

# Departmental Disclosure Statement

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Health and Safety Reform Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

10 March 2014.

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## Part One: General Policy Statement

This Bill is an omnibus Bill introduced under Standing Order 260(a) (dealing with an interrelated topic that can be regarded as implementing a single broad policy).

This Bill reforms New Zealand's workplace health and safety system, following the work of the Independent Taskforce on Workplace Health and Safety and the Royal Commission on the Pike River Coal Mine Tragedy. Its main purpose is to provide for a balanced framework to secure the health and safety of workers and workplaces. The Bill is part of a package of major changes to the health and safety system that has already resulted in the establishment of WorkSafe New Zealand. The new health and safety at work regime in the Bill will replace the Health and Safety in Employment Act 1992 and the Machinery Act 1950. The new regime is based on the Australian Model Work Health and Safety Act, with modifications to take account of differences in the New Zealand context. The new regime recognises that a well-functioning health and safety system relies on participation, leadership, and accountability by government, business, and workers. This includes—

- a law that is flexible enough to work appropriately for small and large businesses and high-risk and low-risk sectors, without imposing unnecessary compliance costs;
- obligations placed on the people in a work environment who create the risk and are best able to manage the risk;
- a worker participation model that provides for better levels of participation and helps workers to have the knowledge and accountability to keep their colleagues safe;
- an appropriate system of regulations and guidance to ensure that people understand their obligations and can comply with them;
- an effective enforcement regime with graduated categories of offences and penalties to provide better guidance to the courts about appropriate fine levels;
- a Workplace Health and Safety Strategy that is approved by the Minister of Labour following development through an open consultative process;
- ensuring that participants in the health and safety regulatory system are able to share information where appropriate.

The Bill also makes changes to the Hazardous Substances and New Organisms Act 1996 to integrate the regulation of workplace use of hazardous substances into the workplace health and safety system and to improve the operation of the hazardous substances regime. An objective of these changes is that a majority of businesses will need to comply and interact with only 1 set of health and safety legislative requirements. The Bill also makes amendments to other Acts, including—

- amendments to the Accident Compensation Act 2001 to enable WorkSafe New Zealand (**WorkSafe**) and the Accident Compensation Corporation to work together to improve injury prevention and to increase the Corporation's flexibility in developing incentive programmes for employers and the self-employed;
- amendments to the Employment Relations Act 2000 to integrate expanded health and safety rights and obligations with existing employee protection mechanisms, so that employees who are subjected to adverse conduct for health and safety reasons may take a personal grievance;
- amendments to the WorkSafe New Zealand Act 2013, which are necessary to ensure the functions and powers of WorkSafe are consistent with the relevant health and safety legislation it will be responsible for enforcing;
- consequential amendments to the Electricity Act 1992, Gas Act 1992, and other Acts to ensure a consistent and robust health and safety regulatory system.

It is intended that the Bill be divided into separate Bills at the committee of the whole House stage, so that—

- *Parts 1 to 5* become the Health and Safety at Work Bill:
- *Part 6* becomes the following separate Bills, as a result of amendments to their respective Acts:
  - the Accident Compensation Amendment Bill:
  - the Hazardous Substances and New Organisms Amendment Bill:
  - the Employment Relations Amendment Bill:
  - the WorkSafe New Zealand Amendment Bill.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p><i>Working Safer: a blueprint for health and safety at work</i>, Ministry of Business, Innovation and Employment, August 2013, <a href="http://www.mbie.govt.nz/what-we-do/workplace-health-and-safety-reform">http://www.mbie.govt.nz/what-we-do/workplace-health-and-safety-reform</a></p> <p>Suite of Cabinet papers: <i>Improving Health and Safety at Work</i>, Ministry of Business, Innovation and Employment, August 2013, <a href="http://www.mbie.govt.nz/what-we-do/workplace-health-and-safety-reform">http://www.mbie.govt.nz/what-we-do/workplace-health-and-safety-reform</a></p> <p><i>The Report of the Independent Taskforce on Workplace Health and Safety</i>, 30 April 2013, <a href="http://hstaskforce.govt.nz/media/media-30-04-2013.asp">http://hstaskforce.govt.nz/media/media-30-04-2013.asp</a></p> <p><i>Royal Commission Report, Royal Commission on the Pike River Coal Mine Tragedy</i>, 30 October 2012, <a href="http://pikeriver.royalcommission.govt.nz/">http://pikeriver.royalcommission.govt.nz/</a></p> <p>The two reports from the Australian National Review into Model Occupational Health and Safety Laws (that informed the policy contained in the Australian Model Law, which the Bill is based upon)</p> <p><a href="http://docs.employment.gov.au/system/files/doc/pdf/national_review_into_model_ohs_laws_first_report.pdf">http://docs.employment.gov.au/system/files/doc/pdf/national_review_into_model_ohs_laws_first_report.pdf</a></p> <p><a href="http://docs.employment.gov.au/system/files/doc/pdf/national_review_into_model_ohs_laws_secondreport.pdf">http://docs.employment.gov.au/system/files/doc/pdf/national_review_into_model_ohs_laws_sec ondreport.pdf</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p><i>Regulatory Impact Statement: Improving New Zealand's Workplace Health and Safety System</i>, July 2013, <a href="http://www.mbie.govt.nz/about-us/publications/ris/ris-improving-nzs-workplace-health-and-safety-system.pdf/view">http://www.mbie.govt.nz/about-us/publications/ris/ris-improving-nzs-workplace-health-and-safety-system.pdf/view</a> and <a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>YES</b>
<p>The Regulatory Impact Analysis Team has reviewed the RIS prepared by the Ministry of Business, Innovation and Employment and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.</p> <p>"This is a wide-ranging proposal with many components and involving many different participants. As such it is not possible to be confident that every possible risk and impact has been fully examined. However, the RIS sets out the main options and their likely impacts in sufficient detail to support the decisions being taken." Refer paragraph 116, page 35 of Cabinet Paper, <i>Improving Health and Safety at Work: Overview</i>, Ministry of Business, Innovation and Employment, August 2013, <a href="http://www.mbie.govt.nz/what-we-do/workplace-health-and-safety-reform">http://www.mbie.govt.nz/what-we-do/workplace-health-and-safety-reform</a></p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
Refer: <i>Regulatory Impact Statement: Improving New Zealand's Workplace Health and Safety System</i> , July 2013, <a href="http://www.mbie.govt.nz/about-us/publications/ris/ris-improving-nzs-workplace-health-and-safety-system.pdf/view">http://www.mbie.govt.nz/about-us/publications/ris/ris-improving-nzs-workplace-health-and-safety-system.pdf/view</a> and <a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
Refer: Suite of Cabinet papers: <i>Improving Health and Safety at Work</i> , Ministry of Business, Innovation and Employment, August 2013, <a href="http://www.mbie.govt.nz/what-we-do/workplace-health-and-safety-reform">http://www.mbie.govt.nz/what-we-do/workplace-health-and-safety-reform</a> <i>Improving New Zealand's Workplace Health and Safety System</i> , Ministry of Business, Innovation and Employment, 15 July 2013, <a href="http://mbie.govt.nz/what-we-do/workplace-health-and-safety-reform">http://mbie.govt.nz/what-we-do/workplace-health-and-safety-reform</a> <i>Improving Health and Safety at Work: An Effective Regulatory Framework</i> Ministry of Business, Innovation and Employment, page 7. <a href="http://www.mbie.govt.nz/pdf-library/what-we-do/workplace-health-and-safety-reform/effective-regulatory-framework.pdf">http://www.mbie.govt.nz/pdf-library/what-we-do/workplace-health-and-safety-reform/effective-regulatory-framework.pdf</a>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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Consultation was undertaken with the Ministry of Foreign Affairs and Trade, Maritime New Zealand, the Civil Aviation Authority and the Trade and International Environment Branch of the Ministry of Business, Innovation and Employment to ensure the changes were consistent with New Zealand's international obligations.

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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The Independent Taskforce on Workplace Health and Safety undertook a series of fono and hui as part of the Taskforce's consultation process.

Te Puni Kōkiri was consulted about the Bill prior to its introduction. The Bill will require the development of a Health and Safety Strategy which will include a focus on addressing the issues associated with particular at-risk populations and organisations - including Māori, who are over-represented in industries with persistently high rates of fatality and serious injury.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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Advice provided to the Attorney-General by the ministry of Justice is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
Refer to appendix one	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
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The Ministry of Justice was consulted on the suite of Cabinet papers "*Improving Health and Safety at Work*" and on the draft Bill. Specific consultation occurred in respect of matters relating to offences and penalties prior to the Bill's introduction.

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
Refer to appendix two.	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Office of the Privacy Commissioner (OPC) was consulted on the above proposals concerning data sharing and the use of personal information. Ministry officials worked with OPC to ensure that all privacy concerns were addressed in the final draft Bill.</p> <p>As a result of consultation with OPC, the Bill was amended to clarify where information sharing is mandatory or elective and characterising inter-agency arrangements as “memoranda of understanding” rather than “information sharing agreements”.</p>	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
Refer to appendix one for a full list of agencies and bodies consulted. In addition an exposure draft of Parts 1, 2 and 3 of the Bill was released for public consultation on 29 October 2013. 92 individual stakeholder submissions were received and considered prior to the introduction of the Bill into Parliament.	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p>The proposals in the Bill have been developed and tested with operational staff to ensure they are workable and complete.</p> <p>The Ministry of Business, Innovation and Employment also held workshops with key external stakeholders, including The NZ Council of Trade Unions, Business Leaders Forum, Business New Zealand and the New Zealand Law Society on the exposure draft of the Bill.</p>	



## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
The Bill enables the collection of a health and safety levy and a levy to fund the New Zealand Mining Board of Examiners. These levies are specifically limited to providing cost-recovery and are existing levy raising abilities which are being carried through to the new regime under the Bill.	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>YES</b>
Refer to appendix one.	

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
The Bill specifically allows Crown organisations to be fined in relation to health and safety breaches which depart from standard Crown immunities. The Cabinet Minute is available from: <a href="http://edit.mbie.govt.nz/mbie/pdf-library/what-we-do/workplace-health-and-safety-reform/effective-regulatory-framework-cabinet-minute.pdf">http://edit.mbie.govt.nz/mbie/pdf-library/what-we-do/workplace-health-and-safety-reform/effective-regulatory-framework-cabinet-minute.pdf</a> The Bill grants immunity to health and safety representatives, inspectors, health and safety medical practitioners or persons assisting an inspector or health and safety medical practitioner, in respect of the good faith performance of their functions or exercise of their powers.	

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
The Bill provides for authorisations to be required before a person may carry out an activity, such as operate a mine or a major hazard facility, or to carry out specific types of work.	

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
Refer to appendix two.	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
Refer to appendix two.	

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>YES</b>
The Bill carries over a provision from the existing law that allows for a health and safety medical practitioner, by notice in writing, to require a worker to be examined and for bodily samples to be taken from the worker and analysed. The purpose of this provision is to enable a full examination of the hazards and risks that the worker and others in the workplace may be exposed to, for example in respect of some chemicals as levels of exposure can only be detected in the blood.	

## Appendix One: Further Information Relating to Part Three

### Offences, penalties and court jurisdiction – question 3.4

The Bill will create a number of offences and prescribe the maximum term of imprisonment and fine levels for offences as applicable.

The penalties and fine levels imposed distinguish between individual and corporate offenders. Fine levels under the Bill do not represent a uniform increase in fines seen under the current health and safety legislation, but can represent both a decrease or increase in the fine level imposed depending upon the type of duty holder and the comparable offence under current legislation.

The graduated categories of offences and penalties will be used to provide better guidance to the Courts about appropriate fine levels.

The proposed fine levels are set at a realistic level in relation to the gravity of the conduct which it is intended to punish. Health and safety breaches have a direct impact on individual's lives, livelihood and ability to participate in society.

#### **Offences and Penalties**

The Bill enables regulations to be made creating offences in respect of contravention of regulations and to provide in the regulations for fines not exceeding \$30,000.00.

The Bill enables offences provided for in the Bill to be prescribed as infringement offences by regulation. Regulations will also set levels of infringement fees which can be up to \$20,000.

There is one offence which provides for a penalty of a term of imprisonment not exceeding 5 years and/or a fine not exceeding \$300,000.00 for individuals who are not PCBUs or officers; for an individual who is a PCBU or officer a term of imprisonment not exceeding 5 years and/or a fine not exceeding \$600,000.00; and for any other person a fine not exceeding \$3 million:

- 42 Provides for an offence of reckless conduct in respect of a breach of a health and safety duty.

There is one offence which provides for a penalty of a fine not exceeding \$150,000.00 for individuals who are not PCBUs or officers; for an individual who is a PCBU or officer a fine not exceeding \$300,000.00; and for any other person a fine not exceeding \$1.5 million:

- 43 Provides for an offence for failing to comply with a health and safety duty that exposes an individual to risk of death or serious illness or injury.

There is one offence which provides for a penalty of a fine not exceeding \$50,000.00 for individuals who are not PCBUs or officers; for an individual who is a PCBU or officer a fine not exceeding \$100,000.00; and for any other person a fine not exceeding \$500,000:

- 44 Provides for an offence for failing to comply with a health and safety duty.

There are five offences which provide for a penalty of a fine not exceeding \$100,000.00 for an individual and a fine not exceeding \$500,000.00 for any other person:

- 112 Provides for an offence for engaging in adverse conduct for a prohibited health and safety reason.
- 113 Provides for an offence for requesting, instructing, inducing, encouraging, authorising or assisting another person to engage in adverse conduct.
- 114 Provides for an offence for coercion or inducement of another person to perform or not perform a function or exercise a power under the Bill in a particular way or refraining from seeking or continuing to undertake a role under the Bill.
- 115 Provides for an offence to knowingly or recklessly make false or misleading representations to another person about that person's rights or obligations, ability to

initiate or participation in processes or proceedings under the Bill or to make a complaint or inquiry to a person or body empowered under the Bill to seek compliance with the Bill.

- 129 Provides for an offence to fail to comply with a prohibition notice or any direction given by an Inspector under the Bill.

There are seven offences which provide for a fine not exceeding \$50,000.00 for an individual and a fine not exceeding \$250,000.00 for any other person:

- 55 Provides for an offence for conducting a business or undertaking at a workplace or directing or allowing work to be undertaken at a workplace where the workplace requires authorisation but is not authorised.
- 101 Provides for an offence for failure to comply with a provisional improvement notice.
- 125 Provides for an offence to fail to comply with an improvement notice.
- 132 Provides for an offence to refuse or fail to comply (without reasonable excuse) with a non-disturbance notice.
- 147 Provides for an offence for a person who contravenes an enforceable undertaking given by that person.
- 177 Provides for an offence for failure to comply (without reasonable excuse) with an order made under subpart 7 of part 4 of the Bill but does not include an order made under clauses 174 or 175).
- 178 Provides for an offence for insuring against fines which may be payable under the Bill.

There are seven offences which provide for a fine not exceeding \$20,000.00 for individuals and a fine not exceeding \$100,000.00 for any other person:

- 27 Provides that it is an offence to breach the duty imposed on duty holders to consult with other duty holders where they have a duty in relation to the same matter.
- 56 Provides for an offence for using or directing or allowing the use of a plant or substance at a workplace where that plant or substance (or its design) requires authorisation but is not authorised.
- 57 Provides for an offence for carrying out or directing or allowing work to occur at a workplace where such work requires authorisation but is not authorised.
- 58 Provides for an offence for carrying out or directing or allowing work to be undertaken by a person where such work is required to be done by a person with prescribed qualifications or experience or to be done under the supervision of such person and such qualifications or experience is not held by the worker or supervisor.
- 59 Provides for an offence for failing to comply with conditions of an authorisation.
- 61 Provides for an offence for breach of the duty to engage with workers.
- 64 Provides for an offence for breach of the duty to have worker participation practices.

There are ten offences which provide for a fine not exceeding \$10,000.00 for an individual and a fine not exceeding \$50,000.00 for any other person:

- 51 Provides for an offence for breach of the duty to notify the regulator of a notifiable event.
- 53 Provides for an offence for breach of the duty to preserve sites at which notifiable events have occurred.
- 78 Provides for an offence for breach of an obligation of a PCBU to a health and safety representative.

- 79 Provides for an offence where a PCBU discloses personal information about a worker to a health and safety representative where such information identifies the worker or could reasonably be expected to identify the worker.
- 80 Provides for an offence where a PCBU fails to comply with any prescribed requirements for access to training for health and safety representatives.
- 90 Provides for an offence where a PCBU breaches their obligations in relation to health and safety committees.
- 193 Provides for an offence for a duty holder to breach the duty of giving all reasonable assistance to an inspector to enable them to enter, inspect, examine, inquire or exercise any power under relevant health and safety legislation.
- 196 Provides for an offence for a person to intentionally hinder or obstruct, or cause or attempt to cause any other person to hinder or obstruct, an inspector in exercising their compliance powers.
- 203 Provides for an offence for a person to intentionally hinder or obstruct, or cause or attempt to cause any other person to hinder or obstruct, a health and safety medical practitioner in exercising their compliance powers.
- 219 Provides for an offence for a person to give false or misleading information in complying or purporting to comply with the Bill or regulations.

There are five offences which provide for a fine not exceeding \$5,000.00 for individuals and a fine not exceeding \$25,000.00 for any other person:

- 28 Provides that it is an offence for a PCBU to levy or charge workers or permit workers to be levied or charged for anything done or provided in relation to health and safety.
- 52 Provides for an offence for breach of the requirement to keep records of notifiable events.
- 88 Provides for an offence where a PCBU fails to establish a health and safety committee within the relevant time period where required to do so by regulation or after being requested to do so by a health and safety representative of a group of workers carrying out work at the workplace or 5 or more workers at the workplace.
- 99 Provides for an offence for a person who fails to display a copy of a provisional improvement notice issued to that person or a person intentionally removes, destroys, damages or defaces such notice.
- 139 Provides for an offence for failure to display a copy of a notice (other than a suspension notice) issued to that person, in a prominent place at or near the workplace or part of the workplace affected by the notice.

There are three offences which provide for a fine not exceeding \$10,000.00:

- 195 Provides for an offence for a person, without reasonable excuse, to refuse or fail to provide an inspector with their correct name and residential address.
- 197 Provides for an offence for a person, who is not an inspector, to hold themselves out as an inspector.
- 204 Provides for an offence for a person, who is not a health and safety medical practitioner, to hold themselves out as a health and safety medical practitioner.

In addition to the above, schedule 1 (sub-clauses 2(2) and 3(2)) of the Bill applies a penalty of a fine not exceeding \$250,000 to offences provided for in the regulations specified in sub-clauses 2(1) or 3(1) of the Schedule.

Schedule 2 of the Bill, which relates to health and safety in the mining sector, provides for specific offences in respect of this sector. Three of these offences carry a penalty of a fine not exceeding \$50,000.00:

- Clause 6(6)(a) Provides for an offence for a site senior executive to fail to stop mining operation or the part or aspect of the operation that is mentioned in any notice given by a health and safety representative requiring suspension of mining operations.
- Clause 7(6)(a) Provides for an offence for a person to fail to stop mining operation or the part or aspect of the operation required to be stopped by a health and safety representative.
- Clause 11(2) Provides for an offence for failure of a senior site executive to ensure that the operation or part or aspect of the mining operation stopped under clause 7 is not restated until satisfied it's not likely to involve a serious risk to health and safety of a person.

Three further offences carry a penalty of a fine not exceeding \$2,000.00:

- Clause 6(6)(b) Provides for an offence for failure of a site senior executive to notify the regulator of a notice given by a health and safety representative requiring suspension of mining operations.
- Clause 7(6)(b) Provides for an offence for failure of a site senior executive to notify the regulator that a health and safety representative has required mining operations to stop.
- Clause 18(4) Provides for an offence for failure to return identity card when a person ceases to be an industry health and safety representative.

### ***Court Jurisdiction***

The Bill will extend the jurisdiction of the District Court in respect of health and safety matters currently provided under the Health and Safety in Employment Act 1992.

In particular clause 117 of the Bill enables civil proceeding to be brought in respect of a breach of clauses 112 to 114 (which relate to adverse conduct).

In addition clause 143 allows the regulator to apply to a District Court for orders compelling a person to comply with a notice issued under the Bill or restraining a person from contravening a notice.

Clause 148 also allows the regulator to apply to a District Court for Orders directing a person to comply with an enforceable undertaking given by the person or an order discharging the undertaking.

The Employment Relations Authority will have the jurisdiction to hear matters relating to personal grievances arising from any adverse conduct undertaken for health and safety reasons.

### **Privacy issues – question 3.5**

The Bill includes the following provisions which relate to the collection, storage, access to, correction of, use or disclosure (as the case may be) of personal information

<b>CLAUSE</b>	<b>PRIVACY ISSUE</b>	<b>PROTECTIONS AFFORDED</b>
51	PCBU has a duty to notify the regulator of any notifiable event.	Clause 220 regarding confidentiality of information where the regulator obtains information in performing or exercising any function, power or duty under the Bill or regulations.
70(3)(a)	Health and safety representative may attend an	Inspector may refuse health and safety representative access to a meeting where

	interview concerning work health and safety between a worker they represent and an inspector or PCBU or PCBUs representative.	personal information may be disclosed unless the person to who the information relates has consented.
72	Health and safety representative can request and be provided with information including personal information.	Clause 79(1)(a) limits this as personal information can only be provided with the consent of the person to which it relates or if it is in a form which does not identify or could not reasonable be expected to identify the person to which it relates.
74(2)(a)	Health and safety representative may accompany inspector.	Inspector may refuse to allow a health and safety representative to accompany him or her on entry into a workplace to be present during any discussion where personal information may be disclosed unless the person to who the information relates has consented.
78(1)	Requires PCBUs to consult with health and safety representatives about health and safety matters and to provide them with information necessary them enable them to perform their functions.	This is limited to information necessary for a health and safety representative to perform their functions; and clause 79(1)(a) limits disclosure of personal information as personal information can only be provided with the consent of the person to which it relates or if it is in a form which does not identify or could not reasonable be expected to identify the person to which it relates.
82	Information obtained by health and safety representatives.	Any personal information obtained by a health and safety representative in the performance of their functions can only be disclosed or used with the consent of the person to which it relates and only to the extent necessary for performance of those functions, except where the information is disclosed to the regulator or person authorised by the regulator where the health and safety representative reasonably believes the disclosure is necessary or required for compliance with legislation.
90(1)(c)	A PCBU must provide information to health and safety committees.	Any information that is necessary to enable the committee to perform its functions can be disclosed. Disclosure of personal information is limited as personal information can only be provided with the consent of the person to which it relates or if it is in a form which does not identify or could not reasonable be expected to identify the person to which it relates [clause 90(4)].
91	Information obtained by health and safety committee.	Any personal information obtained by a health and safety committee in the performance of its functions can only be disclosed or used with the consent of the person to which it relates and only to the extent necessary for the performance of those functions or except where the information is disclosed to the regulator or person authorised by

the regulator where the regulator reasonably believes the disclosure is necessary or required for compliance with legislation.

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| 185       | An inspector may, for the purpose of performing any function of the regulator or an inspector, require a PCBU, or person who appears to have control and management of the workplace, to produce any information relating to the workers at a workplace whether or not those workers still work at the workplace. | Where information relates to a person's health status and identifies the person, an inspector cannot require, examine or copy the information without that person's consent.   |
| 192       | Inspector may require a person to provide their name and residential address.   | An inspector can only exercise this right if the inspector finds the person committing an offence against relevant health and safety legislation or finds the person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has committed an offence. When asking the person to provide information the inspector must tell the person the reason for requiring the information and warn the person that it is an offence to fail to provide the information unless the person has a reasonable excuse. |
| 199(1)(d) | A health and safety medical practitioner can require a PCBU to produce documents or information relating to workers and allow them to copy such information.  | Existing privacy and confidentiality obligations placed on medical practitioners apply to health and safety medical practitioners.   |
| 200       | A health and safety medical practitioner can, by notice in writing, examine a worker and require them to have a bodily sample taken and the written report of analysis of that sample provided to them.   | A health and safety medical practitioner must first be satisfied that the worker has been exposed to a significant hazard and that examining the worker or causing a sample to be taken is likely to enable determination of exposure levels and the extent that the worker's health has been affected.  |
| 213       | Allows for the sharing of information between the regulator and regulatory agencies.  | This clause is expressly subject to the Privacy Act 1993.  |
| 214       | Requires other regulators to notify WorkSafe NZ of any notifiable event.  | Clause 220 regarding confidentiality of information where the regulator obtains information in performing or exercising any function, power or duty under the Bill or regulations.   |
| 215       | Medical officer of health must  | Very limited information required to be provided   |



notify specified personal information to the regulator where person has suffered a notifiable disease or injury caused by a hazardous substance.

and further protection afforded by clause 220 regarding confidentiality of information where the regulator obtains information in performing or exercising any function, power or duty under the Bill or regulations.

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| 220 | Confidentiality of information. | Provides that the regulator who obtains information or gains access to a document while performing or exercising any function under the Act cannot publish or disclose the information unless the information is publically available, is in statistical or summary form or is in connection with the performance or exercise of any function, power or duty conferred under relevant health and safety legislation and other conditions are met. |
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## External Consultation – question 3.6

### ***Suite of Cabinet Papers Improving Health and Safety at Work***

Consultation was undertaken with Treasury, State Services Commission, Civil Aviation Authority, Maritime New Zealand, New Zealand Police, New Zealand Transport Agency, the Transport Accident Investigation Commission, the Tertiary Education Commission, New Zealand Qualifications Authority, Te Puni Kōkiri, Environmental Protection Authority, Accident Compensation Corporation and the Ministries of Health, Justice, Transport, Education, Women's Affairs, Pacific Island Affairs, Defence, Internal Affairs, Foreign Affairs, Primary Industries, and Environment and the Establishment Board of WorkSafe NZ have been consulted on the suite of cabinet papers *Improving Health and Safety at Work*. The Department of Prime Minister and Cabinet was informed.

### ***Cabinet Paper: Further policy decisions required for the Health and Safety Reform Bill***

Consultation was undertaken with Accident Compensation Corporation; Civil Aviation Authority; Department of Internal Affairs; Environmental Protection Agency; Maritime New Zealand; Ministries of Environment, Health, Justice, Pacific Island Affairs, Transport, Women's Affairs; New Zealand Defence Force; New Zealand Police; New Zealand Transport Agency; Office of the Privacy Commissioner; Te Puni Kōkiri; Treasury; Statistics New Zealand; State Services Commission and the Establishment Board of WorkSafe NZ.

### ***Health and Safety Reform Bill***

An exposure draft of Parts 1, 2 and 3 of the Bill was released for consultation on 29 October 2013 and feedback received has been considered and where appropriate and time allowed, incorporated into the Bill.

The Ministry of Business, Innovation and Employment held workshops with key external stakeholders, including The NZ Council of Trade Unions, Business Leaders Forum, Business New Zealand and the New Zealand Law Society.

Consultation was also undertaken with Accident Compensation Corporation; Civil Aviation Authority; Department of Internal Affairs; Environmental Protection Authority; Maritime New Zealand; Ministries of Environment, Health, Justice, Pacific Island Affairs, Transport, Women's Affairs; New Zealand Defence Force; New Zealand Police; New Zealand Transport Agency; Office of the Privacy Commissioner; Te Puni Kōkiri; Treasury; Statistics New Zealand; State Services Commission; and the Establishment Board of WorkSafe NZ and WorkSafe NZ following its establishment.

The Department of the Prime Minister and Cabinet was informed.

## Appendix Two: Further Information Relating to Part Four

### Strict liability or reversal of the usual burden of proof for offences – question 4.4

#### **Strict liability offences**

The following offences are strict liability due to the operation of clause 50 which states that proof of intention is not required:

- 43 Failing to comply with a health and safety duty that exposes individual to risk of death or serious injury or illness.
- 44 Failing to comply with a health and safety duty.

The following offences may be interpreted as being strict liability:

CLAUSE	OFFENCE
27	For failure for a duty-holder not to consult, co-operate with or co-ordinate activities, so far as is reasonably practicable, with all other persons who have a duty in relation to the same matter.
28	For a PCBU to levy or charge workers or permit workers to be levied or charged for anything done or provided in relation to health and safety.
51	For failure to notify the regulator of a notifiable event
52	For failure to keep records of notifiable events.
53	Failure to ensure, so far as is reasonably practicable, that the site where a notifiable event occurred is not disturbed until authorised by an inspector.
55	For conducting a business or undertaking at a workplace or directing or allowing a worker to undertake work at a workplace where the workplace is required to be authorised but is not authorised.
56	For using plant or substance at a workplace or directing or allowing a worker to use plant or substance at a workplace where that plant or substance (or its design) requires authorisation but is not authorised.
57	For carrying out work at a workplace or directing or allowing work to occur at a workplace where such workplace requires authorisation but is not authorised.
58	For carrying out work where such work is required to be done by a person with prescribed qualifications or experience and such qualifications or experience is not held by the worker or supervisor or for directing or allowing work where such work is required to be done by a person with prescribed qualifications or experience and such qualifications or experience is not held by the worker or supervisor.
59	For failing to comply with conditions of an authorisation.
61	Where a PCBU fails to engage, so far as is reasonably practicable, with workers.

- 64 Where PCBU fails to have practices that provide reasonable opportunities for workers to participate effectively in improving work health and safety.
- 78 For breaching obligations to a health and safety representative
- 79 Where a PCBU allows a health and safety representative access to personal information unless it is in the form stated in that clause.
- 80 Where a PCBU fails to comply with any prescribed requirements for access to training for health and safety representatives.
- 88 Where a PCBU fails to establish a health and safety committee within the relevant time period where required to do so by regulation or after being requested to do so by a health and safety representative of a group of workers carrying out work at the workplace or 5 or more workers at the workplace
- 90 For failing:
- to consult, so far as is reasonably practicable, with the health and safety committee on health and safety matters;
- to allow a member to spend as much time as is reasonably necessary to attend committee members or to carry out their functions as a member;
- to provide information necessary to enable the committee to perform its functions. Or for providing personal information to the committee without a workers consent that identifies or could reasonably be expected to identify the worker.
- adopt a recommendation or provide a written statement setting out the reasons for not adopting a recommendation regarding work health and safety made by the committee.
- 99(1) For failing to display a copy of any provisional improvement notice as required
- 101 For failure to comply with a provisional improvement notice.
- 125 For failing to comply with an improvement notice.
- 129 For failing to comply with a prohibition notice or any direction given by an Inspector.
- 139(1) For failure to display, as soon as possible, a copy of a notice (other than a suspension notice) issued on that person in a prominent place at or near the workplace or part of the workplace affected by the notice.
- 147 For a person to contravene an enforceable undertaking made by that person.
- 178 For insuring against fines which may be payable under the Bill.
- 193 For failing, where a person has a duty imposed by relevant health and safety legislation, to give all reasonable assistance to enable an inspector to enter, inspect, examine, inquire or exercise any other power under relevant health and safety legislation.

Schedule 2	<p>Clause 6(6)(a) for failure of a senior executive to stop mining operations or the part or aspect of the operation that is mentioned in any notice given by a health and safety representative requiring suspension of mining operations.</p> <p>Clause 6(6)(b) for failure a site senior executive to notify the regulator of a notice given by a health and safety representative requiring suspension of mining operations.</p> <p>Clause 7(6)(a) for failure of a person to stop mining operation or the part or aspect of the operation required to be stopped by a health and safety representative.</p> <p>Clause 7(6)(b) for failure of a site senior executive to notify the regulator that a health and safety representative has required mining operations to stop.</p> <p>Clause 11(2) for failure of a site senior executive to ensure that the operation or part or aspect of the mining operation stopped under clause 6 or 7 is not restated until satisfied it it's not likely to involve a serious risk to health and safety of a person.</p> <p>Clause 18(4) for failure to return identity card when a person ceases to be an industry health and safety representative.</p>
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The strict liability offences, and the offences considered likely to be interpreted as strict liability, were assessed against the Legislation Advisory Committee guidelines on the use of strict liability offences. It is considered that –

The offences fit the category of public welfare regulatory offences, which are suitable for strict liability. They involve the protection of the public from those undertaking risk-creating activities and/ or the regulation of occupations or trades or activities in which citizens have a choice as to whether they involve themselves;

The threat of criminal liability will supply a motive for persons in these risk-generating activities to adopt precautions, which might otherwise not be taken;

The defendants will be best placed to establish absence of fault because of matters peculiarly or primarily within their knowledge.

#### ***Reversal of the usual burden of proof***

Clause 112 of the Bill makes it an offence to engage in adverse conduct for a prohibited health and safety reason, but *only if* that reason was the dominant reason for the conduct. Clause 116 of the Bill reverses the burden of proof (for criminal proceedings) by creating a presumption that adverse conduct for a prohibited health and safety reason was the dominant reason for that conduct, unless the defendant proves, on the balance of probabilities, that it was not. This reversal of the burden of proof in this clause is justified as the restriction of the offence to circumstances where the prohibited health and safety reason is the dominant reason is to the benefit of the defendant, and the defendant will be best placed to establish if there is a reason other than, or more dominant than, a prohibited health and safety reason for the adverse conduct.

#### **Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation - question 4.7**

The Bill includes broad provisions empowering the making of delegated legislation that could define the meaning of a term in an Act, or grant an exemption from delegated legislation.

The Bill provides for this by allowing for the making of regulations that can prescribe matters under the Bill and exempt persons from complying with regulations on terms and conditions prescribed.

In addition, clause 223 allows for exemptions from the Bill itself in respect of the Armed Forces. The Minister of Defence must be consulted before any recommendation is made to make regulations under this clause.

### **Powers to make delegated legislation- question 4.8**

Other than the powers noted in question 4.7, the Bill includes provisions empowering the making of delegated legislation:

Regulations made by the Governor-General by Order in Council under clauses 221, 222, 223, 224 and 225 of the Bill.

Regulatory powers are necessary to give effect to various provisions of the Bill where clarification, standards or technical requirements, often relating to specific industries or work practices, are needed.

Safe work instruments under clause 234 and clause 236. A safe work instrument is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives. A safe work instrument only has effect to the extent that any regulations made under the relevant health and safety legislation refer to it.

Safe work instruments will relate to detailed or technical matters or standards that change relatively frequently and will often be industry specific and a timely means of allowing for such matters to be addressed and amended is necessary to ensure best practice is maintained.

Contains an amendment to the Accident Corporation Act 2001 providing for the Corporation to develop workplace incentive programmes, the *Gazette* notice in respect of which is deemed to be a disallowable instrument for the purposes of the Legislation Act 2012.

WorkSafe NZ incentive programmes are intended to provide incentives for employers and self-employed persons to reduce the incidence and impact of work-related personal injury. Subject to the Minister for ACC determining that any programme be approved by the Minister prior to its establishment, the Corporation may establish any workplace incentive programmes. It is appropriate that this power be held by the Corporation given its obligations for financial assistance and rehabilitation for work related injury and the direct impact such incentive programmes will have to the Corporations funding allocations.

Contains amendments to the Hazardous Substances and New Organisms Act 1996 which repeals an existing regulation making power, and replaces it with a power enabling the Environmental Protection Authority (EPA) to make EPA notices. EPA notices are not legislative instruments but are disallowable instruments for the purpose of the Legislation Act 2012. The purpose of this change is to enable controls on hazardous substances to be streamlined and more easily updated.