

PARLIAMENT OF VICTORIA

WorkSafe Legislation Amendment Bill 2017

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

WorkSafe Legislation Amendment Bill 2017

A Bill for an Act to amend the **Accident Compensation Act 1985**, the **Dangerous Goods Act 1985**, the **Occupational Health and Safety Act 2004** and the **Workplace Injury Rehabilitation and Compensation Act 2013** to further improve the operation of those Acts and for other purposes.

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purpose

The purpose of this Act is to amend—

- 5
- (a) the **Accident Compensation Act 1985**; and
 - (b) the **Dangerous Goods Act 1985**; and
 - (c) the **Occupational Health and Safety Act 2004**; and

(d) the **Workplace Injury Rehabilitation and Compensation Act 2013**—

to further improve the operation of those Acts.

2 Commencement

- 5 (1) This Part, Parts 2 and 3, sections 9, 20, 23, 24
and 26, Part 5 (except for section 27) and Part 6
come into operation on the day after the day on
which this Act receives the Royal Assent.
- 10 (2) Section 27 is taken to have come into operation
on 1 July 2014.
- (3) Subject to subsection (4), the remaining
provisions of this Act come into operation
on a day or days to be proclaimed.
- 15 (4) If a provision of this Act does not come into
operation before 21 March 2018, it comes into
operation on that day.

Part 2—Amendments to the Accident Compensation Act 1985

3 Liability of Authority and self-insurer

- 5 (1) In section 99(1)(c) of the **Accident Compensation Act 1985**, for "injury—" substitute "injury; and".
- (2) After section 99(1)(c) of the **Accident Compensation Act 1985** insert—
- 10 "(d) reasonable travelling or accommodation expenses not exceeding \$5000 incurred by family members of the worker in circumstances where—
- (i) death results from the injury; and
 - 15 (ii) a burial service or cremation service is held in respect of the worker; and
 - (iii) the service is held at least 100 kilometres from the normal residence of the worker's family members; and
 - 20 (iv) the travelling or accommodation expenses are incurred within Australia—".

4 Indexation of certain amounts—consumer price index

- 25 In the Table to section 100C of the **Accident Compensation Act 1985**—
- (a) items 1, 2, 17 to 22, 26, 27, 31 to 36, 39 and 51 are **repealed**;
 - (b) after item 40 **insert**—

"40A	Section 99(1)(c)—\$5000
40B	Section 99(1)(d)—\$5000".

5 Actions for damages

In section 134AB(25)(a) of the **Accident Compensation Act 1985**, for "99" substitute "Division 2B of Part IV".

5

6 New Division 16 of Part IX inserted

After Division 15 of Part IX of the **Accident Compensation Act 1985** insert—

"Division 16—WorkSafe Legislation Amendment Act 2017

10

392 Amendment of section 99 (Liability of Authority and self-insurer)

15

This Act, as amended by section 3 of the **WorkSafe Legislation Amendment Act 2017**, applies to all claims made on or after the date on which section 3 of the **WorkSafe Legislation Amendment Act 2017** comes into operation.

393 Savings provision—seafarers' claims

20

(1) This section applies to a claim for compensation made, and a premium collected or recovered, under this Act that, but for *Samson Maritime Pty Ltd v Noel Aucote* [2014] FCAFC 182, would be a valid claim or validly collected or recovered premium in accordance with this Act.

25

(2) If a claim has been accepted by the Authority, then it is taken to be a valid claim in accordance with this Act.

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Part 2—Amendments to the Accident Compensation Act 1985

5

- (3) If a premium has been collected or recovered by the Authority, then it is taken to be validly collected or recovered.
- (4) Nothing in this section creates any new entitlement to compensation."

Part 3—Amendments to the Dangerous Goods Act 1985

7 Definitions

5 In section 3(1) of the **Dangerous Goods
Act 1985**, the definition of *statutory rule* is
repealed.

8 Governor in Council may make Order with respect to dangerous goods

10 For section 55(1) of the **Dangerous Goods
Act 1985** substitute—

(1) If the Governor in Council is of the opinion
that it would be expedient for the public
safety, the Governor in Council may make
an Order—

15 (a) prohibiting absolutely or subject
to conditions or restrictions the
manufacture, storage, supply,
transfer, transport, sale or use of
any dangerous goods; or

20 (b) regulating the clean-up, removal
and transport of asbestos,
asbestos-containing material,
asbestos-contaminated dust and
asbestos waste.

25 (1A) An Order made under subsection (1) must
be published in the Government Gazette.

(1B) An Order made under subsection (1)(b)
has effect—

30 (a) from the date on which it is published
in the Government Gazette; and

(b) for a period of 6 months from the
date on which it is published in the
Government Gazette, unless an earlier
period is specified in the Order; and

(c) despite anything to the contrary
in the regulations made under the
**Occupational Health and Safety
Act 2004.**

5 (1C) In this section—

asbestos means—

- 10 (a) the asbestiform varieties of
mineral silicates belonging to
the serpentine or amphibole
groups of rock-forming minerals,
including—
- 15 (i) actinolite asbestos; and
(ii) anthophyllite asbestos; and
(iii) chrysotile ("white asbestos");
and
(iv) crocidolite ("blue asbestos");
and
(v) grunerite asbestos (or
amosite) ("brown asbestos");
20 and
(vi) tremolite asbestos; or
- 25 (b) any material or object, whether
natural or manufactured, that
contains one or more of the
mineral silicates referred to in
paragraph (a);

30 ***asbestos-containing material*** means any
manufactured material or object that,
as part of its design, contains one or
more of the mineral silicates referred
to in paragraph (a) of the definition
of ***asbestos*** (other than plant in which
asbestos is fixed or installed);

asbestos-contaminated dust means dust that is, or is assumed to be, contaminated with asbestos;

5

asbestos waste means asbestos removed and disposable items used during asbestos removal work or asbestos-related activities, including plastic sheeting and disposable personal protective clothing and disposable protective equipment including tools.'

10

Part 4—Amendments to the Occupational Health and Safety Act 2004

9 Act binds the Crown

5 In section 6(1) of the **Occupational Health and Safety Act 2004**, for "binds" **substitute** "and the regulations bind".

10 Authority may accept undertakings

For section 16(3) of the **Occupational Health and Safety Act 2004 substitute**—

10 "(3) A person who gives an undertaking under this section must not contravene the undertaking.

Penalty: 500 penalty units for a natural person;

15 2500 penalty units for a body corporate.

(4) Neither the Authority nor an inspector may bring a proceeding for an offence against this Act or the regulations constituted by the contravention or alleged contravention to which an undertaking relates—

- 20 (a) while the undertaking is in effect; or
(b) if the undertaking has been fully complied with and discharged."

11 Incidents to which this Part applies

In section 37(4) of the **Occupational Health and Safety Act 2004**—

25 (a) in the definition of *medical treatment*, after "the medical" **insert** "or nursing or midwifery";

(b) for the definition of *mine substitute*—

"*mine* means—

- 5 (a) a workplace at which work
is being performed under a
licence within the meaning
of the **Mineral Resources
(Sustainable Development)
Act 1990**—
- 10 (i) including work that is
exploration (within the
meaning of that Act), in the
form of underground work
of any kind or drilling from
the surface for coal-bed
methane; and
- 15 (ii) excluding work that is
exploration carried out above
ground, other than drilling
from the surface for coal-bed
methane; or
- 20 (b) all parts of a tourist mine that are
underground and all infrastructure
and plant associated with the
underground workings;";
- 25 (c) **insert** the following definition—
- 30 "*tourist mine* means a mine, part of a mine,
or any other location in which the
principal activities conducted are those
promoting interest in the practice and
history of prospecting or mining."

12 Duty to notify of incidents

- (1) In section 38(1) of the **Occupational Health and Safety Act 2004**, after "must" **insert** "not, without reasonable excuse, fail to".

14 Service of provisional improvement notice or inspector's notice

- 5 (1) In section 64(c) of the **Occupational Health and Safety Act 2004**, for "workplace." substitute "workplace; or".
- 10 (2) After 64(c) of the **Occupational Health and Safety Act 2004** insert—
- (d) sending it by electronic communication to the person at the person's usual or last known electronic address; or
- 15 (e) if the person is an employer registered under section 434 of the **Workplace Injury Rehabilitation and Compensation Act 2013**, sending it by post or electronic communication to the last address for service shown on a communication from the employer to the Authority."
- 20 (3) At the end of section 64 of the **Occupational Health and Safety Act 2004** insert—
- "(2) A notice under this Division required or authorised to be issued or given to a body corporate may be served by—
- (a) issuing or giving it to; or
- 25 (b) sending it by post or electronic communication to—
- the body corporate at the head office, registered office or principal place of business of the body corporate.
- 30 (3) This section is in addition to, and not in derogation from, the **Interpretation of Legislation Act 1984**, the **Electronic Transactions (Victoria) Act 2000** and sections 109X and 601CX of the Corporations Act."
-

15 Prohibition on discrimination

- (1) In section 76(2)(c) of the **Occupational Health and Safety Act 2004**, after "an inspector," insert "the Authority,".
- 5 (2) In section 76(2)(d) of the **Occupational Health and Safety Act 2004**, after "an inspector," insert "the Authority,".

16 Prohibited reasons

- (1) In section 78B(1)(c) of the **Occupational Health and Safety Act 2004**, after "an inspector," insert "the Authority,".
- 10 (2) In section 78B(1)(d) of the **Occupational Health and Safety Act 2004**, after "an inspector," insert "the Authority,".

17 Revocation and disqualification

In section 85(1)(a)(i) of the **Occupational Health and Safety Act 2004** omit "an".

18 Power to require production of documents etc.

- (1) For the heading to section 100 of the **Occupational Health and Safety Act 2004** substitute—
- 20 "Power to require production of documents and answers to questions".
- (2) In section 100(1) of the **Occupational Health and Safety Act 2004**, after "may" insert "do any or all of the following".
- 25 (3) In section 100(1)(a) of the **Occupational Health and Safety Act 2004** omit "located at the place that is in the person's possession or control".

(4) After section 100(4) of the **Occupational Health and Safety Act 2004** insert—

5 "(5) Despite section 7 of the **Criminal Procedure Act 2009**, a proceeding for an offence against this section must be commenced within 12 months after the date on which the Authority becomes aware that an offence has been committed."

19 Service of notices

10 (1) In section 115(1)(c) of the **Occupational Health and Safety Act 2004**, for "workplace." substitute "workplace; or".

(2) After section 115(1)(c) of the **Occupational Health and Safety Act 2004** insert—

15 "(d) sending it by electronic communication to the person at the person's usual or last known electronic address; or

20 (e) if the person is an employer registered under section 434 of the **Workplace Injury Rehabilitation and Compensation Act 2013**, sending it by post or electronic communication to the last address for service shown on a communication from the employer to the Authority."

25 (3) After section 115(1) of the **Occupational Health and Safety Act 2004** insert—

"(1A) A notice under this Division required or authorised to be issued to a body corporate may be served by—

30 (a) issuing it to; or

(b) sending it by post or electronic communication to—

the body corporate at the head office, registered office or principal place of business of the body corporate.

(1B) This section is in addition to, and not in derogation from, the **Interpretation of Legislation Act 1984**, the **Electronic Transactions (Victoria) Act 2000** and sections 109X and 601CX of the Corporations Act."

20 Proceedings may be brought by the Authority or inspectors

In section 130(1), (4) and (5) of the **Occupational Health and Safety Act 2004**, after "this Act" insert "or the regulations".

21 Procedure if prosecution is not brought

In section 131(1)(a) of the **Occupational Health and Safety Act 2004**, after "this Act" insert "or the regulations".

22 Limitation period for prosecutions

For section 132 of the **Occupational Health and Safety Act 2004** substitute—

"132 Limitation period for prosecutions

- (1) Proceedings for an offence against this Act or the regulations may be brought within the latest of the following periods to occur—
- (a) within 2 years after the offence first comes to the notice of the Authority;
 - (b) within one year after a coronial report was made or a coronial inquiry or inquest ended, if it appeared from the report or the proceedings at the inquiry or inquest that an offence had been

committed against this Act or the regulations;

- 5
- (c) if an undertaking has been given under section 16 in relation to the offence, within 6 months after—
- (i) the undertaking is contravened; or
- (ii) it comes to the notice of the Authority that the undertaking has been contravened; or
- 10
- (iii) the Authority has agreed under section 16(2) to the withdrawal of the undertaking;
- (d) at any time with the written authorisation of the Director of Public Prosecutions.
- 15

(2) A proceeding for an indictable offence may be brought after the end of the applicable limitation period in subsection (1) if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period."

20

25

23 Release on the giving of a health and safety undertaking

In section 137(2)(b) of the **Occupational Health and Safety Act 2004**—

- (a) after "this Act," **insert** "the regulations,";
- (b) after "**Act 1985**" **insert** "or regulations made under those Acts".
- 30

24 Liability of officers of partnerships and unincorporated bodies or associations

5 In section 145(1)(a) and (2) of the **Occupational Health and Safety Act 2004**, after "this Act" insert "or the regulations".

25 Offence to give false or misleading information

After section 153(2) of the **Occupational Health and Safety Act 2004** insert—

10 "(3) An offence against subsection (1) or (2) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**)."

15 **26 New Part 15 inserted**

After Part 14 of the **Occupational Health and Safety Act 2004** insert—

"Part 15—Transitional provisions

20 **Division 1—WorkSafe Legislation Amendment Act 2017**

178 Definitions

In this Division—

amending Act means the **WorkSafe Legislation Amendment Act 2017**.

25 **179 Amendment of section 16 (Authority may accept undertakings)**

30 This Act, as amended by section 10 of the amending Act, applies to all undertakings accepted by the Authority on or after the date on which section 10 of the amending Act comes into operation.

180 Amendment of section 38 (Duty to notify incidents)

5

This Act, as amended by section 12 of the amending Act, applies to all offences against section 38 committed on or after the date on which section 12 of the amending Act comes into operation.

181 Amendment of section 39 (Duty to preserve incident sites)

10

This Act, as amended by section 13 of the amending Act, applies to all offences against section 39 committed on or after the date on which section 13 of the amending Act comes into operation.

182 Amendment of section 64 (Service of provisional improvement notice or inspector's notice)

15

This Act, as amended by section 14 of the amending Act, applies to all notices issued or given by the Authority under section 64 on or after the date on which section 14 of the amending Act comes into operation.

183 Amendment of section 100 (Power to require production of documents etc.)

25

This Act, as amended by section 18 of the amending Act, applies to all offences against section 100 committed, or of which the Authority becomes aware, on or after the date on which section 18 of the amending Act comes into operation.

30

184 Amendment of section 115 (Service of notices)

5 This Act, as amended by section 19 of the amending Act, applies to all notices issued by the Authority under section 115 on or after the date on which section 19 of the amending Act comes into operation.

185 Amendment of section 132 (Limitation period for prosecutions)

10 This Act, as amended by section 22 of the amending Act, applies to all prosecutions commenced by the Authority on or after the date on which section 22 of the amending Act comes into operation.

186 Amendment of section 153 (Offence to give false or misleading information)

15 This Act, as amended by section 25 of the amending Act, applies to all offences against section 153 committed on or after the date on which section 25 of the amending Act comes into operation."
20

Part 5—Amendments to the Workplace Injury Rehabilitation and Compensation Act 2013

27 Assessing degree of impairment of whole person

5 In section 63(5) of the **Workplace Injury
Rehabilitation and Compensation Act 2013**, for
"subsection (4)" **substitute** "subsection (4)(a)(i)".

28 Part not to apply in certain circumstances

10 In section 101(2)(b) of the **Workplace Injury
Rehabilitation and Compensation Act 2013**—

(a) for "owner-builders' permits" **substitute**
"certificates of consent";

(b) for "permits" **substitute** "certificates".

29 Definition applying to pre-injury average weekly earnings and current weekly earnings—base rate of pay

15 (1) In section 156(1) of the **Workplace Injury
Rehabilitation and Compensation Act 2013**,
after "hours of work" **insert** "(including any
20 casual loadings)".

(2) In section 156(1)(b) of the **Workplace Injury
Rehabilitation and Compensation Act 2013**,
after "loadings" **insert** "(excluding any casual
loadings)".

30 Liability of Authority and self-insurer

25 (1) In section 224(1)(c) of the **Workplace Injury
Rehabilitation and Compensation Act 2013**,
for "cremation." **substitute** "cremation; and".

(2) After section 224(1)(c) of the **Workplace Injury
Rehabilitation and Compensation Act 2013**
insert—

- 5 "(d) reasonable travelling or accommodation
 expenses not exceeding \$5000 incurred
 by family members of the worker in
 circumstances where—
- 10 (i) the injury is a severe injury for which
 immediate in-patient treatment in a
 hospital is received; and
- (ii) the hospital is located at least
 100 kilometres from the normal
 residence of the worker's family
 members; and
- 15 (e) reasonable travelling or accommodation
 expenses not exceeding \$5000 incurred
 by family members of the worker in
 circumstances where—
- 20 (i) death results from the injury; and
- (ii) a burial service or cremation service
 is held in respect of the worker; and
- (iii) the service is held at least
 100 kilometres from the
 normal residence of the
25 worker's family members; and
- (iv) the travelling or accommodation
 expenses are incurred within
 Australia."

31 Certain persons not compelled to give evidence

After section 272(2) of the **Workplace Injury
Rehabilitation and Compensation Act 2013**
insert—

- 5 "(3) A person referred to in subsection (1) is
 competent to give evidence in proceedings
 as to reasons for an opinion under Division 3
 or to matters relating to the person's role and
10 function as a Panel member but is not
 compelled to give such evidence.
- (4) A person referred to in subsection (2)
 is competent to give evidence in any
 proceedings about the person's role as
15 an expert retained by a Medical Panel
 to give advice but is not compelled to
 give such evidence."

32 Review of approval

After section 384(2)(c) of the **Workplace Injury
Rehabilitation and Compensation Act 2013**
insert—

- 20 "(ca) the employer or an eligible subsidiary of
 the employer ceases to employ all of its
 workers; or".

**33 Eligible subsidiary of self-insurer becomes a
non-WorkCover employer**

For section 409(3), (4), (5) and (6) of the
**Workplace Injury Rehabilitation and
Compensation Act 2013** substitute—

- 25 "(3) On and from the date the employer becomes
 a non-WorkCover employer, the self-insurer
 retains liability for, and the responsibility
 for management of, the tail claims of the
30 employer until the self-insurer ceases to be
 a self-insurer.

Part 5—Amendments to the Workplace Injury Rehabilitation and
Compensation Act 2013

(4) In this section, *tail claim* of an employer that ceases to be an eligible subsidiary of a self-insurer means—

- 5 (a) a claim, regardless of when made, in respect of an injury or death incurred or suffered by a worker employed by the employer while the employer was an eligible subsidiary of a self-insurer and which entitles that worker, the
10 dependants of that worker or the members of that worker's family to compensation or any other payments under this Act (other than section 576 or 578) or the **Accident Compensation Act 1985** or damages at common law as permitted by and in accordance with Division 2 of Part 7 (other than sections 348 to 356 inclusive) or
15 section 366 or section 134AB or 135C of the **Accident Compensation Act 1985**; or
- 20 (b) a claim of the employer that ceases to be an eligible subsidiary of the self-insurer for which the self-insurer assumed liability for, and the
25 responsibility for management of, under section 395, 396, 397 or 398."

34 Authority retains or assumes liability for tail claims

30 In section 414 of the **Workplace Injury Rehabilitation and Compensation Act 2013**—

- (a) in paragraph (b), for "employer; or" substitute "employer.";
- (b) paragraph (c) is **repealed**.

35 Functions of the Authority

In section 493(1)(zb)(ii) of the **Workplace Injury Rehabilitation and Compensation Act 2013**, for "cooperation" substitute "co-operation".

5

36 Delegation

(1) In section 500(1) of the **Workplace Injury Rehabilitation and Compensation Act 2013**, after "other Act" insert ", or regulations made under this Act or any other Act,".

10

(2) After section 500(1) of the **Workplace Injury Rehabilitation and Compensation Act 2013** insert—

15

"(1A) A delegation under subsection (1) may be made to a person, a class of persons, the holder of an office or position or the holder of each office in a class of offices specified in the instrument of delegation."

37 Indexation of certain amounts—consumer price index

20

In the Table to section 545 of the **Workplace Injury Rehabilitation and Compensation Act 2013**, after item 25 insert—

"25A Section 224(1)(d)—\$5000

25B Section 224(1)(e)—\$5000".

38 Criminal liability of officers of bodies corporate—failure to exercise due diligence

25

Section 601(2)(x) of the **Workplace Injury Rehabilitation and Compensation Act 2013** is repealed.

39 Institution of prosecutions

After section 608(5) of the **Workplace Injury
Rehabilitation and Compensation Act 2013**
insert—

- 5 "(5A) Despite any law to the contrary, a
 proceeding for an offence against Part 8
 must be commenced within 12 months after
 the date on which the Authority becomes
 aware that an offence has been committed."

10 **40 New sections 623G, 623H, 623I and 623J inserted**

After section 623F of the **Workplace Injury
Rehabilitation and Compensation Act 2013**
insert—

15 **"623G Transitional provision—WorkSafe
Legislation Amendment Act 2017**

 This Act, as amended by section 29 of
 the **WorkSafe Legislation Amendment
Act 2017**, applies to all claims made on
 or after the date on which section 29 of
20 the **WorkSafe Legislation Amendment
Act 2017** comes into operation.

**623H Transitional provision—WorkSafe
Legislation Amendment Act 2017**

25 This Act, as amended by section 30 of
 the **WorkSafe Legislation Amendment
Act 2017**, applies to all claims made on
 or after the date on which section 30 of
 the **WorkSafe Legislation Amendment
Act 2017** comes into operation.

30 **623I Transitional provision—WorkSafe
Legislation Amendment Act 2017**

 This Act, as amended by section 39 of
 the **WorkSafe Legislation Amendment
Act 2017**, applies to all offences against
35 Part 8 committed, or of which the Authority

becomes aware, on or after the date on which
section 39 of the **WorkSafe Legislation
Amendment Act 2017** comes into operation.

623J Savings provision—seafarers' claims

- 5 (1) This section applies to a claim for
compensation made, and a premium
collected or recovered under this Act that,
but for *Samson Maritime Pty Ltd v Noel
Aucote* [2014] FCAFC 182, would be a
10 valid claim or validly collected or recovered
premium in accordance with this Act.
- (2) If a claim has been accepted by the
Authority, then it is taken to be a valid
claim in accordance with this Act.
- 15 (3) If a premium has been collected or recovered
by the Authority then it is taken to be validly
collected or recovered.
- (4) Nothing in this section creates any new
entitlement to compensation."

Part 6—Repeal of amending Act

41 Repeal of amending Act

5

This Act is **repealed** on the first anniversary of the date on which all of its provisions have come into operation.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.