site senior executive, or another representative of the mine operator, on behalf of the mine operator.
- (4) No person may remove a notice under section 41A served in accordance with subsection (3)(a) unless authorised by an inspector.

21 Section 43 amended (Compliance with prohibition notices)

- (1) In section 43, after “notice”, insert “under section 41”.
- (2) In section 43, insert as subsection (2):
- (2) A mine operator to whom a prohibition notice under section 41A is given must ensure that no action is taken in contravention of it.

22 Section 50 amended (Other offences)

In section 50(1)(b), after “19B,”, insert “section 19Q(1), section 19ZN(2), section 19ZG(4), section 19ZH(3), section 19ZL,”.

23 Section 56D amended (Inspector may require information)

- (1) After section 56D(1)(b)(iii), insert:
 - (iiia) a mine operator:
 - (iiib) a mine worker:
 - (iiic) a site senior executive:
- (2) After section 56D(2)(b)(i), insert:
 - (ia) a mine operator:

24 Section 59 amended (Funding)

- (1) In section 59(1), insert in its appropriate alphabetical order:

certain Crown costs means the expected cost to the Crown of—

 - (a) WorkSafe carrying out its functions under any enactment:
 - (b) any agency designated under section 28B of this Act carrying out functions under this Act and enforcing the Hazardous Substances and New Organisms Act 1996 in places of work:
 - (c) the Crown administering the relevant health and safety legislation (within the meaning of section 3 of the WorkSafe New Zealand Act 2013):
 - (d) collecting the funding levy
- (2) In section 59(2), replace “the expected cost to the Crown of the administration of this Act” with “certain Crown costs”.
- (3) In section 59(5), replace “the Secretary” with “WorkSafe”.

25 New section 63 and Schedule 1AA inserted

- (1) After section 62, insert:

63 Application, savings, and transitional provisions

The application, savings, and transitional provisions set out in Schedule 1AA have effect for the purposes of this Act.

- (2) Before Schedule 1, insert the Schedule 1AA set out in Schedule 1 of this Act.

26 Further amendments

The enactments specified in Schedule 2 are amended in the manner set out in that schedule.

Schedule 1
New Schedule 1AA inserted in principal Act

s 25

Schedule 1AA

s 63

Part 1

**Transitional provisions relating to Health and Safety in Employment
Amendment Act 2013**

1 Existing mining operations

- (1) This clause applies to any mining operation that was in operation immediately before the date on which the Health and Safety in Employment Amendment Act 2013 came into force.
- (2) Nothing in sections 12A, 13AA, 39A, or 41A of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, applies in respect of the mining operation until 1 January 2015.
- (3) The mine operator may, but is not required to, comply with section 19Q(1) of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, before 1 January 2015.
- (4) Section 19J of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, applies in respect of the mining operation from the earlier of—
 - (a) the date on which the mine operator complies with section 19Q(1) of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013; and
 - (b) 1 January 2015.
- (5) If, on 1 January 2015, the mining operation does not have a documented worker participation system referred to in section 19Q(1) of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, the prescribed provisions referred to in section 19U(1) of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, apply.
- (6) Nothing in subclause (3) limits the application of sections 19ZU to 19ZZ of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, in respect of the mining operation.

2 Notices, etc, before site senior executive appointed for existing mining operation

- (1) This clause applies to any mining operation to which clause 1 applies before the mine operator has appointed a site senior executive for the first time in accordance with regulations made under section 21 of the principal Act.
- (2) Any notice required or enabled by the Act to be given to the site senior executive of the mining operation may be given to the mine operator or a representative of the mine operator.
- (3) Sections 19ZF, 19ZG, 19ZH, and 19ZK of the principal Act, as inserted by the Health and Safety in Employment Amendment Act 2013, apply, with any necessary modifications, as if references to the site senior executive were references to the mine operator or a representative of the mine operator.

3 Exemptions of mining operations from regulations for limited period

- (1) Regulations made under section 21(1)(b) of the principal Act may provide for the granting by WorkSafe of an exemption (unconditionally or subject to conditions) in respect of any particular mining operation (whether or not it is one to which clause 1 applies) from one or more obligations or requirements under the regulations for any specified period, or periods, of up to a total of 36 months and ending not later than 31 December 2017.
- (2) The regulations must—
 - (a) specify the reasons for which exemptions may be granted; and
 - (b) require WorkSafe to specify in an exemption the reasons for which the exemption is granted.
- (3) An exemption granted under the regulations is not a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.
- (4) Nothing in this clause limits section 23(1)(k) of the principal Act.

Schedule 2

Consequential amendments

s 26

Employment Relations Act 2000 (2000 No 24)

Replace section 107(2) with:

- (2) An employee who is representing employees under the Health and Safety in Employment Act 1992, whether as a health and safety representative or a site health and safety representative (as those terms are 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).

Privacy Act 1993 (1993 No 28)

In Schedule 2, Part 1, insert in its appropriate alphabetical order:

Health and Safety in Employment Act 1992 section 19ZZB

Reprints notes

1 *General*

This is a reprint of the Health and Safety in Employment Amendment Act 2013 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

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