

Health and Safety (Pike River Implementation) Bill

Government Bill

Explanatory note

General policy statement

The Royal Commission on the Pike River Coal Mine Tragedy found that New Zealand's regulation of health and safety in the mining industry was ineffective. It made a number of recommendations, including that a new stand-alone Crown agency for workplace health and safety should be created and that an effective regulatory framework for mining should be established urgently. The Government accepted the Royal Commission's recommendations, and this Bill makes the necessary legislative changes to enable the implementation of the Government's response to the recommendations of the Royal Commission.

This omnibus Bill has 3 Parts:

- *Part 1* establishes WorkSafe New Zealand, a new workplace health and safety agency:
- *Part 2* makes amendments to the Health and Safety in Employment Act 1992:
- *Part 3* creates a new Mines Rescue Act 2013.

Part 1

WorkSafe New Zealand

Part 1 of the Bill establishes WorkSafe New Zealand, a new workplace health and safety agency, as a Crown entity. WorkSafe New Zealand will take on the operational functions currently undertaken by the Ministry of Business, Innovation and Employment (**MBIE**) relating to workplace health and safety and energy safety. The intention is to improve workplace health and safety through the creation of a stand-alone agency that has a dedicated focus on health and safety. MBIE will continue to be responsible for providing policy advice to the Government on health and safety matters.

The Bill sets out the objectives and functions of WorkSafe New Zealand. It also prescribes the make-up of its governance board, and enables WorkSafe New Zealand to establish an advisory group or groups. The Bill provides for the transfer of employees and assets from MBIE to WorkSafe New Zealand, and addresses issues such as technical redundancy, the terms and conditions of transferred employees, Government Superannuation entitlements, and consequential amendments to other enactments.

Part 2

Amendments to Health and Safety in Employment Act 1992

Part 2 of the Bill amends provisions of the Health and Safety in Employment Act 1992 (the **Act**) to support the introduction of a new regulatory regime that will set clear expectations concerning the management of hazards in the mining industry. The new regime will primarily be set out in a new set of mining regulations, which will include: processes for managing hazards, strengthened minimum standards (eg, for acceptable methane levels, and necessary emergency equipment), requirements for health and safety management systems, new safety-critical roles, and strengthened training and competency requirements. The new regime will make mining operations safer, and align New Zealand with international best practice on health and safety in the mining industry.

The Bill amends the Act to—

- define the scope of the mining operations that will be covered by the new regulatory regime for mining, and the new require-

ments for worker participation in health and safety in mining operations. This will include underground and surface coal and metalliferous mines, and quarries and tunnels that have certain risk factors. The factors that determine which quarries or tunnels are within scope will be specified by Order in Council. While the Royal Commission's focus was on underground coal mines, the new regime will apply to mining operations more generally because of the hazards that are present:

- create the new classes of duty holder—mine operator and mine worker—who will have obligations under the new regulations. Under the new regulatory regime, a mine operator will be responsible for the health and safety of all mine workers, including employees, self-employed contractors, employees of contractors, and labour hire workers. The Bill will also establish the role of site senior executive. The site senior executive will be the most senior representative of a mining operator at a mining operation, and will be responsible under regulations for the development and maintenance of health and safety systems and processes:
- increase the opportunities for mine workers to participate in health and safety by making it compulsory for all mining operations within scope to have a documented worker participation system, enabling all mine workers (not just employees) to be part of a worker participation system, requiring the results of health and safety monitoring to be given to all mine workers without the need for them to request the results, providing new functions and powers for mine health and safety representatives (such as the ability to inspect and shut down mining operations), and creating the new role of mining industry health and safety representative. The Bill includes a number of checks and balances to the new functions and powers of the site-specific and industry-wide health and safety representatives:
- enable the issue of improvement and prohibition notices where a mines inspector has a reasonable belief that a mine operator is likely to fail to comply with the Act or the mining regulations, not just where there has been a failure to comply. This will enable an inspector to take preventative action by issuing a prohibition notice where the inspector reasonably believes that

continuing operations will give rise to a risk of serious harm. It would also allow inspectors to issue improvement or prohibition notices (as appropriate) where a mine operator does not have an acceptable health and safety management system (including the necessary hazard management plans) in place:

- create a New Zealand Mining Board of Examiners (the **Board**), which will add rigour and independence to the setting and assessment of the necessary competencies for persons working in the mining industry. An industry training organisation will continue to assess unit standards, which will be supplemented by an examination by the Board before a certificate of competence is granted:
- expand the regulation-making powers in the Act to enable the making of the new mining regulations, and prescribe some of the details of the new worker participation obligations. This will include the ability to impose health and safety duties on mine operators and mine workers, the competencies required for health and safety representatives, identity cards and the contents of a public register for mining industry health and safety representatives, a default system for the election of health and safety representatives, the default system if a worker participation system is not developed, and a levy on mining operators to fund the Board.

Part 3 Mines Rescue

Part 3 of the Bill creates a new Mines Rescue Act 2013, which will repeal the Mines Rescue Trust Act 1992. The new Act will better reflect the role and functions of the Mines Rescue Trust in providing specialist search and rescue services in mining emergencies, training and equipping mines rescue brigades, providing advice to mine operators during emergencies, and assisting with the development and testing of emergency management plans. The 1992 Act only lists functions concerning the establishment and maintenance of rescue stations, and the purchase of property.

The Bill also extends the coverage of the Mines Rescue Service beyond coal mines to include underground metalliferous mines and certain tunnels. The expertise of the Mines Rescue Trust in irrespirable

atmospheres means it can add value in these areas. This expertise is generally not needed in surface metalliferous mines or in quarries or shorter tunnels where the expertise and equipment of the Fire Service and other emergency services are sufficient. The Bill changes the composition of the Board to reflect the broader coverage of the Trust.

The Mines Rescue Trust is funded by a combination of cost recovery (to cover the costs of responding to particular emergencies) and levies paid by mine operators. The levy is currently based on the amount of coal produced, and has not changed since 1992. The Bill provides for the levy rate to be set by regulation, which will provide greater flexibility to change the rate when needed. The Bill also enables the Trust to recover unpaid levies and the costs of responding to particular emergencies from mine operators as a debt due.

To provide consistency with other emergency services, the Bill includes a provision to limit the liability of the Mines Rescue Trust and others for any damage caused by actions done in good faith during rescue operations.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 20 April 2013 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.mbie.govt.nz/about-us/publications/ris>
- <http://www.treasury.govt.nz/publications/information-releases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

It is intended that the Bill will be divided at the Committee of the Whole stage into the following Bills:

- a WorkSafe New Zealand Bill;
- a Health and Safety in Employment Amendment Bill;
- a Mines Rescue Bill.

Clause 2 provides that the Bill comes into force on 1 December 2013.

Part 1

WorkSafe New Zealand

Part 1 establishes WorkSafe New Zealand as a new Crown entity.

Subpart 1—Preliminary provisions

Clause 3 defines certain terms used in *Part 1*.

Clause 4 provides that, when enacted, *Part 1* binds the Crown.

Subpart 2—WorkSafe New Zealand

Clause 5 establishes WorkSafe New Zealand.

Clause 6 provides that WorkSafe New Zealand is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004 and that Act applies to WorkSafe New Zealand except to the extent that *Part 1* and *Schedule 1* expressly provide otherwise.

Clause 7 provides for the appointment and membership of WorkSafe New Zealand's board. The board is to consist of at least 5, but not more than 9, members appointed by the Minister of the Crown responsible for the administration of *Part 1*.

Clause 8 enables WorkSafe New Zealand to establish an advisory group to provide a forum for dialogue and co-operation between the Government, employers, and workers and to provide advice to WorkSafe New Zealand on workplace health and safety matters. It also provides that WorkSafe New Zealand may also establish 1 or more other advisory groups to provide advice to WorkSafe New Zealand on matters relating to its functions.

WorkSafe New Zealand's main objective and functions

Clause 9 provides that WorkSafe New Zealand's main objective is to promote and contribute to the prevention of harm to all people at work and in, or in the vicinity of, the workplace.

Clause 10 lists WorkSafe New Zealand's functions. Its functions are to—

- advise on the operation of the workplace health and safety system, including co-ordination across the different components of the system:

- make recommendations for changes to improve the effectiveness of the workplace health and safety system, including legislative changes:
- monitor and enforce compliance with the relevant health and safety legislation (as defined in *clause 3*):
- make recommendations about the level of any funding (including fees or levies) that WorkSafe New Zealand requires to effectively perform its functions:
- develop codes of practice:
- provide guidance and advice on workplace health and safety matters to persons who have duties under the relevant workplace health and safety legislation and to the public:
- promote and support research, education, and training on workplace health and safety:
- collect, analyse, and publish statistics relating to workplace health and safety:
- engage with, promote, and co-ordinate the sharing of information with other agencies and interested persons that contribute to workplace health and safety:
- foster a co-operative and consultative relationship between persons who have duties under the relevant workplace health and safety legislation and the persons to whom they owe duties in relation to workplace health and safety:
- promote and co-ordinate the implementation of workplace health and safety initiatives:
- perform or exercise any other functions or powers conferred on WorkSafe New Zealand by or under any other enactment:
- perform any additional function that the Minister directs under section 112 of the Crown Entities Act 2004.

Subpart 3—Transition to WorkSafe New Zealand and consequential amendments

Transfer of employees

Clause 11 relates to the transfer of Ministry of Business, Innovation, and Employment (MBIE) employees to WorkSafe New Zealand.

Subclause (1) restricts an employee's entitlement to redundancy compensation if the employee's position within MBIE ceases to

exist as a result of a transfer of functions from MBIE to WorkSafe New Zealand and, in connection with that transfer of functions, the employee is offered equivalent employment in WorkSafe New Zealand or is offered, and accepts, other employment in WorkSafe New Zealand.

Subclause (2) defines equivalent employment as employment that is—

- in substantially the same position; and
- in the same general locality; and
- on terms and conditions of employment that are no less favourable than those that applied to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and
- on terms that treat the employee's period of service with MBIE as if it were continuous service with WorkSafe New Zealand.

Subclause (3) provides that *clause 11* overrides any provision to the contrary in Part 6A of the Employment Relations Act 2000.

Clause 12 relates to the terms and conditions of employees who are offered, and accept, employment within WorkSafe New Zealand under *clause 11* (**transferred employees**). It provides that—

- the employment of a transferred employee within WorkSafe New Zealand is not new employment for the purposes of the KiwiSaver Act 2006; and
- a transferred employee is not a new employee for the purposes of the Employment Relations Act 2000 (for example, in relation to trial periods under sections 67A and 67B of that Act).

Clause 13 relates to transferred employees who are bound by a collective agreement with MBIE immediately before transferring to WorkSafe New Zealand. It provides that the employee continues to be bound by the collective agreement and may enforce the agreement against WorkSafe New Zealand.

Clause 14 preserves superannuation entitlements in the Government Superannuation Fund for transferred employees.

Transfer of contracts

Clause 15 deals with contracts that relate solely to functions or powers of the chief executive of MBIE that become functions or powers of WorkSafe New Zealand. It provides that the contract must be read as if WorkSafe New Zealand were a party to the contract instead of the chief executive or MBIE and references in the contract to the chief executive or MBIE must be read as references to WorkSafe New Zealand.

Consequences of transfer of functions, etc,

Clause 16 sets out the consequences of the transfer of functions under the relevant health and safety legislation from MBIE to WorkSafe New Zealand.

Clause 17 sets out the consequences of WorkSafe New Zealand becoming a party to a collective agreement or a contract in place of the chief executive or MBIE.

Continuation of inspectors and enforcement officers

Clause 18 continues the appointment of inspectors appointed under section 29 of the Health and Safety in Employment Act 1992 and enforcement officers appointed under section 97B(2)(b) of the Hazardous Substances and New Organisms Act 1996 as if the inspector or enforcement officer were appointed by WorkSafe New Zealand.

Amendments to other enactments

Clause 19 and *Schedule 1* amend other enactments, including—

- Part 1 of Schedule 1 of the Crown Entities Act 2004 by adding WorkSafe New Zealand to the list of statutory entities that are Crown agents;
- the Ombudsmen Act 1975 by adding WorkSafe New Zealand to the list of organisations other than local organisations to which that Act applies. Accordingly, the Official Information Act 1982 will also apply to WorkSafe New Zealand;
- the Electricity Act 1992, the Gas Act 1992, the Hazardous Substances and New Organisms Act 1996, the Health and Safety in Employment Act 1992, and the Machinery Act 1950

(and regulations made under those Acts) to reflect changes made by the Bill in respect of the transfer of functions under those Acts to WorkSafe New Zealand.

Part 2

Amendments to Health and Safety in Employment Act 1992

Clause 20 provides that this Part amends the Health and Safety in Employment Act 1992.

Clause 21 amends section 2, to insert references to the terms defined in *new Part 2B* and consequentially amend certain existing definitions.

Clause 22 inserts a *new section 3G* into the principal Act. *New section 3G* refers to the *new Schedule 1AA* containing application, savings, and transitional provisions (*see clause 38*).

Clause 23 amends section 11, which requires employees to be given results of monitoring. The amendment clarifies the relationship between obligations of an employer under section 11 and obligations of a mine operator under *new section 12A* (*see clause 24*).

Clause 24 inserts *new sections 12A and 12B*. *New section 12A* is modelled on section 11 of the principal Act. It requires a mine operator to give mine workers the results of monitoring done in accordance with the Act or regulations.

New section 12B requires a mine operator to ensure that health and safety representatives have access to information about health and safety systems and issues in the mining operation. It is modelled on section 12(2) of the principal Act.

Clause 25 inserts *new section 13AA*. The new section is modelled on section 13 of the principal Act. It requires a mine operator to ensure that mine workers are adequately supervised and trained.

Clause 26 inserts *new section 19J* into Part 2A. It provides that generally nothing in Part 2A (which relates to employee participation) applies to a mining operation.

Clause 27 inserts *new Part 2B*. The new Part provides for worker participation in health and safety in the mining sector.

New section 19K sets out the purpose of *Part 2B*.

New section 19L defines terms used in *Part 2B*, including mine operator and mine worker.

New section 19M defines mining operation.

New section 19N defines quarrying operation.

New section 19O defines tunnelling operation.

New section 19P provides that certain operations may be excluded from the definition of quarrying operation or tunnelling operation by Order in Council.

New section 19Q imposes a duty on a mine operator to ensure that there is a documented worker participation system for the mining operation that provides reasonable opportunities for the mine workers to participate in processes for improvement of health and safety in the mining operation.

Worker participation system

New section 19R deals with the process of development, and the content of, the worker participation system.

New section 19S provides for the review and replacement of a worker participation system.

New section 19T provides that the default worker participation system to be prescribed in regulations will apply if a mining operation has no worker participation system within 3 months of the date on which the operation begins.

Mine health and safety representatives

New section 19U provides for the election of, and competency requirements for, mine health and safety representatives for a mining operation.

New section 19V sets out the functions of mine health and safety representatives. These are—

- to investigate complaints from mine workers regarding health and safety:
- if requested by a mine worker, to represent the worker in relation to a matter relating to health and safety (including a complaint):
- to identify hazards in the mining operation and bring them to the attention of the mine operator or site senior executive:

- to monitor measures taken by the mine operator that are relevant to health and safety:
- to provide feedback to the mine operator or site senior executive about whether the requirements of the principal Act or regulations made under the principal Act (as amended by the Bill) are being complied with:
- any other functions agreed by the mine operator, the representative, and any union representing the representative.

New section 19W provides that nothing in the principal Act (as amended by the Bill) imposes a duty on a mine health and safety representative in that capacity.

Powers of mine health and safety representatives

New section 19X allows a mine health and safety representative (with the consent of a mine worker) to attend an interview about health and safety that the mine worker has with the mining operator, the site senior executive or any other representative of the mine operator, or an inspector.

New section 19Y confers power on a mine health and safety representative to enter and inspect a mining operation. This provision is based on section 100(a) of the Coal Mining Safety and Health Act 1999 (Qld) (the **Queensland Act**).

New section 19Z confers power on a mine health and safety representative to examine and copy documents. This provision is based on section 100(b) of the Queensland Act.

New section 19ZA provides that a mine health and safety representative who enters a mining operation may require assistance in the exercise of a power under *new section 19Y or 19Z*.

New section 19ZB confers power on a mine health and safety representative to accompany an inspector who has entered a mining operation under section 31 of the principal Act (which is a power of entry and inspection).

New section 19ZC provides that a mine health and safety representative may consult with an inspector on any health and safety issue.

New section 19ZD provides that a mine health and safety representative may issue a hazard notice if he or she believes there is a hazard in the mining operation that is not being dealt with. It is modelled on section 46A of the principal Act.

New section 19ZE confers power on a mine health and safety representative to give notice requiring the whole or a part or aspect of a mining operation to be suspended if the representative believes that it is likely to cause serious harm to any person. It is modelled on section 101(1) and (2) of the Queensland Act.

New section 19ZF confers power on a mine health and safety representative to require immediate cessation of the whole or a part or aspect of a mining operation if the representative believes there is a likelihood of imminent serious harm to any person. It is modelled on section 101(3) and (4) of the Queensland Act.

New section 19ZG provides that an inspector may cancel a notice given by a mine health and safety representative under *section 19ZE* or an action taken under *new section 19ZF*.

New section 19ZH provides that if work is stopped, the mine workers affected must do other work (within the scope of their employment) if directed.

New section 19ZI provides that work stopped under *new section 19ZE* or *19ZF* must not restart until the site senior executive is satisfied that there is no likelihood of serious harm.

New section 19ZJ provides that a mine operator or site senior executive must not prevent a mine health and safety representative from, or penalise the representative for, performing his or her functions or exercising his or her powers.

New section 19ZK requires the mine health and safety representative to perform functions or exercise powers for health and safety purposes only.

New section 19ZL provides that a mine health and safety representative must not unnecessarily impede production.

Removal of mine health and safety representative

New sections 19ZM to 19ZO provide for the removal by WorkSafe of a mine health and safety representative, and for a right of appeal against removal.

Mining industry health and safety representatives

New sections 19ZP to 19ZV provide for mining industry health and safety representatives. These representatives are appointed

by a union or a group of mine workers. They have the functions and powers of a mine health and safety representative but may perform or exercise them in any mining operation. They also have 2 additional industry-specific functions. These are—

- to participate in investigations into accidents in mining operations that resulted, or could have resulted, in serious harm:
- to assist with industry-wide initiatives to improve health and safety in mining operations.

These provisions are modelled on provisions in the Queensland Act providing for industry safety and health representatives.

New sections 19ZW to 19ZY provide for WorkSafe to keep a register of mining industry health and safety representatives.

Clause 28 inserts *new sections 20A to 20H*.

New sections 20 to 20C replace existing section 20 of the principal Act, which relates to codes of practice. The new sections provide for the issue of codes of practice by WorkSafe New Zealand. These codes of practice must be approved by the Minister, as is the case under existing section 20.

New sections 20D to 20H provide for WorkSafe to establish a Board of Examiners for the mining industry to—

- advise WorkSafe on competency requirements for mine workers:
- examine applicants for certificates of competence:
- issue certificates of competence:
- perform any other function conferred by regulations.

Clauses 29 to 31 amend regulation-making powers.

Clause 32 inserts *new section 39A*, which allows an inspector to issue an improvement notice in relation to a mining operation. It is modelled on section 39 of the principal Act.

Clause 33 inserts *new section 41A*, which allows an inspector to issue a prohibition notice in relation to a mining operation. It is modelled on section 41 of the principal Act.

Clause 34 consequentially amends section 42, which relates to the service of prohibition notices.

Clause 35 consequentially amends section 43, which relates to compliance with prohibition notices.

Clause 36 amends section 50 to add new offences relating to the requirements in *new Part 2B*.

Clause 37 amends section 59, which provide for the recovery via ACC levies of costs of administering the Act. A new definition of **certain Crown costs** is inserted.

Clause 38 and *Schedule 2* provide for transitional provisions.

Clause 39 and *Schedule 3* consequentially amend section 107 of the Employment Relations Act 2000.

Part 3 **Mines Rescue**

Part 3 repeals and replaces the Mines Rescue Trust Act 1992 with a new Mines Rescue Act. It provides for a board registered under the Charitable Trusts Act 1957 with specified functions relating to mines rescue services to be recognised for the purposes of the new Act.

Clause 40 defines certain terms used in *Part 3*. The definition of mining operation establishes the scope of the Mines Rescue Trust. It is narrower than the definition of that term in *Part 2*. The definition in *Part 3* includes—

- coal mines (above and below ground):
- other mines (below ground only):
- tunnelling operations which relate to tunnels that are, or are intended to be, at least 150 metres long.

Clause 41 provides that, when enacted, *Part 3* binds the Crown.

Clause 42 refers to application, savings, and transitional matters in *clause 55* and *Schedule 4*.

Mines Rescue Trust Board

Clause 43 enables the Minister to recognise a board registered under the Charitable Trusts Act 1957 for the purposes of *Part 3*.

Clause 44 provides that, before recognising a board under *clause 43*, the Minister must be satisfied that the board has functions—

- providing training, equipment, and resources for mines rescue brigades to ensure that they have the capacity and readiness to respond to emergencies in mining operations:

- assisting mine operators in emergency preparedness, including by developing, reviewing, and testing mine operators' emergency management plans in mining operations:
- deploying mines rescue brigades and other resources and providing advice to mine operators during emergencies.

Clause 44 also provides that for the purposes of performing the functions above, the board also has the following functions:

- establishing and maintaining rescue stations:
- purchasing real property, goods, and services for rescue stations:
- employing or engaging staff for rescue stations.

Clause 45 provides that, before recognising a board under *clause 43*, the Minister must be satisfied that the board comprises appointees or representatives of—

- MBIE:
- the operators of specified categories of mining operations:
- a union whose members work in mining operations.

Cost recovery

Clauses 46 to 51 relate to the recovery of costs incurred by the board in performing its functions. Costs are recovered in either of 2 ways. For most of the board's functions, the board will recover its costs by a levy. The matters provided for in *clauses 46 to 50* relate to levies and include—

- regulations to be made imposing a levy on mine operators:
- an obligation on the board to report its levy income and expenditure:
- penalties for non-payment of levy money:
- for persons authorised by the chief executive of MBIE, a power of inspection for the purposes of ascertaining whether the requirements of any regulations relating to levies are being met:
- an offence for failing to comply with a requirement by an authorised person exercising the power of inspection or a requirement of levy regulations.

Clause 51 provides that the board's costs incurred in responding to an emergency at a mining operation are payable by the operator of the mining operation.

Miscellaneous provisions

Clause 52 provides for a commissioner to be appointed to perform the functions specified in *clause 44* if the Minister is satisfied, on reasonable grounds, that the board is not performing the functions.

Clause 53 sets out immunities that apply to members of mines rescue brigades and members, employees, and agents of the board for acts done in good faith in the course of responding to an emergency at a mining operation or in testing a mine's emergency management plan.

Clause 54 enables the making of regulations specifying the number of mine workers a mine operator must make available to be members of mines rescue brigades.

Clause 55 provides for the transitional provisions in *Schedule 4*. The transitional provisions relate to the trust currently recognised under the Mines Rescue Trust Act 1992.

Clause 56 repeals the Mines Rescue Trust Act 1992.

Hon Simon Bridges

Health and Safety (Pike River Implementation) Bill

Government Bill

Contents

		Page
1	Title	6
2	Commencement	6
Part 1		
WorkSafe New Zealand		
Subpart 1—Preliminary provisions		
3	Interpretation	7
4	Part 1 binds the Crown	8
Subpart 2—WorkSafe New Zealand		
5	WorkSafe New Zealand established	8
6	WorkSafe New Zealand is Crown entity	8
7	WorkSafe New Zealand's board	8
8	Advisory groups	8
<i>WorkSafe New Zealand's main objective and functions</i>		
9	WorkSafe New Zealand's main objective	9
10	WorkSafe New Zealand's functions	9
Subpart 3—Transition to WorkSafe New Zealand and consequential amendments		
<i>Transfer of employees</i>		
11	Restriction on compensation for technical redundancy	10
12	Terms and conditions of transferred employees	11
13	Transferred employees bound by collective agreement	11
14	Government Superannuation fund	12

**Health and Safety (Pike River
Implementation) Bill**

	<i>Transfer of contracts</i>	
15	Transfer of contracts to Worksafe New Zealand	12
	<i>Consequences of transfers of functions, etc</i>	
16	Consequences of transfer of functions under relevant health and safety legislation to WorkSafe New Zealand	13
17	Consequences of transfer of collective agreement or contract to WorkSafe New Zealand	14
	<i>Continuation of inspectors and enforcement officers</i>	
18	Continuation of inspectors and enforcement officers	15
	<i>Amendments to other enactments</i>	
19	Amendments to other enactments	15
	Part 2	
	Amendments to Health and Safety in Employment Act 1992	
20	Principal Act	15
21	Section 2 amended (Interpretation)	15
22	New section 3G inserted (Provisions affecting application of amendments to this Act)	17
	3G Provisions affecting application of amendments to this Act	17
23	Section 11 amended (Employees to be given results of monitoring)	17
24	New sections 12A and 12B and cross-heading inserted	17
	<i>Duties of mine operators in relation to information</i>	
	12A Mine workers to be given results of monitoring	17
	12B Information for mine health and safety representatives	18
25	New section 13AA and cross-heading inserted	18
	<i>Duties of mine operators in relation to training and supervision</i>	
	13AA Training and supervision of mine workers	18
26	New section 19J inserted (Relationship of this Part with Part 2B)	19
	19J Relationship of this Part with Part 2B	19
27	New Part 2B inserted	19

**Health and Safety (Pike River
Implementation) Bill**

**Part 2B
Worker participation in health and safety in
mining sector**

19K	Purpose of Part	19
19L	Interpretation	19
19M	Meaning of mining operation	21
19N	Meaning of quarrying operation	22
19O	Meaning of tunnelling operation	22
19P	Governor-General may, by Order in Council, exclude operations from sections 19N and 19O	22
19Q	General duty to involve mine workers in health and safety matters	23
	<i>Worker participation system</i>	
19R	Development of worker participation system	24
19S	Review and replacement of worker participation systems	25
19T	Prescribed provisions apply if no scheme in place	25
	<i>Mine health and safety representatives</i>	
19U	Election and qualifications of mine health and safety representatives	25
19V	Functions of mine health and safety representatives	25
19W	No duty on mine health and safety representatives	26
	<i>Powers of mine health and safety representatives</i>	
19X	Power of mine health and safety representative to attend interview	26
19Y	Power of mine health and safety representative to enter and inspect mining operation	26
19Z	Power of mine health and safety representative to examine and copy documents	27
19ZA	Power to require assistance	27
19ZB	Power of mine health and safety representative to accompany inspector	27
19ZC	Mine health and safety representative may consult inspector	28
19ZD	Mine health and safety representatives may issue hazard notices	28
19ZE	Power of mine health and safety representative to give notice requiring suspension of mining operation	29

**Health and Safety (Pike River
Implementation) Bill**

	19ZF Power of mine health and safety representative to require mining operation to stop in case of imminent serious harm	29
	19ZG Inspector may cancel order to suspend mining operation	30
	19ZH Workers must do other work	30
	19ZI Work not to restart until no likelihood of serious harm	30
	19ZJ Protection of mine health and safety representatives performing functions or exercising powers	30
	19ZK Functions and powers for health and safety purposes only	31
	19ZL Health and safety representative not to unnecessarily impede production	31
	<i>Removal of mine health and safety representative</i>	
	19ZM WorkSafe may remove mine health and safety representative	31
	19ZN Election of another mine health and safety representative	31
	19ZO Mine health and safety representative may appeal against removal	32
	<i>Mining industry health and safety representatives</i>	
	19ZP Appointment of mining industry health and safety representatives	32
	19ZQ Notice to WorkSafe of appointment or cessation of appointment of representative	32
	19ZR Functions and powers of mining industry health and safety representatives	32
	19ZS Further provision concerning scope of functions and powers of mining industry health and safety representatives	33
	19ZT Identity cards	33
	19ZU Production or display of identity card	34
	19ZV Removal of mining industry health and safety representative	34
	19ZW Register of mining industry health and safety representatives	34
	19ZX Alterations to register	35
	19ZY Search of register	35
28	Section 20 replaced (Codes of practice)	35

**Health and Safety (Pike River
Implementation) Bill**

20	Codes of practice	35
20A	Code to be approved by Minister	36
20B	Court may have regard to code	37
20C	Codes to be made available	38
	<i>Competencies in mining industry</i>	
20D	New Zealand Mining Board of Examiners	38
20E	Functions of Board	38
20F	Membership of board	38
20G	Proceedings of Board	39
20H	Board levy	39
29	Section 21 amended (Regulations)	39
30	Section 22 amended (Application of regulations)	40
31	Section 23 amended (Other provisions relating to regulations)	40
32	New section 39A inserted (Inspectors may issue improvement notices in relation to mining operation)	41
	39A Inspectors may issue improvement notices in relation to mining operation	41
33	New section 41A inserted (Inspectors may issue prohibition notices in relation to mining operation)	41
	41A Inspectors may issue prohibition notices in relation to mining operation	42
34	Section 42 amended (Service of prohibition notices)	42
35	Section 43 amended (Compliance with prohibition notices)	43
36	Section 50 amended (Other offences)	43
37	Section 59 amended (Funding)	43
38	New section 63 and Schedule 1AA inserted	44
	63 Application, savings, and transitional provisions	44
39	Further amendment	44
	Part 3	
	Mines Rescue	
40	Interpretation	44
41	Part binds the Crown	46
42	Provisions affecting application of amendments to this Part	46
	<i>Mines Rescue Trust Board</i>	
43	Mines Rescue Trust Board	46
44	Functions of board	47
45	Membership of board	47

cl 1	Health and Safety (Pike River Implementation) Bill	
<i>Cost recovery</i>		
46	Regulations imposing levies	48
47	Board to account for levy	49
48	Failure to pay levy	50
49	Power of inspection in relation to levy	50
50	Offences	51
51	Recovery of costs incurred in emergency	51
<i>Miscellaneous provisions</i>		
52	Appointment of commissioner	52
53	Protection from civil and criminal liability	52
54	Regulations	53
55	Application, savings, and transitional provisions	53
56	Repeal of Mines Rescue Trust Act 1992	53
	Schedule 1	54
	Amendments relating to WorkSafe New Zealand	
	Schedule 2	69
	New Schedule 1AA inserted in principal Act	
	Schedule 3	70
	Consequential amendment	
	Schedule 4	71
	Application, savings, and transitional provisions	

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Health and Safety (Pike River Implementation) Act **2013**.
- 2 Commencement** 5
This Act comes into force on **1 December 2013**.

Part 1
WorkSafe New Zealand

Subpart 1—Preliminary provisions

3 Interpretation

In this **Part**, unless the context otherwise requires,— 5

board means the board of WorkSafe New Zealand

chief executive means the chief executive of MBIE

collective agreement has the same meaning as in section 2 of
the State Sector Act 1988

employment agreement has the same meaning as in section 10
5 of the Employment Relations Act 2000

MBIE means the Ministry of Business, Innovation, and Em-
ployment

Minister means the Minister of the Crown who, under the au-
thority of any warrant or with the authority of the Prime Min- 15
ister, is for the time being responsible for the administration of

Part 1

relevant health and safety legislation means—

(a) the Health and Safety in Employment Act 1992 and any
regulations made under that Act: 20

(b) the Machinery Act 1950 and any regulations made
under that Act:

(c) any provisions of the following Acts (or any regulations
made under those Acts) under which WorkSafe New
Zealand has functions: 25

(i) Electricity Act 1992:

(ii) Gas Act 1992:

(iii) Hazardous Substances and New Organisms Act
1996

transferred employee means a person referred to in **section** 30
11 who has been offered and has accepted employment in
WorkSafe New Zealand

workplace has the meaning given to place of work in section
2(1) of the Health and Safety in Employment Act 1992

WorkSafe New Zealand means the entity established by **sec-** 35
tion 5.

4 Part 1 binds the Crown**Part 1** binds the Crown.

Subpart 2—WorkSafe New Zealand

5 WorkSafe New Zealand established

This section establishes WorkSafe New Zealand.

5

6 WorkSafe New Zealand is Crown entity

(1) WorkSafe New Zealand is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.

(2) The Crown Entities Act 2004 applies to WorkSafe New Zealand except to the extent that **Part 1** and **Schedule 1** expressly provide otherwise. 10**7 WorkSafe New Zealand's board**

(1) The Minister must appoint at least 5, but not more than 9, persons as members of the board.

(2) When appointing a member of the board, the Minister must have regard to the need to ensure that WorkSafe New Zealand has among its members persons who have, collectively, knowledge and experience of, and capability in, the following: 15

(a) public sector governance:

(b) central government processes: 20

(c) New Zealand's workplace health and safety environment, including workplace illness and occupational disease:

(d) perspectives of workplace participants:

(e) administration of workplace health and safety legislation and risk management frameworks: 25

(f) business generally.

(3) The Minister may not appoint any member of the board unless the Minister has first publicised an invitation for nominations from interested parties and considered any nominations received. 30

8 Advisory groups

(1) WorkSafe New Zealand may establish an advisory group—

- (a) to provide a forum for dialogue and co-operation between the Government, employers, and workers on workplace health and safety matters; and
 - (b) to provide advice to WorkSafe New Zealand that represents the views of the Government, employers, and workers on workplace health and safety matters. 5
- (2) WorkSafe New Zealand may establish 1 or more other advisory groups to provide advice to it on matters relating to its functions.
- (3) An advisory group referred to in **subsection (1) or (2)** may (but is not required to) be established in accordance with clause 14(1)(a) of Schedule 5 of the Crown Entities Act 2004. 10

WorkSafe New Zealand's main objective and functions

- 9 WorkSafe New Zealand's main objective** 15
- (1) WorkSafe New Zealand's main objective is to promote and contribute to the prevention of harm to all people at work and in, or in the vicinity of, the workplace.
 - (2) When performing its functions under the relevant health and safety legislation, WorkSafe New Zealand must act in a way that furthers any relevant objectives or purposes stated in that legislation. 20
- 10 WorkSafe New Zealand's functions**
- WorkSafe New Zealand's functions are to—
- (a) advise on the operation of the workplace health and safety system, including co-ordination across the different components of the system: 25
 - (b) make recommendations for changes to improve the effectiveness of the workplace health and safety system, including legislative changes: 30
 - (c) monitor and enforce compliance with relevant health and safety legislation:
 - (d) make recommendations about the level of any funding (including fees or levies) that WorkSafe New Zealand requires to effectively carry out its functions: 35
 - (e) develop codes of practice:

- (f) provide guidance, advice, and information on workplace health and safety to—
 - (i) persons who have duties under the relevant health and safety legislation; and
 - (ii) the public: 5
- (g) promote and support research, education, and training on or in workplace health and safety:
- (h) collect, analyse, and publish statistics and other information relating to workplace health and safety:
- (i) engage with, promote, and co-ordinate the sharing of information with other agencies and interested persons that contribute to workplace health and safety: 10
- (j) foster a co-operative and consultative relationship between persons who have duties under the relevant health and safety legislation and the persons to whom they owe duties and their representatives in relation to workplace health and safety: 15
- (k) promote and co-ordinate the implementation of workplace health and safety initiatives by establishing partnerships or collaborating with other agencies or interested persons in a coherent, efficient, and effective way: 20
- (l) perform or exercise any other functions or powers conferred on WorkSafe New Zealand by or under any other enactment:
- (m) perform any additional function that the Minister directs under section 112 of the Crown Entities Act 2004. 25

Subpart 3—Transition to WorkSafe New Zealand and consequential amendments

Transfer of employees

- 11 Restriction on compensation for technical redundancy** 30
- (1) An employee of MBIE is not entitled to receive any payment or other benefit on the ground that the position held by the employee in MBIE has ceased to exist if—
 - (a) the position ceases to exist as a result of a transfer of functions from MBIE to WorkSafe New Zealand; and 35
 - (b) in connection with that transfer of functions,—

- (i) the employee is offered equivalent employment in WorkSafe New Zealand (whether or not the employee accepts the offer); or
 - (ii) the employee is offered, and accepts, other employment in WorkSafe New Zealand. 5
 - (2) In **subsection (1), equivalent employment** to the employee's employment in MBIE is employment in WorkSafe New Zealand that is—
 - (a) in substantially the same position; and
 - (b) in the same general locality; and 10
 - (c) on terms and conditions of employment that are no less favourable than those that applied to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and 15
 - (d) on terms that treat the period of service with MBIE (and any other period of service recognised by MBIE as continuous service) as if it were continuous service with WorkSafe New Zealand.
 - (3) This section overrides Part 6A of the Employment Relations Act 2000. 20
- 12 Terms and conditions of transferred employees**
- The employment of a transferred employee does not—
- (a) constitute new employment for the purposes of the KiwiSaver Act 2006; or 25
 - (b) treat the employee as a new employee for the purposes of the Employment Relations Act 2000.
- 13 Transferred employees bound by collective agreement**
- (1) This section applies to a transferred employee who was bound by a collective agreement with the chief executive immediately before the employee transferred to WorkSafe New Zealand. 30
 - (2) On and after the commencement of **Part 1**,—
 - (a) the employee continues to be bound by the collective agreement and may enforce the collective agreement against Worksafe New Zealand; and 35

- (b) WorkSafe New Zealand must be treated as if it were a party to the collective agreement instead of the chief executive; and
- (c) unless the context otherwise requires, every reference in the collective agreement to the chief executive or MBIE must be read as a reference to WorkSafe New Zealand. 5

14 Government Superannuation fund

- (1) Any person who, immediately before becoming an employee of WorkSafe New Zealand, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 is deemed, for the purpose of that Act, to be employed in the Government service as long as the person continues to be an employee of WorkSafe New Zealand. 10
- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if the person's service as an employee of WorkSafe New Zealand were Government service. 15
- (3) **Subsection (1)** does not entitle a person to become a contributor to the Government Superannuation Fund if the person has ceased to be a contributor. 20
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, the chief executive of WorkSafe New Zealand is the controlling authority.

Transfer of contracts

- 15 Transfer of contracts to Worksafe New Zealand** 25
- (1) This section applies to a contract (other than an employment agreement) that—
 - (a) was made between the chief executive or MBIE and another person; and
 - (b) is identified by MBIE and relates solely to a function or power of the chief executive under the relevant health and safety legislation before the commencement of **Part 1** that becomes a function or power of WorkSafe New Zealand on that commencement. 30
- (2) On and after the commencement of **Part 1**,— 35

- (a) the contract must be treated as if WorkSafe New Zealand were the party to the contract instead of the chief executive or MBIE (as the case requires); and
- (b) unless the context otherwise requires, every reference in the contract to the chief executive or MBIE is to be read as a reference to WorkSafe New Zealand. 5

Consequences of transfers of functions, etc

16 Consequences of transfer of functions under relevant health and safety legislation to WorkSafe New Zealand

- (1) This section applies to a function of the chief executive under the relevant health and safety legislation that is transferred to WorkSafe New Zealand as a consequence of the amendments to the relevant health and safety legislation made by **Part 1**. 10
- (2) On and after the commencement of **Part 1**,—
 - (a) all information that relates solely or principally to the function and that is held by the chief executive or MBIE is held by WorkSafe New Zealand; and 15
 - (b) all money payable to or by the chief executive or MBIE in relation to the function becomes payable to or by WorkSafe New Zealand; and 20
 - (c) all rights, liabilities, entitlements, and engagements of the chief executive or MBIE in relation to the function become the rights, liabilities, entitlements, and engagements of WorkSafe New Zealand; and
 - (d) all directions to the chief executive or MBIE that relate to the function and that are in force immediately before the commencement of **Part 1** become directions to WorkSafe New Zealand; and 25
 - (e) anything done, or omitted to be done, or that is to be done, in relation to the function by, or in relation to, the chief executive or MBIE is to be treated as having been done, or having been omitted to be done, or to be done, by, or in relation to, WorkSafe New Zealand; and 30
 - (f) the commencement, continuation, or enforcement of proceedings relating to the function by or against the chief executive or MBIE may instead be carried out by or against WorkSafe New Zealand without amendment to the proceedings; and 35

- (g) a matter or thing relating to the function that would, but for this section, have been completed by the chief executive or MBIE may be completed by WorkSafe New Zealand.
- (3) On and after the commencement of **Part 1**, property identified by MBIE as being owned by the chief executive or MBIE solely or principally for the purposes of the function and that should be transferred to WorkSafe New Zealand is vested in WorkSafe New Zealand. 5
- (4) The transfer of information from the chief executive or MBIE to WorkSafe New Zealand under **subsection (2)(a)** does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993. 10
- 17 Consequences of transfer of collective agreement or contract to WorkSafe New Zealand** 15
- (1) This section applies to—
- (a) a collective agreement to which WorkSafe New Zealand has become a party under **section 13**; and
- (b) a contract transferred to WorkSafe New Zealand under **section 15**. 20
- (2) On and after the commencement of **Part 1**,—
- (a) all rights, liabilities, and entitlements of the chief executive or MBIE under the contract become the rights, liabilities, and entitlements of WorkSafe New Zealand; and 25
- (b) anything done, or omitted to be done, or that is to be done by, or in relation to, the chief executive or MBIE is to be treated as having been done, or having been omitted to be done, or to be done by, or in relation to, WorkSafe New Zealand; and 30
- (c) the commencement, continuation, or enforcement of proceedings by or against the chief executive or MBIE may instead be carried out by or against WorkSafe New Zealand without amendment to the proceedings.

*Continuation of inspectors and enforcement
officers*

18 Continuation of inspectors and enforcement officers

Despite the amendments made by **Part 1** to section 29 of
the Health and Safety in Employment Act 1992 (**HSE**) and 5
to section 97B(2)(b) of the Hazardous Substances and New
Organisms Act 1996 (**HSNO**), a person’s appointment as an
inspector for the purposes of the HSE or as an enforcement
officer for the purposes of HSNO continues,—

- (a) if the person is a transferred employee, as if WorkSafe 10
New Zealand appointed the person; or
- (b) if **paragraph (a)** does not apply, as if WorkSafe New
Zealand had, with the approval of the Minister, dele-
gated the power to appoint the person as an inspector or
an enforcement officer (as the case may be) to the per- 15
son who made the appointment.

Amendments to other enactments

19 Amendments to other enactments

Amend the enactments specified in **Schedule 1** as set out in
that schedule. 20

Part 2

**Amendments to Health and Safety in
Employment Act 1992**

20 Principal Act

This **Part** amends the Health and Safety in Employment Act 25
1992 (the **principal Act**).

21 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** 30
“**coal** has the meaning given to it in **section 19L**
“**mine health and safety committee** has the meaning given to
it in **section 19L**

- “**mine 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** 5
- “**mining industry health and safety representative** 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** 10
- “**site senior executive** has the meaning given to it in **section 19L**
- “**tourist mining operation** has the meaning given to it in **section 19L** 15
- “**tunnelling operation** has the meaning given to it in **section 19O**
- “**WorkSafe** means WorkSafe New Zealand established by **section 5** of the **Health and Safety (Pike River Implementation) Act 2013**”. 20
- (2) In section 2(1), replace the definition of **approved code of practice** with:
- “**approved code of practice** means a statement, for the time being approved under **section 20A**; but where any amendment of the statement has been approved under that section, means the statement as amended”. 25
- (3) In section 2(1), replace the definition of **improvement notice** with:
- “**improvement notice** means a notice under section 39(1) or (2) or **39A**”. 30
- (4) In section 2(1), replace the definition of **prohibition notice** with:
- “**prohibition notice** means a notice under section 41(1) or **41A**”.

- 22 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*).” 5
- 23 Section 11 amended (Employees to be given results of monitoring)** 10
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**.” 15
- 24 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** 20
- “(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 25
- “(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— 30
- “(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— 35

- “(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 infor- 5
mation 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 infor- 10
mation that identifies, or discloses anything about, any
individual mine worker.
- “**12B Information for mine health and safety representatives**
A mine operator must ensure that all mine health and safety
representatives in the mining operation have ready access to 15
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.”
- 25 New section 13AA and cross-heading inserted** 20
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 25
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
mine—
- “(a) has, or is so supervised by a person who has, such know- 30
ledge 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, 35
substances, and protective clothing and equipment that
the mine worker is or may be required to use or handle.”

- 26 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 **Part 2B**, nothing in this Part applies to a mining operation.” 5
- 27 New Part 2B inserted**
After Part 2A, insert:
- “Part 2B**
“Worker participation in health and safety in mining sector” 10
- “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— 15
- “(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. 20
- “19L Interpretation**
In this Act,—
- “**coal** means anthracite, bituminous coal, sub-bituminous coal, lignite, and peat; and includes every other substance worked or normally worked with coal 25
- “**mine health and safety committee** means a committee established to support the ongoing improvement of health and safety in a mining operation
- “**mine health and safety representative** means a mine worker elected, as an individual or as a member of a mine health and safety committee, or both, to represent the views of mine workers in a mining operation in relation to health and safety at work 30

“**mine operator** means,—

“(a) in respect of a mining operation carried out subject to 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 5

“(ii) the permit operator, if no such person has been appointed:

“(b) where mining operations are carried out subject to 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 10

“(ii) the person who holds a licence or other permission to carry out mining operations, if no such person has been appointed: 15

“(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 20

“(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 25

“**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 30

“**mining industry health and safety representative** means a person appointed in accordance with **section 19ZP**

“**mining operation** has the meaning given to it in **section 19M** 35

“**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 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— 5

“(a) mine education; or

“(b) mine research; or

“(c) mine tourism

“**tunnelling operation** has the meaning given to it in **section 190**. 10

“**19M Meaning of mining operation**

“(1) In this Act, **mining operation** means any of the following activities and the place at which they are carried out:

“(a) all activities associated with the extraction of coal or minerals, including— 15

“(i) exploring for coal or minerals:

“(ii) mining for coal or minerals:

“(iii) processing coal or minerals associated with a mine: 20

“(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: 25

“(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: 30

“(vii) preparatory, maintenance, and repair activities associated with the activities described in **subparagraphs (i) to (iv)**: 35

“(b) a tourist mining operation:

“(c) a quarrying operation if it is of a type defined in **section 19N** : 35

- “(d) a tunnelling operation if it is of a type defined in **section 19O**.
- “(2) Despite **subsection (1), mining operation** does not include a mining operation on or under the seabed anywhere that is the seaward side of the mean high-water mark. 5
- “**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 10
- “(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 15
- “(c) includes any place in which any material extracted or processed in a quarry is crushed or screened; but
- “(d) excludes any quarrying operation of a kind declared under **section 19P** not to be a quarrying operation. 20
- “(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**— 25
- “(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 30
- “(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 sections 19N and 19O**
- The Governor-General may, by Order in Council made on the recommendation of the Minister, declare that— 35

- “(a) certain operations or classes of operations are not quarrying operations for the purposes of **section 19N**;
- “(b) 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** 5

- “(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. 10
- “(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. 15
- “(4) If a mine health and safety committee or a mine 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 mine health and safety committee or mine health and safety representative setting out the reasons for not adopting the proposal. 20
- “(5) In **subsection (1), reasonable opportunities** means opportunities that are reasonable in the circumstances, having regard to relevant matters such as— 25
 - “(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 30
 - “(c) the nature of the work that is performed and the way that it is arranged or managed by the mining 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 35
 - “(e) 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)**: 5
- “(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. 10
- “**(3)** If the system includes provision for mine health and safety representatives, those representatives must be elected by the mine workers in the mining operation. 15
- “**(4)** If the mine workers request that the system include provision for mine health and safety representatives, there must be provision for the election of at least 1 mine health and safety representative if there is an available person qualified as described in **section 19U(2)**. 20
- “**(5)** A system may allow for more than 1 mine health and safety representative or 1 mine 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. 25
- “**(6)** A 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 mine health and safety representatives who are employees to take for health and safety training under section 19E(1) (as applied by **section 19U(3)**): 30
 - “(b) total number of days’ paid leave that employers of mine workers are required to allow mine 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 **section 19U(3)**). 35

“19S 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. 5

“(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**. 10

“19T Prescribed provisions apply if no scheme in place

The provisions prescribed in regulations made under this Act apply if a worker participation system is not developed within 3 months of the date on which a mining operation begins.

“Mine health and safety representatives” 15

“19U Election and qualifications of mine health and safety representatives

“(1) If a worker participation system provides for the election of 1 or more mine 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. 20

“(2) No person may be elected as a mine health and safety representative unless that person meets the competency requirements for mine health and safety representatives prescribed in regulations made under this Act. 25

“(3) Sections 19E to 19G apply to any mine health and safety representative under this Part who is an employee.

“19V Functions of mine health and safety representatives

The functions of a mine health and safety representative are, in relation to the mining operation in respect of which the representative is appointed,— 30

“(a) to investigate complaints from mine workers regarding health and safety:

- “(b) if requested by a mine worker, to represent the worker in relation to a matter relating to health and safety (including a complaint):
- “(c) to identify hazards in the mining operation and bring them to the attention of the mine operator or site senior executive: 5
- “(d) to monitor measures taken by the mine operator that are relevant to health and safety:
- “(e) 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: 10
- “(f) any other functions agreed by the mine operator, the representative, and any union representing the representative. 15
- “**19W No duty on mine health and safety representatives**
Nothing in this Act imposes a duty on a mine health and safety representative in that capacity.
- “Powers of mine health and safety representatives”* 20
- “**19X Power of mine health and safety representative to attend interview**
With the consent of the mine worker, a mine 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. 25
- “**19Y Power of mine health and safety representative to enter and inspect mining operation**
- “(1) A mine health and safety representative may enter and inspect any area of a mining operation at any reasonable time to perform the functions of the mine health and safety representative. 30
- “(2) Before exercising the power under this section, the mine health and safety representative must give reasonable notice to the site senior executive. 35

“(3) In exercising the power under this section, the mine health and safety representative must comply with any reasonable procedures and requirements applying in the mining operation that relate to health and safety.

“**19Z Power of mine health and safety representative to examine and copy documents** 5

A mine health and safety representative who enters a mining operation may examine and copy any documents relevant to health and safety that are held by the mine operator, if the mine 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. 10

“**19ZA Power to require assistance** 15

A mine health and safety representative who enters a mining operation may require the site senior executive or person in charge of the relevant part or aspect of a mining operation to give the mine health and safety representative reasonable assistance in the exercise of a power under **section 19Y or 19Z.** 20

“**19ZB Power of mine health and safety representative to accompany inspector**

“(1) A mine health and safety representative may accompany an inspector who has, under section 31, entered a mining operation. 25

“(2) An inspector may refuse to allow a mine 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 mine health and safety representative being present): 30

“(b) if the inspector believes that the presence of the mine health and safety representative would prejudice the maintenance of the law, including the investigation and prosecution of offences. 35

“(3) In this section, **personal information** has the meaning given to it in section 2(1) of the Privacy Act 1993.

“**19ZC Mine health and safety representative may consult inspector**

A mine health and safety representative may consult with an inspector on any health and safety issue. 5

“**19ZD Mine 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 10
 - “(b) is in the prescribed form; and
 - “(c) may set out suggested steps to deal with the hazard.
- “(2) **Subsection (3)** applies if a mine health and safety representative—
- “(a) believes on reasonable grounds that there is a hazard in the mining operation; and 15
 - “(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. 20
- “(3) The mine health and safety representative may give the site senior executive on behalf of the mining operator a hazard notice if—
- “(a) the site senior executive refuses to discuss, or take steps to deal with, the hazard; or 25
 - “(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. 30
- “(4) If a hazard notice has been given by a mine health and safety representative, the site senior executive must notify WorkSafe of that fact. 35

“19ZE Power of mine health and safety representative to give notice requiring suspension of mining operation

- “(1) This section applies if a mine health and safety representative believes on reasonable grounds that the whole or a part or aspect of a mining operation is likely to cause serious harm to any person. 5
- “(2) The mine health and safety representative may give a written notice to the site senior executive ordering the suspension of the whole, or a part or aspect, of the mining operation.
- “(3) The notice must set out the reasons for the mine health and safety representative’s belief. 10
- “(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. 15

“19ZF Power of mine health and safety representative to require mining operation to stop in case of imminent serious harm

- “(1) This section applies if a mine 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 aspect of a mining operation. 20
- “(2) The mine health and safety representative may—
- “(a) stop the whole or a part or aspect of the mining operation and immediately advise the person in charge of the operation or part or aspect of the operation; or 25
- “(b) require the person in charge of the operation or part or aspect of the operation to stop the operation.
- “(3) If a mine health and safety representative requires a person to stop the whole or a part or aspect of a mining operation, that person must do so. 30
- “(4) The mine 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. 35

“19ZG Inspector may cancel order to suspend mining operation

An inspector may cancel the whole or part of a notice given under **section 19ZE** (whether or not mining operations have stopped pursuant to the notice) or an action taken by a mine health and safety representative under **section 19ZF(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. 5

“19ZH Workers must do other work

If the whole or a part or aspect of a mining operation is stopped under **section 19ZE or 19ZF**, 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. 10
15

“19ZI 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 19ZE**, or stopped or required to be stopped under **section 19ZF**, is not restarted until the site senior executive is satisfied that it is not likely to cause serious harm to any person. 20

“19ZJ Protection of mine health and safety representatives performing functions or exercising powers

A mine operator or site senior executive must not— 25

“(a) prevent or attempt to prevent a mine health and safety representative from performing his or her functions or exercising his or her powers; or

“(b) penalise a mine health and safety representative for performing his or her functions or exercising his or her powers. 30

“19ZK Functions and powers for health and safety purposes only

A mine 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.

5

“19ZL Health and safety representative not to unnecessarily impede production

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

10

“Removal of mine health and safety representative

“19ZM WorkSafe may remove mine health and safety representative

“(1) WorkSafe may, by notice in writing, remove a mine health and safety representative from office if WorkSafe considers that the mine health and safety representative is not performing his or her functions or exercising his or her powers satisfactorily.

15

“(2) The notice under **subsection (1)** must set out the reasons for WorkSafe’s opinion.

20

“19ZN Election of another mine health and safety representative

“(1) If a mine health and safety representative is removed from office by WorkSafe, another mine health and safety representative may be elected.

25

“(2) No election for a mine 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 19Z0** or, if an appeal is lodged, until a decision is made on the appeal.

30

**“19ZO Mine health and safety representative may appeal
against removal**

- “(1) A mine health and safety representative may appeal to a District Court against a decision of WorkSafe to remove him or her. 5
- “(2) The appeal must be brought within 28 days of the date of the notice under **section 19ZM**.

*“Mining industry health and safety
representatives***“19ZP Appointment of mining industry health and safety
representatives 10**

- “(1) A union or group of mine workers may, in any manner determined by the union or group, appoint a person to be a mining industry health and safety representative.
- “(2) The person appointed must meet the competency requirements for mining industry health and safety representatives prescribed in regulations made under this Act. 15
- “(3) The union or group of mine workers that appoints a mining industry health and safety representative must meet the costs of the representative. 20

**“19ZQ Notice to WorkSafe of appointment or cessation of
appointment of representative**

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

- “(a) give notice to WorkSafe of that appointment; and 25
- “(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 30
which the person ceases to be a representative.

**“19ZR Functions and powers of mining industry health and
safety representatives**

- “(1) A mining industry health and safety representative has, in respect of any mining operation and any mine worker, the func- 35

tions and powers set out in **sections 19V and 19X to 19ZF**, and those sections and **sections 19W and 19ZG to 19ZL** apply with any necessary modifications.

“(2) In addition to the functions and powers referred to in **subsection (1)**, a mining industry health and safety representative has 5 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 10 and safety in mining operations.

“**19ZS Further provision concerning scope of functions and powers of mining industry health and safety representatives**

A mining 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 20

“(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.

“**19ZT Identity cards** 25

“(1) WorkSafe must give each mining 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 a mining industry health and safety representative must return his or her identity card to WorkSafe 30 as soon as possible, but within 14 days, after the date on which the person ceases to be a representative.

“19ZU Production or display of identity card

“(1) Before a mining 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 5

“(b) display the identity card so it is clearly visible to that person.

“(2) A mining industry health and safety representative who exercises a power under **section 19Y** must—

“(a) produce his or her identity card to the person apparently in charge of the part of the mining operation being entered; or 10

“(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— 15

“(a) the representative’s identity; and

“(b) the address of a place where the representative may be contacted; and 20

“(c) the date and time of entry onto the mining operation; and

“(d) the representative’s reasons for entering onto the mining operation.

“19ZV Removal of mining industry health and safety representative 25

Sections 19ZM to 19ZO apply to a mining industry health and safety representative with any necessary modifications.

“19ZW Register of mining industry health and safety representatives 30

“(1) WorkSafe must keep and maintain a register of mining 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 mining industry health and safety representatives. 35

“(3) The register may be kept in any manner that WorkSafe thinks fit.

“(4) The register must contain the prescribed information.

“**19ZX 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 19ZW(4)**. 5

“**19ZY Search of register**

“(1) A person may search the register for a purpose set out in **section 19ZW(2)**. 10

“(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.” 15

28 Section 20 replaced (Codes of practice)

Replace section 20 with:

“**20 Codes of practice** 20

“(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 25

“(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 30

- “(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 5
 - “(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 10
- “(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. 15 20
- “(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). 25
- “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. 30
- “(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 35
 - “(b) the Minister has consulted any persons that will be affected by the code, amendment, or revocation (or rep-

- 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. 5
- “(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. 10
- “(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. 15
- “(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. 20
- “**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— 25
- “(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. 30
- “(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. 35

“20C Codes to be made available

- “(1) WorkSafe must ensure that copies of approved codes of practice are, at all reasonable times, available at every office of WorkSafe for inspection and copying by the public.
- “(2) WorkSafe may charge any person a reasonable fee for— 5
- “(a) providing the person with a 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. 10
- “(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 15**
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: 20
- “(b) to examine applicants, or have applicants examined, for certificates of competence:
- “(c) to issue, renew, cancel, and suspend certificates of competence: 25
- “(d) any other function 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. 30
- “(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: 5
 - “(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. 10
- “(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. 15

“**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 mining operators to fund the costs of the Board. 20
- “(2) Without limiting **subsection (1)**, regulations made under this section may—
- “(a) prescribe the amount, a method or methods for calculating the amount, or both, of the levy payable by mining operators; and 25
 - “(b) prescribe different amounts or different methods of calculating the amounts payable by different classes of mining operators. 30
- “(3) The Minister must receive advice from WorkSafe before recommending that regulations be made under this section.”

29 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:
- “(c) the default worker participation system for the purpose of **section 19T**: 5
- “(d) the requirements for conducting elections of mine health and safety representatives for the purpose of **section 19U(1)**:
- “(e) the form of the identity card to be held by a mining industry health and safety representative: 10
- “(f) prescribing the information to be provided to WorkSafe for the purpose of **section 19ZQ(b)** and any requirements concerning the authentication of any photograph provided under that section: 15
- “(g) prescribing the information to be contained in the register kept under **section 19ZW**:
- “(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.” 20

30 Section 22 amended (Application of regulations)

In section 22, insert as subsection (2):

- “(2) Regulations under **section 21(1)(b)** may impose duties— 25
- “(a) on all mine operators:
- “(b) on mine operators of a particular kind or description:
- “(c) on all mine workers:
- “(d) on mine workers of a particular kind or description:
- “(e) in relation to all mining operations: 30
- “(f) in relation to mining operations of a particular class or description.”

31 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. 35
- (2) After section 23(1)(e), insert:

- “(ea) the competency requirements to be met by mine health and safety representatives and mining industry health and safety representatives.”
- (3) After section 23(1)(f), insert:
- “(fa) the prescribing by WorkSafe, by notice in the *Gazette*, of requirements to be met for the granting of certificates of competence for mine workers.” 5
- 32 New section 39A inserted (Inspectors may issue improvement notices in relation to mining operation)** 10
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. 15
- “(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— 20
- “(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 25
- “(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. 30
- “(5) Nothing in this section limits the power of an inspector under section 39.”
- 33 New section 41A inserted (Inspectors may issue prohibition notices in relation to mining operation)** 35
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 5
 - “(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. 10
- “(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. 15 20
- “(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. 20
- “(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. 25
- “(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. 30
- “(6) Nothing in this section limits the power of an inspector under section 41.”

34 Section 42 amended (Service of prohibition notices)

- (1) In section 42(1), after “prohibition notice”, insert “under section 41”. 35
- (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 mining operator, on behalf of the mining operator; or 5
- “(b) give the notice to the site senior executive, or another representative of the mining operator, on behalf of the mining operator.
- “(4) No person may remove a notice under **section 41A** served in accordance with **subsection (3)(a)** unless authorised by an inspector.” 10
- 35 Section 43 amended (Compliance with prohibition notices)**
- (1) In section 43, after “notice”, insert “under **section 41**”. 15
- (2) In section 43, insert as subsection (2):
- “(2) A mining operator to whom a prohibition notice under **section 41A** is given must ensure that no action is taken in contravention of it.”
- 36 Section 50 amended (Other offences)** 20
- In section 50(1)(b), after “19B,”, insert “**section 19Q(1), section 19ZE(4), section 19ZF(3), section 19ZJ,**”.
- 37 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— 25
- “(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 Act in places of work: 30
- “(c) the Crown administering the relevant health and safety legislation (within the meaning of **section 3** of the

- Health and Safety (Pike River Implementation)
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”. 5
- (3) In section 59(5), replace “the Secretary” with “WorkSafe”.
- 38 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.” 10
- (2) Before Schedule 1, insert the **Schedule 1AA** set out in **Schedule 2** of this Act.
- 39 Further amendment**
The enactment specified in **Schedule 3** is amended in the 15 manner set out in that Schedule.

Part 3 Mines Rescue

- 40 Interpretation**
In this **Part**, unless the context otherwise requires,— 20
- authorised person** means a person who is authorised by the chief executive to exercise the powers conferred by **section 49**
- board** means the board recognised under **section 43**
- chief executive** means the chief executive of the department 25
- coal** has the same meaning as in **section 19L** of the Health and Safety in Employment Act 1992
- department** means the department of State that, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of 30 this **Part**
- financial year** means a period of 12 months ending with 31 March

GST means goods and services tax under the Goods and Services Tax Act 1985

mine operator means,—

- (a) in respect of a mining operation carried out subject to a permit granted under the Crown Minerals Act 1991,— 5
 - (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) where mining operations are carried out subject to a licence or other permission,— 10
 - (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 15
 - (ii) the person who holds a 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 20
 - (ii) the owner of the land where the mining operation is being carried out, if no such person has been appointed 25

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

mineral has the same meaning as in **section 19L** of the Health and Safety in Employment Act 1992

mines rescue brigade means a group of persons organised by the board to provide rescue services during emergencies at mining operations 30

mining operation—

- (a) means a mining operation (within the meaning of **section 19M** of the Health and Safety in Employment Act 1992) but only to the extent that the mining operation is— 35
 - (i) associated with the extraction of coal; or

- (ii) associated with the extraction of minerals other than coal and below ground; and
- (b) includes a tunnelling operation; but
- (c) does not include a tourist mining operation

Minister means the Minister of the Crown who, with the authority of the Prime Minister, is for the time being responsible for the administration of this **Part**

rescue station—

- (a) means a site that serves as an operational base for the functions specified in **section 44(a) to (c)**; and
- (b) includes a site for the management and administration of the board

tourist mining operation has the same meaning as in **section 19L** of the Health and Safety in Employment Act 1992

tunnelling operation means a tunnelling operation (within the meaning of **section 190** of the Health and Safety in Employment Act 1992) but only to the extent that the tunnelling operation relates to a tunnel that is, or is intended to be, at least 150 metres long

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

41 **Part binds the Crown**

This **Part** binds the Crown.

42 **Provisions affecting application of amendments to this Part**

Schedule 4 contains application, savings, and transitional provisions that affect other provisions of this **Part** as from time to time amended, repealed, or repealed and replaced (*see section 55*).

Mines Rescue Trust Board

43 **Mines Rescue Trust Board**

- (1) Subject to **sections 44 and 45**, the Minister may, by notice in the *Gazette*, recognise a board incorporated under Part 2 of the Charitable Trusts Act 1957 for the purposes of this **Part**.

- (2) The notice must specify a day on which the recognition is to take effect (the **appointed day**).

44 Functions of board

The Minister must be satisfied that the board has as the following functions:

- (a) providing training, equipment, and resources for mines rescue brigades to ensure that the brigades have the capacity and readiness to respond to emergencies in mining operations; and 5
- (b) assisting mine operators in emergency preparedness, including by developing, reviewing, and testing mine operators' emergency management plans in mining operations; and 10
- (c) deploying mines rescue brigades and other resources, and providing advice to mine operators, during emergencies; and 15
- (d) for the purposes of performing the functions in **paragraphs (a) to (c)**,—
 - (i) establishing and maintaining rescue stations; and
 - (ii) purchasing real property, goods, and services for rescue stations; and 20
 - (iii) employing or engaging staff for rescue stations.

45 Membership of board

The Minister must be satisfied that the board comprises—

- (a) 1 person appointed by the chief executive (who has no voting rights and is not counted for the purposes of determining whether or not a quorum is present at a meeting of the board); and 25
- (b) 2 people who represent mine operators of underground coal mines; and 30
- (c) 1 person who represents mine operators of opencast coal mines; and
- (d) 1 person who represents mine operators of underground metalliferous mines; and
- (e) 1 person who represents tunnelling operators; and 35

- (f) 1 person appointed by a union (within the meaning of the Employment Relations Act 2000) whose members work in mining operations; and
- (g) any other person appointed by the board.

Cost recovery

5

46 Regulations imposing levies

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the payment of a levy by mine operators to the board to enable the recovery of the direct and indirect costs of the board incurred in performing the functions specified in **section 44(a), (b), and (d)**. 10
- (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: 15
 - (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: 20
 - (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) The regulations may— 25
 - (a) specify the returns to be made to the board 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: 30
 - (c) specify a method by which the levy may increase or decrease over time to reflect a relevant index published by Statistics New Zealand:
 - (d) for the purpose of ascertaining whether the regulations are being complied with,— 35

- (i) require the keeping of accounts, statements, and records of a specified class or description by either or both of the board and the persons responsible for paying the levy; and
 - (ii) require the retention of the accounts, statements, and records for a specified period: 5
- (e) 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 10
 - (ii) the procedures to be followed by the persons; and
 - (iii) the remuneration of the persons.
- (4) Before making a recommendation under **subsection (1)**, the Minister must consult the board and the persons responsible for paying the levy. 15
Compare: 2012 No 2 s 62

47 Board to account for levy

- (1) As soon as practicable after the end of a financial year in which a levy has been paid to the board, the board must prepare the following for the year: 20
 - (a) a statement of the money paid to the board as levy in the year:
 - (b) a statement of the assets the board has at the end of the year as a result of money paid as levy in the year:
 - (c) a statement of the board's receipt and expenditure of money paid as levy in the year: 25
 - (d) all other statements necessary to show fully—
 - (i) the board's financial position as a result of money paid as levy in the year; and
 - (ii) the financial results of all of the board's activities involving the use of the money paid as levy in the year or the use of assets the board has at the end of the year as a result of money paid as levy in the year. 30
- (2) On or before 1 July after the end of a financial year, the board must— 35
 - (a) ensure that the statements are independently audited; and

- (b) provide the audited statements to the chief executive and to levy payers.
- (3) The board may provide the audited statements to levy payers by making them available on an Internet site free of charge.
Compare: 2012 No 2 s 63 5
- 48 Failure to pay levy**
- (1) This section applies if a levy imposed by regulations made under **section 46** (or GST payable on that amount) is wholly or partly unpaid by the close of the date for payment.
- (2) The person responsible for paying the levy is liable to pay an additional amount equal to 10% of the amount unpaid. 10
- (3) The board may waive all or part of the amount of the additional amount if it is satisfied that the failure or refusal of a person to pay the original debt is a result of a genuine dispute as to the person's liability to pay the debt. 15
- (4) The board may recover a levy, and any additional amount payable under **subsection (2)**, as a debt due in a court of competent jurisdiction.
Compare: 2012 No 2 s 65
- 49 Power of inspection in relation to levy** 20
- (1) An authorised person may exercise the powers specified in this section, at any reasonable time within business hours, for the purpose of ascertaining whether the requirements of any regulations relating to the levy are being met.
- (2) For the purposes of **subsection (1)**, an authorised person has the power to— 25
- (a) enter any place that is not a dwelling house or marae—
(i) on reasonable notice to the occupier; or
(ii) without notice if giving notice would defeat the purpose of entry: 30
- (b) inspect and examine any books, accounts, records, or documents:
- (c) require any person to provide any information:
- (d) require a person to produce any books, accounts, records, or documents in the person's possession or 35

- control and allow copies of or extracts from them to be made or taken:
- (e) require a person to reproduce, or assist the authorised person to reproduce, in usable form any information recorded or stored electronically. 5
- (3) An authorised person exercising powers under this section in respect of a place must identify himself or herself as an authorised person—
- (a) before or on entry to the place; and
 - (b) whenever reasonably required to do so by the apparent occupier after entry. 10

Compare: 1992 No 97 s 8

50 Offences

- (1) **Subsection 2** applies to—
- (a) any requirement to make returns or to keep accounts, statements, or records imposed by regulations made under **section 46**;
 - (b) a requirement under **section 49(2)**.
- (2) A person must not, in relation to the requirement,—
- (a) without reasonable excuse, refuse or fail to comply with the requirement: 20
 - (b) provide any information that the person knows, or ought to know, is materially false or misleading.
- (3) A person who contravenes **subsection (2)** commits an offence and is liable on conviction to a fine not exceeding \$2,000. 25
- (4) If a person contravenes **subsection (2)** while acting as an agent (including a contractor) or employee of another person (the **principal**), and it is proved that the contravention took place with the principal's authority, permission, or consent, the principal commits an offence and is liable on conviction to a fine not exceeding \$2,000. 30

Compare: 1992 No 97 s 9

51 Recovery of costs incurred in emergency

- (1) This section applies to direct and indirect costs incurred by the board in performing the function specified in **section 44(c)**. 35

- (2) The costs are payable to the board by the mine operator of the mining operation where the emergency occurs and, if the mine operator fails to pay the costs, the board may recover the costs as a debt due in a court of competent jurisdiction.
- (3) **Sections 46 to 50** do not apply to the costs. 5

Miscellaneous provisions

52 Appointment of commissioner

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
- (a) appoint a commissioner to perform the functions specified in **section 44**: 10
- (b) revoke the commissioner's appointment.
- (2) The Minister must not recommend the making of an order appointing a commissioner unless the Minister is satisfied, on reasonable grounds, that the board is not performing the functions specified in **section 44**. 15
- (3) The Minister must not recommend the making of an order revoking the appointment of a commissioner unless satisfied, on reasonable grounds, that—
- (a) the board is able to perform its functions without substantial difficulties; or 20
- (b) it is necessary to appoint a new commissioner.
- (4) While an order is in force under **subsection (1)(a)**,—
- (a) the commissioner has the functions specified in **section 44**, and, in relation to the performance of those functions, has and may exercise the board's powers; and 25
- (b) the board must not perform the functions.

Compare: 1992 No 97 s 6

53 Protection from civil and criminal liability

- (1) This section applies to the following persons: 30
- (a) a member of a mines rescue brigade:
- (b) a member of the board:
- (c) an employee of the board:
- (d) an agent of the board.

-
- (2) The person is protected from civil and criminal liability for any act done in good faith that the person does or omits to do in the course of—
- (a) providing rescue services during an emergency at a mining operation: 5
 - (b) providing advice to a mine operator during an emergency at a mining operation:
 - (c) testing a mine’s emergency management plan.
- 54 Regulations**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations imposing obligations on mine operators to make mine workers available to be members of mines rescue brigades, including the number of mine workers a mine operator must make available and the extent to which the mine workers must be made available. 10 15
- (2) The number of mine workers a mine operator must make available and the extent to which the mine workers must be made available may be specified by a formula that takes into account the total number of mine workers working in the mining operation. 20
- 55 Application, savings, and transitional provisions**
The application, savings, and transitional provisions set out in **Schedule 4** have effect for the purposes of this Act.
- 56 Repeal of Mines Rescue Trust Act 1992**
Repeal the Mines Rescue Trust Act 1992 (1992 No 97). 25
-

Schedule 1

s 19

Amendments relating to WorkSafe New
Zealand

Part 1

Amendments to Acts

5

Accident Compensation Act 2001 (2001 No 49)

In section 6(1), insert in its appropriate alphabetical order:

“**WorkSafe** means WorkSafe New Zealand established by
section 5 of the **Health and Safety (Pike River Imple-
 mentation) Act 2013**.”

10

In section 280(2), replace “Department of Labour” with “Ministry of
Business, Innovation, and Employment, WorkSafe”.In the heading to section 286(1), replace “**Department of Labour**”
with “**Ministry of Business, Innovation, and Employment and to
WorkSafe**”

15

Replace section 286(1) to (4) with:

“(1) The Corporation must provide to the chief executive of the
 Ministry of Business, Innovation, and Employment or to
 WorkSafe any information held by the Corporation under this
 Act that—

20

“(a) relates to—

“(i) employers; or

“(ii) workplaces; or

“(iii) claims for work-related personal injury; and

“(b) is of a type specified for the purpose of this section in
 an agreement between the Corporation and the chief
 executive of the Ministry of Business, Innovation, and
 Employment or WorkSafe as the case may be.

25

“(2) The chief executive of the Ministry of Business, Innovation,
 and Employment and WorkSafe may use the information only
 for 1 or more of the following purposes:

30

“(a) to support the Ministry of Business, Innovation, and
 Employment and WorkSafe in their administration of
 any provisions of the relevant Acts:

“(b) to ensure appropriate co-ordination of activities with the
 Corporation and other relevant agencies:

35

Part 1—*continued*

Accident Compensation Act 2001 (2001 No 49)—*continued*

- “(c) in the case of the Ministry of Business, Innovation, and Employment, to support the Ministry’s responsibilities for workforce development and employment creation.
- “(3) The power conferred on the chief executive of the Ministry of Business, Innovation, and Employment and on WorkSafe by **subsection (2)** includes (without limitation) power to provide information received under this section to any agency designated under section 28B of the Health and Safety in Employment Act 1992, but only for the purpose of supporting the agency’s functions under that Act.
- “(4) The Corporation must provide the information in accordance with the agreement referred to in **subsection (1)(b)**.”

Crown Entities Act 2004 (2004 No 115)

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

Name	Exemption from acquisition of securities, borrowing, guarantee, and derivative rules				Exemption from section 165 (net surplus payable to Crown)
	s 161	s 162	s 163	s 164	
WorkSafe New Zealand					✓

Crown Minerals Act 1991 (1991 No 70)

In section 2(1), repeal the definition of **Health and Safety Regulator**.

In section 2(1), replace paragraph (d) of the definition of **regulatory agency** with:

“(d) WorkSafe New Zealand.”

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

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

In section 29A(3)(b), replace “the Health and Safety Regulator” with “WorkSafe”.

Part 1—*continued***Crown Minerals Act 1991 (1991 No 70)**—*continued*

In the heading to section 33A, replace “**Health and Safety Regulator**” with “**WorkSafe**”.

In section 33A(1), (2)(a) and (b), replace “the Health and Safety Regulator” with “WorkSafe”.

In section 33A(2)(c), replace “the Health and Safety Regulator’s” with “WorkSafe’s”. 5

In the heading to section 33B, replace “**Health and Safety Regulator**” with “**WorkSafe**”.

In section 33B(1), replace “The Health and Safety Regulator” with “WorkSafe”. 10

In section 33B(2), replace “the Health and Safety Regulator’s” with “WorkSafe’s”, in each place.

In section 41C(3)(b), replace “the Health and Safety Regulator” with “WorkSafe”.

In section 90E(1), replace “the Health and Safety Regulator” with “WorkSafe”. 15

In section 90E(1)(b), replace “the Health and Safety Regulator’s” with “WorkSafe’s”.

Electricity Act 1992 (1992 No 122)

In section 2(1), replace the definition of **Minister** with: 20

“**Minister** means the Minister of the Crown who, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”.

In section 2(1), replace the definition of **Ministry** with:

“**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”. 25

In section 2(1), replace the definition of **Secretary** with:

“**Secretary** means the chief executive of the Ministry”.

In section 2(1), insert in its appropriate alphabetical order: 30

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

Part 1—*continued*

Electricity Act 1992 (1992 No 122)—*continued*

In the cross-heading above section 5, after “*powers of*”, insert “*Work-Safe and*”.

Replace section 5 with:

“5 Functions of WorkSafe

- “(1) The functions of WorkSafe under this Act are— 5
- “(a) to carry out such inquiries, tests, audits, or investigations as may be necessary to determine whether or not a person is complying with this Act:
 - “(b) to take all such lawful steps as may be necessary to ensure the safe supply and use of electricity: 10
 - “(c) to perform such other functions as are provided for under this Act.
- “(2) This section is subject to **section 5A**.

“5A Functions of Secretary

- “ (1) The Secretary— 15
- “(a) must carry out the functions conferred on the Secretary under this Act or regulations made under this Act; and
 - “(b) may carry out a function conferred on WorkSafe under a specified provision of this Act or regulations made under this Act in relation to a specified matter. 20
- “(2) The Prime Minister may, by notice in the *Gazette*, specify—
- “(a) 1 or more matters in relation to which the Secretary may carry out functions conferred on WorkSafe under this Act; and
 - “(b) 1 or more provisions of this Act which confer functions on WorkSafe and under which the Secretary may exercise functions in relation to the specified matter. 25
- “(3) If the Secretary carries out a function in relation to a specified matter, every reference to WorkSafe in the relevant specified provision must be read as if it was a reference to the Secretary. 30
- “(4) Without limiting **subsection (3)**, the Secretary has the powers necessary to carry out the functions in a specified provision in relation to a specified matter in accordance with this Act.

Part 1—*continued***Electricity Act 1992 (1992 No 122)**—*continued*

- “(5) WorkSafe and the Secretary must work co-operatively to ensure that their functions under this Act and any regulations made under this Act are carried out in an effective and efficient manner.
- “(6) In this section— 5
“**specified matter** means a matter that is specified in a *Gazette* notice under **subsection (2)(a)**
“**specified provision** means a provision that is specified in a *Gazette* notice under **subsection (2)(a)**.
- “**5B WorkSafe and Secretary must share information** 10
- “(1) WorkSafe must provide information to the Secretary if the information is necessary or desirable for the Secretary to carry out his or her functions under this Act.
- “(2) The Secretary must provide information to WorkSafe if the information is necessary or desirable for WorkSafe to carry 15
out its functions under this Act.”
- In sections 6, 8, 9, 11, 13, 15 to 20, 38, 40 to 42, 57, 59, 165A, 165B, 169(1)(2)(d), 169(1)(8), and 169(1)(9), replace “the Secretary” with “WorkSafe” in each place.
- In the headings to sections 8, 9, 13, 19, and 20, replace “**Secretary**” 20
with “**WorkSafe**”.
- In sections 8, 18, 36, 37, 39, 165B, and 165D, replace “The Secretary” with “WorkSafe”.
- Replace section 16A with:
- “**16A Transfer of accident information** 25
- “(1) In this section, **specified matter** means a matter that is specified in a *Gazette* notice under **section 5A(2)**.
- “(2) If WorkSafe is notified of an accident under section 16 and the accident relates to a specified matter, WorkSafe must provide the notice and any particulars that WorkSafe has received to 30
the Secretary.
- “(3) If an accident relates to a specified matter, a person required to provide notification of any accident under section 16 may

Part 1—*continued*

Electricity Act 1992 (1992 No 122)—*continued*

notify the Secretary in accordance with that section instead of WorkSafe.”

Replace section 40(6) and (7) with:

“(6) Despite section 73 of the Crown Entities Act 2004, WorkSafe must not delegate to any person the power conferred by this section. 5

“(7) **Subsection (8)** applies if, pursuant to **section 5A(3)**, the Secretary may exercise the power conferred by this section in relation to a matter specified in a *Gazette* notice under **section 5A(2)**. 10

“(8) Despite section 41 of the State Sector Act 1988, the Secretary must not delegate to any person the power conferred by this section.”

Repeal section 43A.

In section 149(n), delete “by the Secretary”. 15

In section 169(1)(26B), replace “the Board or” with “the Board, WorkSafe, or”.

In section 169(1)(30), replace “the Board or” with “the Board, WorkSafe, or”.

In section 169(3), replace “Acts Interpretation Act 1924” with “Interpretation Act 1999”. 20

In section 169(3), replace “the Secretary” with “WorkSafe, the Secretary,”.

Energy (Fuel, Levies, and References) Act 1989 (1989 No 140)

In section 1B, insert in its appropriate alphabetical order: 25

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

Repeal section 14(1)(a)(ii).

In section 14(1), replace “the Department of Labour” with “WorkSafe” in each place. 30

In section 26(1), replace “this Part” with “section 24”.

Part 1—*continued***Energy (Fuel, Levies, and References) Act 1989 (1989 No 140)**—*continued*

Replace section 30 with:

“30 Payment of levy into account

“(1) All money received by the Secretary under section 22 or 23 must be paid into a Crown Bank Account.

“(2) All money received by the Secretary under section 24 must be paid into the Departmental Bank Account of the responsible department of State.” 5

Gas Act 1992 (1992 No 124)

In section 2(1), replace the definition of **Secretary** with:

“**Secretary** means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act” 10

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

“**WorkSafe** means WorkSafe New Zealand established by **section 5** of the **Health and Safety (Pike River Implementation) Act 2013**” 15

In the cross-heading above section 6, after “*powers of*”, insert “*Work-Safe and*”.

Replace section 6 with:

“6 Functions of WorkSafe 20

“(1) The functions of WorkSafe under this Act are—

“(a) to carry out such inquiries, tests, audits, or investigations as may be necessary to determine whether or not a person is complying with this Act:

“(b) to take all such lawful steps as may be necessary to ensure the safe supply and use of gas: 25

“(c) to perform such other functions as are provided for under this Act.

“(2) This section is subject to **section 6A**.

“6A Functions of Secretary 30

“(1) The Secretary—

Part 1—*continued*

Gas Act 1992 (1992 No 124)—*continued*

- “(a) must carry out the functions conferred on the Secretary under this Act or regulations made under this Act; and
- “(b) may carry out a function conferred on WorkSafe under a specified provision of this Act or regulations made under this Act in relation to a specified matter. 5
- “(2) The Prime Minister may, by notice in the *Gazette*, specify—
- “(a) 1 or more matters in relation to which the Secretary may carry out functions conferred on WorkSafe under this Act; and
- “(b) 1 or more provisions of this Act which confer functions on WorkSafe and under which the Secretary may exercise functions in relation to the specified matter. 10
- “(3) If the Secretary carries out a function in relation to a specified matter, every reference to WorkSafe in the relevant specified provision must be read as if it was a reference to the Secretary. 15
- “(4) Without limiting **subsection (3)**, the Secretary has the powers necessary to carry out the functions in a specified provision in relation to a specified matter in accordance with this Act.
- “(5) WorkSafe and the Secretary must work co-operatively to ensure that their functions under this Act and any regulations made under this Act are carried out in an effective and efficient manner. 20
- “(6) In this section—
- “**specified matter** means a matter that is specified in a *Gazette* notice under **subsection (2)(a)** 25
- “**specified provision** means a provision that is specified in a *Gazette* notice under **subsection (2)(a)**.
- “**6B WorkSafe and Secretary must share information**
- “(1) WorkSafe must provide information to the Secretary if the information is necessary or desirable for the Secretary to carry out his or her functions under this Act. 30
- “(2) The Secretary must provide information to WorkSafe if the information is necessary or desirable for WorkSafe to carry out its functions under this Act.”

Part 1—*continued***Gas Act 1992 (1992 No 124)**—*continued*

In sections 7, 9, 10, 12, 14, 16 to 21, 39, 41 to 43, 51, 54(1)(b)(iv), (1)(d), (1)(n), (1)(o), and (3), and 57B to 57D, replace “the Secretary” with “WorkSafe” in each place.

In the headings to sections 9, 10, 14, 20, and 21, replace “Secretary” with “WorkSafe”. 5

In sections 9, 19, 37, 38, 40, 57C, and 57E, replace “The Secretary” with “WorkSafe” in each place.

Replace section 17A with:

“17A Transfer of accident information

“(1) In this section, **specified matter** means a matter that is specified in a *Gazette* notice under **section 6A(2)**. 10

“(2) If WorkSafe is notified of an accident under section 17 and the accident relates to a specified matter, WorkSafe must provide the notice and any particulars that WorkSafe has received to the Secretary. 15

“(3) If an accident relates to a specified matter, a person required to provide notification of any accident under section 17 may notify the Secretary in accordance with that section instead of WorkSafe.”

Replace section 41(6) and (7) with: 20

“(6) Despite section 73 of the Crown Entities Act 2004, WorkSafe must not delegate to any person the power conferred by this section.

“(7) **Subsection (8)** applies if, pursuant to **section 6A(3)**, the Secretary may exercise the power conferred by this section in relation to a matter specified in a *Gazette* notice under **section 6A(2)**. 25

“(8) Despite section 41 of the State Sector Act 1988, the Secretary must not delegate to any person the power conferred by this section.” 30

In section 54(1)(r), after “authorising”, insert “WorkSafe or”.

In section 54(4), replace “the Secretary” with “WorkSafe, the Secretary” in each place.

Part 1—*continued*

**Hazardous Substances and New Organisms Act 1996 (1996
No 30)**

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

“**WorkSafe** means WorkSafe New Zealand established by
section 5 of the **Health and Safety (Pike River Imple-** 5
mentation) Act 2013.”

Replace section 97(1)(a) with:

“(a) WorkSafe New Zealand must ensure that the provisions
of this Act are enforced in any place of work.”

In section 97B(3), replace paragraph (a) of the definition of **enforce-** 10
ment agency with:

“(a) means WorkSafe New Zealand.”

Health and Safety in Employment Act 1992 (1992 No 96)

In sections 19H, 25, 25A, 28B, 29, 31, 34, 54, 54A, and 54C, replace 15
“the Secretary” with “WorkSafe” in each place.

In section 25A, 29, 34, 54, and 56G, replace “The Secretary” with
“WorkSafe” in each place

In section 28B(4), replace “the chief executive of the agency.” with
“the agency (except for the reference to WorkSafe in 59(4)).”

In the heading to section 54, replace “**Secretary**” with “**WorkSafe**”. 20

Machinery Act 1950 (1950 No 52)

In section 2, repeal the definition of **Secretary**.

In section 2, insert in its appropriate alphabetical order:

“**WorkSafe** means WorkSafe New Zealand established by
section 5 of the **Health and Safety (Pike River Imple-** 25
mentation) Act 2013.”

In section 26A(2), replace “The Secretary” with “WorkSafe”.

In section 26B(2)(a), replace “the Secretary” with “WorkSafe”.

Replace section 26C with:

“(1) In any proceedings, the production of a copy of a code of prac- 30
tice purporting to be issued by the following persons is suffi-
cient evidence that the code of practice has been issued under
section 26A and approved under section 26B:

Part 1—*continued***Machinery Act 1950 (1950 No 52)**—*continued*

- “(a) for a code of practice issued before 16 October 1989, the Chief Inspector of Factories or the Chief Construction Safety Engineer:
- “(b) for a code of practice issued on or after 16 October 1989 and before 1 December 2013, the Secretary of Labour: 5
- “(c) for a code of practice issued on or after 1 December 2013, WorkSafe.
- “(2) **Subsection (1)** does not affect any other method of proof by which it may be established that a code of practice has been issued under section 26A and approved under section 26B.” 10

Ombudsmen Act 1975 (1975 No 9)

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

“WorkSafe New Zealand”.

Privacy Act 1993 (1993 No 28)

In section 97, definition of **specified agency**, insert after paragraph (i): 15

“(ia) WorkSafe New Zealand:”.

In section 97, definition of **specified agency**, replace paragraph (e) with:

“(e) the Ministry of Business, Innovation, and Employment:” 20

In Schedule 5, the third column of the item relating to Motor Vehicles Register, replace the item relating to Department of Labour with:

WorkSafe New Zealand (access is limited to name and address details of persons who are or were previously registered in respect of a specified vehicle for the purposes of enforcing the relevant health and safety legislation)
Ministry of Business, Innovation, and Employment (access is limited to name and address details of persons who are or were previously registered in respect of a specified vehicle for the purposes of enforcing immigration legislation)

Part 2

Amendments to regulations

Amusement Devices Regulations 1978 (SR 1978/294)

In Schedule 1, replace “the Department of Labour” with “WorkSafe” in each place. 5

Electricity (Hazards from Trees) Regulations 2003 (SR 2003/375)

In regulation 32, replace “the secretary” with “WorkSafe”.

Electricity (Safety) Regulations 2010 (SR 2010/36)

In the heading to regulations 19, 85, 86, 108, and 109, replace “Secretary” with “WorkSafe”. 10

In regulations 19, 53, 54, 55, 74E, 74F, 74G, 75, 78(3), 78(5), 78(6), 83, 84, 85, 86, 87, 91, 108, 109, 110, 111, 112, and 119, replace “the Secretary” with “WorkSafe” in each place.

In regulations 83, 84, 85, 86, 108, 109, 110, 111, and 119, replace “The Secretary” with “WorkSafe” in each place. 15

In the cross-heading above regulation 108, replace “*Secretary*” with “*WorkSafe*”.

In Schedule 3, replace “Secretary/Registrar*” with “WorkSafe/Secretary/Registrar*” in each place. 20

In the heading to Schedule 5, replace “Secretary” with “WorkSafe”.

Gas (Safety and Measurement) Regulations 2010 (SR 2010/76)

In regulations 3, 10, 31, 37, 38, 39, 52G, 52H, 52I, 54, 55, 57, 59, 60, 61, 62, 63, 64, 65, 67, 69, 73, 79, 82, 85, 85D, 85E, 86, 87, and 88, replace “the Secretary” with “WorkSafe” in each place. 25

In the heading to regulations 10, 61, and 85, replace “Secretary” with “WorkSafe”.

In regulations 59, 60, 61, 62, 64, 69, 82, 85, 85D, 85E, 86, and 91, replace “The Secretary” with “WorkSafe” in each place.

Geothermal Energy Regulations 1961 (SR 1961/124)

In regulation 2(1), delete the definition of **Secretary**. 30

In regulation 2(1), definition of **well-head master valve**, delete “.”.

Part 2—*continued***Geothermal Energy Regulations 1961 (SR 1961/124)**—*continued*

In regulation 2(1), insert in its appropriate alphabetical order:

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

In regulations 2, 3, 4, 11, 14B, 16, and 35, replace “the Secretary” with “WorkSafe” in each place. 5

In regulations 11, 16, and 35, replace “The Secretary” with “WorkSafe”.

Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001 (SR 2001/117) 10

In regulation 30, replace “the chief executive of the department that is for the time being responsible for the administration of the Health and Safety in Employment Act 1992” with “WorkSafe New Zealand”.

Health and Safety in Employment (Adventure Activities) Regulations 2011 (SR 2011/367) 15

In regulation 3, repeal the definition of **Secretary**.

In regulation 3, definition of **serious harm**, delete “.”.

In regulation 3, insert in its appropriate alphabetical order:

“**WorkSafe** means WorkSafe New Zealand established by **section 5** of the **Health and Safety (Pike River Implementation) Act 2013**.” 20

In regulations 3, 7, 8, 9, 11, 12, 17, 18, and 21, replace “the Secretary” with “WorkSafe” in each place.

In the heading to regulation 9, replace “**Secretary**” with “**WorkSafe**”. 25

In regulations 9, 11, 12, 13, 17, 18, 19, 20, and 21, replace “The Secretary” with “WorkSafe” in each place.

Health and Safety in Employment (Asbestos) Regulations 1998 (SR 1998/443) 30

In regulations 3, 22, 23, 24, 26, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39, 40, 43, 45, 48, 49, 50, 51, 55, 56, 58, 59, 62(2), 72, 73, 74, 75, 76,

Part 2—*continued*

**Health and Safety in Employment (Asbestos) Regulations 1998
(SR 1998/443)**—*continued*

78, 79, 80, and 85, and Schedules 4 and 5, replace “the Secretary” with “WorkSafe” in each place.

In the headings to regulations 29, 30, 32, 33, 35, 38, 40, 50, 58, 73, 74, and 75, replace “**Secretary**” with “**WorkSafe**” in each place.

In regulations 30, 31, 32, 33, 34, 35, 37, 38, 40, 47, 49, 56, 58, and 75, replace “The Secretary” with “WorkSafe” in each place. 5

In regulation 49, replace “his or her” with “its”.

In regulation 58, replace “his or her” with “its”.

**Health and Safety in Employment (Petroleum Exploration and
Extraction) Regulations 2013 (SR 2013/208)**

10

In regulations 3, 22, 23, 24, 26, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39, 40, 43, 45, 48, 49, 50, 51, 55, 56, 58, 59, 62(2), 72, 73, 74, 75, 76, 78, 79, 80, and 85, and Schedules 4 and 5, replace “the Secretary” with “WorkSafe” in each place.

In the headings to regulations 29, 30, 32, 33, 35, 38, 40, 50, 58, 73, 74, and 75, replace “**Secretary**” with “**WorkSafe**” in each place. 15

In regulations 30, 31, 32, 33, 34, 35, 37, 38, 40, 47, 49, 56, 58, and 75, replace “The Secretary” with “WorkSafe” in each place.

In regulation 49, replace “his or her” with “its”.

In regulation 58, replace “his or her” with “its”. 20

**Health and Safety in Employment (Pipelines) Regulations 1999
(SR 1999/350)**

In regulations 2, 9, 11, 12, 13, and 17, replace “the Secretary” with “WorkSafe” in each place.

In regulation 9, replace “The Secretary” with “WorkSafe”. 25

In Schedule 1, replace “the Secretary of Labour” with “WorkSafe”.

In the heading to Schedule 2, replace “**Secretary**” with “**WorkSafe**”.

In Schedule 2, the headings to Part 1 and Part 2, replace “Secretary” with “WorkSafe”.

Part 2—*continued***Health and Safety in Employment (Pressure Equipment,
Cranes, and Passenger Ropeways) Regulations 1999 (SR
1999/128)**

In regulations 5, 6, 17, 22, 23, 25, 29, and 35, replace “The Secretary”
with “WorkSafe” in each place. 5

In regulations 5, 6, 9, 10, 15, 17, 22, 23, 25, 28, 34, 35, and 37,
replace “the Secretary” with “WorkSafe” in each place.

**Health and Safety in Employment Regulations 1995 (SR
1995/167)**

In the headings to regulations 28, 29, 36, 38, and 39, replace “**Secre- 10**
tary” with “**WorkSafe**” in each place.

In regulation 19, 28, 39, and 65, replace “The Secretary” with “Work-
Safe” in each place.

In regulation 19, 28, 29, 36, 37, 38, 39, 40, 42, 43, and 65, replace
“the Secretary” with “WorkSafe” in each place. 15

Schedule 2	s 38
New Schedule 1AA inserted in principal Act	
Schedule 1AA	s 63
Part 1	5
Transitional provision relating to Part 2 of the Health and Safety (Pike River Implementation) Act 2013	
1 Existing mining operations	
(1) This clause applies to any mining operation that began before the date on which Part 2 of the Health and Safety (Pike River Implementation) Act 2013 came into force.	10
(2) In relation to any mining operation to which this clause applies,—	
(a) until 31 December 2014, the principal Act applies as if it had not been amended by Part 2 of the Health and Safety (Pike River Implementation) Act 2013 ;	15
(b) on and after 1 January 2015, in section 19T , “3 months of the date on which a mining operation begins” is to be read as 31 December 2014 .	20

Schedule 3

s 39

Consequential amendment

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 mine 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).”

5

10

Schedule 4

s 55

**Application, savings, and transitional
provisions**

1 Interpretation

In this schedule, unless the context otherwise requires,— 5

appointed day means the date specified in the notice published in the *Gazette* under **section 41**

Trust Board means the Board approved under section 3 of the Mines Rescue Trust Act 1992.

Transitional provisions 10

2 Trust Board continues until appointed day

(1) Until the appointed day, the Trust Board and any other person has, and may perform or exercise, the functions, responsibilities, duties, and powers conferred by the Mines Rescue Trust Act 1992 and the provisions of that Act are deemed to continue in force to the extent necessary for the performance or exercise of those functions, responsibilities, duties, and powers. 15

(2) On and from the appointed day, neither the Trust Board nor any other person has any functions, responsibilities, duties, or powers under the Mines Rescue Trust Act 1992. 20

3 Money payable under Mines Rescue Trust Act 1992

(1) Any amount of money that immediately before the appointed day was payable to the Trust Board under section 7 of the Mines Rescue Trust Act 1992 is, on and after the appointed day, payable to the board as if it were a levy payable under regulations made under **section 44**. 25

(2) Despite the repeal of the Mines Rescue Trust Act 1992, the Trust Board must, within three months of the appointed day, give the chief executive independently audited accounts of the Trust Board's income and expenditure under section 7 of the Mines Rescue Trust Act 1992 for the period ending at the close of the day before the appointed day. 30