

South Australia

**Occupational Health, Safety and Welfare
(Safework SA) Amendment Bill 2004**

A BILL FOR

An Act to amend the Occupational Health, Safety and Welfare Act 1986 and to make related amendments to the WorkCover Corporation Act 1994 and the Workers Rehabilitation and Compensation Act 1986.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of Occupational Health, Safety and Welfare Act 1986

- 4 Amendment of section 4—Interpretation
- 5 Substitution of Part 2

Part 2—SafeWork SA

Division 1—Establishment of SafeWork SA

- 7 Establishment of SafeWork SA

Division 2—The Authority's membership

- 8 Composition of the Authority
- 9 Terms and conditions of office
- 10 Allowances and expenses
- 11 Validity of acts and immunity of members

Division 3—Proceedings

- 12 Proceedings

Division 4—Functions and powers

- 13 Functions of the Authority

Division 5—Use of staff and facilities

- 14 Use of staff and facilities

Division 6—Related matters

- 15 Confidentiality
- 16 Annual report

- 6 Amendment of section 19—Duties of employers
- 7 Amendment of section 21—Duties of workers
- 8 Amendment of section 22—Duties of employers and self-employed persons
- 9 Amendment of section 27—Health and safety representatives may represent groups
- 10 Amendment of section 28—Election of health and safety representatives
- 11 Insertion of Part 4 Division 2A

Division 2A—Training

- 31A Training of health and safety representatives, deputies and committee members
- 31B Maintenance of pay and reimbursement of expenses
- 31C Guidelines

- 12 Amendment of section 32—Functions of health and safety representatives
- 13 Amendment of section 34—Responsibilities of employers
- 14 Insertion of section 37A
 - 37A Division not to derogate from other referrals to an inspector
- 15 Amendment of section 38—Powers of entry and inspection
- 16 Amendment of section 39—Improvement notices
- 17 Amendment of section 40—Prohibition notices
- 18 Amendment of section 51—Immunity of inspectors and officers
- 19 Amendment of section 53—Delegation
- 20 Amendment of section 54—Power to require information
- 21 Insertion of section 54A
 - 54A Provision of information by WorkCover

22	Amendment of section 55—Confidentiality
23	Insert of section 55A
	55A Inappropriate behaviour towards an employee
24	Amendment of section 58—Offences
25	Insertion of section 60A
	60A Non-pecuniary penalties
26	Amendment of section 61—Offences by bodies corporate
27	Amendment of section 62—Health and safety in the public sector
28	Amendment of section 63—Codes of practice
29	Repeal of section 65
30	Amendment of section 67—Exemption from Act
31	Amendment of section 67A—Registration of employers
32	Insertion of sections 67B and 67C
	67B Portion of WorkCover levy to be used to improve occupational health and safety
	67C Five-yearly reports
33	Amendment of section 68—Consultation on regulations
34	Amendment of section 69—Regulations
35	Substitution of Schedule 3
	Schedule 3—The Mining and Quarrying Occupational Health and Safety Committee
	1 The Committee
	2 Application of funds
	3 Ministerial control

Schedule 1—Related amendments and transitional provisions

Part 1—Preliminary

1	Amendment provisions
---	----------------------

Part 2—Amendment of *WorkCover Corporation Act 1994*

2	Amendment of section 13—Functions
3	Amendment of section 16—Committees
4	Amendment of Schedule
	1 References

Part 3—Amendment of *Workers Rehabilitation and Compensation Act 1986*

5	Amendment of section 64—The Compensation Fund
6	Amendment of Schedule 1
7	Repeal of Schedule 4

Part 4—Transitional provisions

8	Staff
9	Property
10	Review of conciliation and mediation scheme
11	Training
12	Committee membership
13	Regulations
14	Interpretation

Schedule 2—Statute law revision amendment of the *Occupational Health, Safety and Welfare Act 1986*

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Occupational Health, Safety and Welfare (Safework SA) Amendment Act 2004*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of Occupational Health, Safety and Welfare Act 1986

4—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *Advisory Committee*—delete the definition and substitute:

appointed member of the Authority means a member of the Authority appointed by the Governor;

- (2) Section 4(1)—after the definition of *approved code of practice* insert:

Authority means SafeWork SA established under this Act;

- (3) Section 4(1), definition of *Corporation*—delete the definition and substitute:

Department means the administrative unit of the Minister to whom the administration of this Act is committed;

- (4) Section 4(1), definition of *the Director*—delete the definition and substitute:

Director means the person for the time being holding, or acting in, the position of Executive Director of that part of the Department that is directly involved in the administration and enforcement of this Act;

- (5) Section 4(1)—after the definition of *plant* insert:

record means a record of any kind and includes a disk, tape or other article from which information is capable of being reproduced (with or without another article or device);

- (6) Section 4(1)—after the definition of *substance* insert:

WorkCover means the WorkCover Corporation of South Australia;

5—Substitution of Part 2

Part 2—delete the Part and substitute:

Part 2—SafeWork SA

Division 1—Establishment of SafeWork SA

7—Establishment of SafeWork SA

- (1) An authority to be called SafeWork SA is established.
- (2) The Authority is a body corporate.
- (3) The Authority is an instrumentality of the Crown and holds its property on behalf of the Crown.
- (4) The Authority is subject to the control and direction of the Minister.
- (5) If a document appears to bear the common seal of the Authority, it will be presumed, in the absence of proof to the contrary, that the common seal of the Authority was duly affixed to the document.

Division 2—The Authority's membership

8—Composition of the Authority

- (1) The Authority consists of 11 members of whom—
 - (a) 9 will be appointed by the Governor and of these—
 - (i) 1 will be the presiding member appointed on the recommendation of the Minister; and
 - (ii) 4 will be persons who, in the opinion of the Minister, are suitable to represent the interests of employers (1 being a person considered by the Minister to be suitable to represent the interests of the public sector as an employer), appointed on the recommendation of the Minister after the Minister has consulted with Business SA, and with associations representing the interests of employers determined to be appropriate by the Minister; and
 - (iii) 4 will be persons who, in the opinion of the Minister, are suitable to represent the interests of employees (1 being a person considered by the Minister to be suitable to represent the interests of employees in the public sector), appointed on the recommendation of the Minister after the Minister has consulted with the United Trades and Labor Council, and with other associations representing the interests of employees determined to be appropriate by the Minister; and
 - (b) 1 will be the Director (*ex officio*); and

(c) I will be the Chief Executive of WorkCover (*ex officio*).

- 5
- (2) In proposing persons for appointment to the Authority, an organisation or association consulted under subsection (1) should seek to promote gender balance, and diversity, in the membership of the Authority.
- (3) Subject to subsection (4), the Minister may appoint a suitable person to be a deputy of a member of the Authority and to act as a member of the Authority during any period of absence of the member.
- 10
- (4) During the absence of the presiding member of the Authority, the Director will act in the position of the presiding member (and if the Director is unavailable then a member of the Authority appointed by the remaining members will act in the position of presiding member).

9—Terms and conditions of office

- 15
- (1) An appointed member of the Authority will hold office on conditions, and for a term (not exceeding 3 years), determined by the Governor and, on the expiration of a term of appointment, is eligible for re-appointment.
- (2) The Governor may remove an appointed member from office for—
- 20
- (a) breach of, or non-compliance with, a condition of appointment; or
- (b) mental or physical incapacity to carry out duties of office satisfactorily; or
- (c) neglect of duty; or
- (d) dishonourable conduct.
- 25
- (3) The office of an appointed member becomes vacant if the member—
- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns by written notice addressed to the Minister; or
- (d) is found guilty of an indictable offence; or
- 30
- (e) is found guilty of an offence against subsection (6); or
- (f) is removed from office by the Governor under subsection (2).
- (4) On the office of an appointed member of the Authority becoming vacant, a person must be appointed, in accordance with this Act, to the vacant office.
- 35
- (5) The Minister should seek to fill a vacant office as expeditiously as possible.

(6) A member of the Authority who has a direct or indirect personal or pecuniary interest in a matter under consideration by the Authority—

- 5
- (a) must, as soon as practicable after becoming aware of the interest, disclose the nature and extent of the interest to the Authority; and
 - (b) must not take part in a deliberation or decision of the Authority on the matter and must not be present at a meeting of the Authority when the matter is under consideration.

Maximum penalty: Division 5 fine or imprisonment for two years.

10 (7) The court by which a person is convicted of an offence against subsection (6) may, on the application of an interested person, make an order avoiding a contract to which the non-disclosure relates and for restitution of property passing under the contract.

10—Allowances and expenses

- 15 (1) An appointed member of the Authority is entitled to fees, allowances and expenses approved by the Governor.
- (2) The amount of any fees, allowances or expenses paid under subsection (1) will be recoverable from the Compensation Fund under the *Workers Rehabilitation and Compensation Act 1986* under
- 20 a scheme established or approved by the Treasurer.

11—Validity of acts and immunity of members

- (1) An act or proceeding of the Authority is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
- 25 (2) No personal liability attaches to a member of the Authority for an act or omission by the member or the Authority in good faith in performance, exercise or discharge, or purported performance, exercise or discharge, of the member's or the Authority's functions, powers or duties under this Act.
- 30 (3) A liability that would, but for subsection (2), lie against a member of the Authority will lie instead against the Crown.

Division 3—Proceedings

12—Proceedings

- (1) Six members of the Authority, of whom—
- 35 (a) 1 is the presiding member, or the Director acting in the absence of the presiding member (unless the Director is unavailable); and
- (b) at least 2 are members appointed to represent the interests of employers; and
- 40 (c) at least 2 are members appointed to represent the interests of employees,

constitute a quorum of the Authority.

- 5
- (2) When a matter arises for decision at a meeting of the Authority—
- (a) the members appointed to represent the interests of employers or employees will each have a deliberative vote; and
- (b) if those deliberative votes are equal, the presiding member, if present at the meeting, has a casting vote but if the presiding member is not present then the matter must be deferred until the presiding member is present to determine the matter.
- 10
- (3) The members of the Authority holding office under section 8(1)(b) and (c) do not have a vote on any matter arising for decision at a meeting of the Authority.
- (4) A decision carried by a majority of the votes cast under subsection (2) is a decision of the Authority.
- 15
- (5) A telephone or video conference between members of the Authority constituted in accordance with procedures determined by the Authority will, for the purposes of this section, be taken to be a meeting of the Authority at which the participating members are present.
- 20
- (6) A resolution of the Authority—
- (a) of which notice was given to all members of the Authority in accordance with procedures determined by the Authority; and
- (b) in which a majority of the members of the Authority who would be entitled to vote under subsection (2) if the matter were before a meeting of the Authority have expressed their concurrence in writing or in some other manner determined by the Authority,
- 25
- will be taken to be a decision of the Authority made at a meeting of the Authority.
- (7) The Authority must cause an accurate record to be kept of its proceedings.
- (8) Subject to this Act, the proceedings of the Authority will be conducted in a manner determined by the Authority.
- 30
- 35

Division 4—Functions and powers

13—Functions of the Authority

- (1) The functions of the Authority are—
- (a) to keep the administration and enforcement of this Act, and any other legislation relevant to occupational health, safety and welfare, under review, and to make recommendations for change as the Authority thinks fit; and
- 40

- 5
- 10
- 15
- 20
- 25
- 30
- 35
- 40
- (b) to advise the Minister (on its own initiative or at the request of the Minister) on—
 - (i) legislation, regulations, codes, standards and policies relevant to occupational health, safety and welfare; and
 - (ii) national and international developments in the field of occupational health, safety and welfare; and
 - (iii) the establishment of public inquiries and legislative and other reviews concerning issues associated with occupational health, safety and welfare; and
 - (c) to provide a forum for ensuring consultation and co-operation between WorkCover, associations representing the interests of employees or employers, industry associations, Government agencies and other public authorities, and other interested persons or bodies, in relation to occupational health, safety or welfare matters; and
 - (d) to prepare, adopt, promote or endorse prevention strategies, standards, codes, guidelines or guidance notes, and to recommend practices, to assist people in connection with occupational health, safety and welfare; and
 - (e) to promote education and training with respect to occupational health, safety and welfare, to develop, support, accredit, approve or promote courses or programmes relating to occupational health, safety or welfare, and to accredit, approve or recognise education providers in the field of occupational health, safety and welfare; and
 - (f) to keep the provision of services relevant to occupational health, safety and welfare under review; and
 - (g) to collect, analyse and publish information and statistics relating to occupational health, safety or welfare; and
 - (h) to commission or sponsor research in relation to any matter relevant to occupational health, safety or welfare; and
 - (i) to initiate, co-ordinate or support projects and activities that promote public discussion or comment in relation to the development or operation of legislation, codes of practice and other material relevant to occupational health, safety or welfare; and
 - (j) to promote occupational health, safety or welfare programs, and to make recommendations with respect to the making of grants in support of projects and activities relevant to occupational health, safety or welfare; and
 - (k) to consult and co-operate with relevant national, State and Territory authorities; and

- 5
- (l) to report to the Minister on any matter referred to the Authority by the Minister; and
- (m) as it thinks fit, to consider any other matter relevant to occupational health, safety or welfare; and
- 5 (n) to carry out other functions assigned to the Authority by or under this or any other Act.
- (2) The Authority may, with the approval of the Minister—
- (a) perform functions conferred on the Authority by or under a law of the Commonwealth, another State or a Territory;
- 10 (b) confer (subject to conditions or limitations (if any) specified by the Minister) functions of the Authority on an authority established by or under a law of the Commonwealth, another State or a Territory.
- (3) The Authority should seek—
- 15 (a) to ensure that South Australia takes advantage of initiatives that are recognised as being at the fore-front of occupational health, safety and welfare practices; and
- (b) to achieve a high level of consistency between occupational health, safety and welfare standards and requirements under this Act and corresponding standards and requirements under the laws of the Commonwealth, the other States and the Territories (insofar as to do so is in the best interests of the State).
- 20
- (4) The Authority should, as far as reasonably practicable, ensure that information provided for use in the workplace is in a language and form appropriate for those expected to make use of it.
- 25
- (5) If the Minister receives a recommendation from the Authority under this Act, the Minister should, within 2 months, respond in writing to the Authority in relation to the recommendation.
- 30
- (6) The Authority may establish such committees and subcommittees as it thinks fit (which may, but need not, consist of, or include, members of the Authority) to advise it on, or to assist it with respect to, any aspect of its functions under this Act.
- 35
- (7) The Authority has the power to do anything necessary, expedient or incidental to the performance of its functions.

Division 5—Use of staff and facilities

14—Use of staff and facilities

- 40
- (1) The Authority may, by agreement with the Minister responsible for an administrative unit in the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

- (2) The Authority may, by agreement with the relevant agency or instrumentality, make use of the services of the staff, equipment or facilities of any other agency or instrumentality of the Crown.

Division 6—Related matters

15—Confidentiality

A member of the Authority who, as a member of the Authority, acquires information that—

- (a) the member knows to be of a commercially sensitive nature, or of a private confidential nature; or

- (b) the Authority classifies as confidential information,

must not divulge the information without the approval of the Authority.

Maximum penalty: Division 6 fine.

16—Annual report

- (1) The Authority must, on or before 30 September in each year, prepare a report on the work of the Authority, and on other matters relevant to the operation and administration of this Act, for the financial year ending on the preceding 30 June.

- (2) A report under this section may be incorporated into the annual report of the Department.

- (3) The Minister must cause a copy of a report prepared under subsection (1) to be laid before both Houses of Parliament within 12 sitting days after the report is prepared.

6—Amendment of section 19—Duties of employers

Section 19(3)—after paragraph (d) insert:

- (da) keep information and records relating to occupational health, safety or welfare training undertaken by any of the employer's employees in connection with their employment; and

7—Amendment of section 21—Duties of workers

Section 21(1b)(c)—delete "Advisory Committee" and substitute:

Authority

8—Amendment of section 22—Duties of employers and self-employed persons

Section 22(2)—delete subsection (2) and substitute:

- 5 (2) An employer or self-employed person must ensure, so far as is reasonably practicable, that any other person (not being an employee employed or engaged by the employer or the self-employed person) is safe from injury and risks to health—
- (a) while the other person is at a workplace that is under the management and control of the employer or self-employed person; or
- 10 (b) while the other person is in a situation where he or she could be adversely affected through an act or omission occurring in connection with the work of the employer or self-employed person.

Maximum penalty:

- 15 (a) for a first offence—Division 2 fine;
- (b) for a subsequent offence—Division 1 fine.

9—Amendment of section 27—Health and safety representatives may represent groups

20 Section 27(6)—delete "the Corporation after seeking the advice of the Advisory Committee" and substitute:

the Authority

10—Amendment of section 28—Election of health and safety representatives

- (1) Section 28(3)—delete "Corporation" wherever occurring and substitute in each case:

Authority

- 25 (2) Section 28(5)—delete "Advisory Committee" and substitute:

Authority

- (3) Section 28—after subsection (6) insert:

(6a) The employer must be consulted about when the election is to be carried out before the arrangements for the election are finalised.

- 30 (4) Section 28(12)—delete "Corporation" and substitute:

Authority

11—Insertion of Part 4 Division 2A

Part 4—after section 31 insert:

Division 2A—Training

31A—Training of health and safety representatives, deputies and committee members

- 5
- (1) A prescribed person is entitled to take such time off work as is authorised by the regulations for the purposes of taking part in a course of training relating to occupational health, safety or welfare approved by the Authority for the purposes of this section.
- 10
- (2) Subsection (1) is subject to the following qualifications:
- (a) if—
- (i) the employer employs 10 or less employees; and
- (ii) the employer is not an employer in respect of whom a supplementary levy has been imposed by WorkCover under Part 5 of the *Workers Rehabilitation and Compensation Act 1986*,
- 15
- a prescribed person may only take such time off work to take part in a course of training as the employer reasonably allows;
- 20
- (b) a prescribed person must take reasonable steps to consult with the employer before taking time off work to take part in a course of training under this section.
- (3) If a dispute arises in relation to the entitlement of a prescribed person under this section, the prescribed person or the employer may refer the dispute to the Industrial Commission.
- 25
- (4) The Industrial Commission may determine the dispute and the decision of the Industrial Commission is binding on the prescribed person and the employer.
- (5) In this section—
- 30
- prescribed person*** means—
- (a) a health and safety representative; and
- (b) a deputy to a health and safety representative; and
- (c) a member of a health and safety committee.

31B—Maintenance of pay and reimbursement of expenses

- 35
- (1) A person who takes time off work for the purposes of any training under this Division—
- (a) is entitled to take that time without the loss of any remuneration (payable by the employer) that the person would have received had he or she been at work for the relevant time; and
- 40

(b) is entitled to be reimbursed by the employer for any reasonable expenses reasonably incurred by the person with respect to—

- (i) travelling; or
- (ii) obtaining meals or accommodation; or
- (iii) parking fees; or
- (iv) other matters (if any) prescribed by the regulations,

to the extent that these expenses are over and above, or additional to, expenses that the person would have incurred in any event had he or she been at work at the relevant time.

(2) If a dispute arises in relation to the entitlement of a person under this section, the person or the employer may refer the dispute to the Industrial Commission.

(3) The Industrial Commission may determine the dispute and the decision of the Industrial Commission is binding on the person and the employer.

31C—Guidelines

The Authority may prepare and publish guidelines in relation to the operation of this Division.

12—Amendment of section 32—Functions of health and safety representatives

Section 32(3)(a)(i)—delete subparagraph (i) and substitute:

- (i) the Authority;

13—Amendment of section 34—Responsibilities of employers

(1) Section 34(3), (4) and (5)—delete subsections (3), (4) and (5) and substitute:

(3) A health and safety representative is entitled to take such time off work as is reasonably necessary for the purposes of performing the functions of a health and safety representative under this Act.

(4) A health and safety representative who takes time off work under subsection (3)—

(a) is entitled to take that time without the loss of any remuneration (payable by the employer) that the health and safety representative would have received had he or she been at work for the relevant time; and

(b) is entitled to be reimbursed by the employer for any reasonable expenses reasonably incurred by the health and safety representative with respect to—

- (i) travelling; or
- (ii) obtaining meals or accommodation; or
- (iii) parking fees; or

(iv) other matters (if any) prescribed by the regulations,
to the extent that these expenses are over and above, or
additional to, expenses that the health and safety
representative would have incurred in any event had he or
she been at work at the relevant time.

(5) A health and safety representative must take reasonable steps to consult with the employer before incurring any expenses that he or she intends to claim under subsection (4)(b).

(6) The Authority may prepare and publish guidelines in relation to the operation of subsections (3), (4) and (5).

(2) Section 34(6)—after "subsection (3)" insert:

or (4)

14—Insertion of section 37A

After section 37 insert:

37A—Division not to derogate from other referrals to an inspector

Nothing in this Division limits or derogates from the ability of a health and safety representative, employee or other person to refer at any time any matter concerning occupational health, safety or welfare to an inspector or other person involved in the administration or enforcement of this Act.

15—Amendment of section 38—Powers of entry and inspection

(1) Section 38(1)—delete "the Corporation" and substitute:

the Authority

(2) Section 38(1)(h)—after paragraph (h) insert:

(i) if the inspector or other authorised person suspects on reasonable grounds that a person has committed, is committing, or is about to commit an offence against this Act, require the person—

(i) to state his or her full name and usual place of residence;

(ii) to produce evidence of any qualification or competency that is required under, or for the purposes of, this Act;

(j) if the inspector or other authorised person has reason to believe that a person is capable of providing information or evidentiary material relevant to the investigation of a suspected breach of this Act and the inspector or other authorised person believes that it is reasonably necessary to exercise a power under this paragraph, require the person to attend before a specified person on a specified day and at a specified place and time (being a day, place and time that is reasonable in the circumstances) to be interviewed and to produce any evidentiary material relevant to the investigation;

(k) impose other requirements reasonably connected with a power conferred by any of the above paragraphs or otherwise in connection with the operation, administration or enforcement of this Act.

(3) Section 38—after subsection (2) insert:

(2a) An inspector or other person may take a video or audio recording of any interview conducted under this section.

(2b) A person who undertakes any recording under subsection (2a) must comply with any guidelines issued or approved by the Attorney-General for the purposes of this section.

(4) Section 38—after subsection (3) insert:

(3a) A person is not excused from a requirement under subsection (1) to provide information or answer questions, or to produce any document or record, on the ground that the information, answer, document or record might incriminate the person of an offence.

(3b) However, any information or answer furnished, or document or record produced, by a natural person in compliance with such a requirement is not admissible in evidence against the person in criminal proceedings other than—

(a) proceedings for an offence with respect to false or misleading statements, information or records; or

(b) proceedings for an offence in the nature of perjury.

(5) Section 38(5) and (6)—delete subsections (5) and (6) and substitute:

(5) An inspector who has seized anything under subsection (4) must, on request, provide a receipt for the thing seized.

(6) In the exercise of powers under this section, a person may be accompanied or assisted by such persons, authorised by the Director or the Authority, as may be necessary or desirable in the circumstances.

(6) Section 38(11)—delete "the Corporation" and substitute:

the Authority

(7) Section 38(11)—delete "the Corporation's" and substitute:

the Authority's

16—Amendment of section 39—Improvement notices

(1) Section 39(2)—after paragraph (c) insert:

(d) make provision for a statement (a *statement of compliance*) that is to be completed by the person required to comply with the notice when the matters to which the notice relates have been remedied.

(2) Section 39(4), penalty provision—insert:

Expiation fee: \$315.

(3) Section 39—after subsection (4) insert:

(5) The person required to comply with an improvement notice must, within 5 business days after the matters to which the notice relates have been remedied in accordance with the requirements of the notice, complete and return to the Department the relevant statement of compliance.

Maximum penalty: Division 7 fine.

Expiation fee: \$315.

17—Amendment of section 40—Prohibition notices

(1) Section 40(1) and (2)—delete subsections (1) and (2) and substitute:

(1) Where an inspector is of the opinion—

(a) that there is an immediate risk—

(i) to the health or safety of a person at work; or

(ii) to the health or safety of any person in connection with the performance of any work, or from any plant to which this Act extends by virtue of Schedule 2; or

(b) that there could be an immediate risk—

(i) to the health or safety of a person at work; or

(ii) to the health or safety of any person in connection with the performance of any work, or from any plant to which this Act extends by virtue of Schedule 2,

if particular action were to be taken or a particular situation were to occur,

an inspector may issue to the person apparently in control of the activity or situation from which the risk arises or could arise (as the case may be) a prohibition notice prohibiting the carrying on of an activity or any other relevant action until the inspector is satisfied that adequate measures have been taken or are in place to avert, assess, eliminate or minimise any risk.

(2) A prohibition notice must—

(a) identify the activity or situation from which the risk arises or would arise; and

(b) state the grounds of the inspector's opinion on which the notice is based.

(2) Section 40(3)—after "avert," insert:

assess,

18—Amendment of section 51—Immunity of inspectors and officers

Section 51(1)—delete "an officer of the Corporation" and substitute:
any other officer

19—Amendment of section 53—Delegation

5 Section 53(1)—delete "the Corporation" and substitute:
the Authority

20—Amendment of section 54—Power to require information

(1) Section 54(1)—delete "the Corporation" wherever occurring and substitute in each case:

10 the Authority

(2) Section 54(1a)—delete subsection (1a)

21—Insertion of section 54A

After section 54 insert:

54A—Provision of information by WorkCover

15 (1) WorkCover will, to the extent required by a scheme established by
the Minister after consultation with WorkCover, furnish to the
Authority and the Department, in accordance with the terms of the
scheme, any of the following information obtained by WorkCover in
20 the performance or exercise of its functions or powers under a related
Act:

- (a) information about any work-related injury, or about any
specified class of work-related injury, reported to or
investigated by WorkCover;
- (b) the steps being taken by any employer, or any employer of a
25 specified class, to protect employees from injury or risks to
health, safety or welfare, or to assist in the rehabilitation of
employees who have suffered injuries in connection with
their work;
- (c) information relating to the cost or frequency of claims
30 involving a particular employer, or class of employers, so as
to allow comparisons between employers in a particular
industry, or part of an industry;
- (d) the outcome of any investigation, inquiry or other action
undertaken by WorkCover;
- 35 (e) other information of a kind prescribed by the regulations.

(2) In this section—

related Act means—

- (a) the *WorkCover Corporation Act 1994*; and
(b) the *Workers Rehabilitation and Compensation Act 1986*.

22—Amendment of section 55—Confidentiality

Section 55(1a)(e)—delete "the Corporation" and substitute:
the Authority, WorkCover

23—Insert of section 55A

5 After section 55 insert:

55A—Inappropriate behaviour towards an employee

(1) If—

- (a) an inspector receives a complaint from an employee that he or she is being bullied or abused at work; and
- 10 (b) the inspector, after an investigation of the matter, has reason to believe that the matter is capable of resolution under this section,

the inspector may—

- 15 (c) take reasonable steps to resolve the matter between the parties himself or herself; and
- (d) if the matter remains unresolved after taking the steps required under paragraph (c), after consultation with the parties, refer the matter to the Industrial Commission for conciliation or mediation.

20 (2) A reference under subsection (1) will be made by written instrument that complies with any prescribed requirements.

(3) The inspector must ensure that the parties are furnished with a copy of any reference under subsection (1).

25 (4) If a matter is referred to the Industrial Commission under subsection (1), the Industrial Commission must attempt to resolve the matter by—

- (a) conciliation; or
- (b) mediation,

as the Industrial Commission thinks fit.

30 (5) For the purposes of this section—

- (a) conciliation is a process where the parties attend before the conciliator with a view to the conciliator identifying the issues and resolving the matter by making recommendations if the matter is not settled by agreement; and
- 35 (b) mediation is a process where the mediator seeks to resolve the matter by facilitating an amicable agreement between the parties.

(6) For the purposes of any conciliation or mediation, the Industrial Commission may—

- 40 (a) interview the parties separately or together; and

(b) inform itself in any other way as it thinks fit.

- 5
- (7) For the purposes of any conciliation, the conciliator may call a compulsory conference of the parties.
- (8) The Industrial Commission may at any time bring any conciliation or mediation to an end if the Industrial Commission considers that the conciliation or mediation will not result in the resolution of the matter.
- 10
- (9) Subject to subsection (10), nothing said or done in any conciliation or mediation under this section may subsequently be given in evidence without the consent of the parties to the conciliation or mediation.
- (10) The terms of any agreement between the parties to any conciliation or mediation may be given in evidence in subsequent proceedings (without the restriction imposed by subsection (9)).
- 15
- (11) The Industrial Commission must inform the Department when any conciliation or mediation under this section is concluded or brought to an end.
- (12) The Industrial Commission and the Department may consult from time to time about the processes and arrangements that should apply under this section, and prepare and publish information and guidelines to assist persons who may become involved in conciliation or mediation under this section.
- 20
- (13) The President of the Industrial Commission may make rules relating to—
- 25
- (a) representation before the Industrial Commission in connection with the operation of this section; or
- (b) the conduct of the parties to a conciliation or mediation under this section; or
- 30
- (c) any other matter that, in the opinion of the President, is necessary or convenient for the purposes of any conciliation or mediation under this section.

24—Amendment of section 58—Offences

(1) Section 58(5)—after paragraph (a) insert:

(ab) an administrative unit in the Public Service of the State;

35

(2) Section 58—after subsection (5) insert:

(5a) For the purposes of subsection (5)—

- 40
- (a) the proceedings will be taken against the relevant agency, instrumentality, administrative unit or person (the "responsible agency") as if it were a distinct entity or person; and
- (b) the responsible agency is to be specified in the charge for the offence; and

- 5 (c) except for proceedings against a natural person, the responsible agency may, during any proceedings for an offence, be changed by the prosecutor with the leave of the relevant court on the ground that there is now a successor to the relevant agency, instrumentality or administrative unit; and
- 10 (d) in proceedings against an administrative unit, the chief executive of the administrative unit, or a person authorised by that chief executive, may appear and provide evidence and make admissions on behalf of the administrative unit; and
- (e) any penalty may be imposed against the responsible agency.
- (3) Section 58(6)—delete "Proceedings" and substitute:
Subject to subsection (6a), proceedings
- 15 (4) Section 58—after subsection (6) insert:
- 20 (6a) The Director of Public Prosecutions may, by instrument in writing, extend a time limit that would otherwise apply under subsection (6) in a particular case if the Director of Public Prosecutions is satisfied that a prosecution could not reasonably be commenced within the relevant period due to a delay in the onset or manifestation of an injury or disease, a condition or defect of any kind, or any other relevant factor or circumstance.
- 25 (6b) An apparently genuine document purporting to be signed by the Director of Public Prosecutions and to be an extension under subsection (6) will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of an extension in a particular case.
- (5) Section 58(7)—after paragraph (a) insert:
- 30 (ab) by the Director of Public Prosecutions; or
(ac) by the Director; or
- (6) Section 58(7)(c)—after "the Minister" insert:
, the Director of Public Prosecutions, the Director
- (7) Section 58(8)—delete subsection (8) and substitute:
- 35 (8) However—
- (a) proceedings for an offence against an administrative unit in the Public Service of the State may only be brought by—
- (i) the Director of Public Prosecutions; or
- (ii) the Director; and
- 40 (b) the approval of the Minister is required to bring proceedings under subsection (7)(c) unless 18 months have elapsed since the date on which the relevant offence is alleged to have been committed.

(8) Section 58(9)—delete "subsection (8)" and substitute:

subsection (8)(b)

(9) Section 58—after subsection (9) insert:

(10) An inspector is authorised to give expiation notices for alleged offences by or under this Act that are expiable.

25—Insertion of section 60A

After section 60 insert:

60A—Non-pecuniary penalties

(1) If a person is convicted of an offence against this Act, the court may, after taking into account any submissions and other relevant matters, in addition or in substitution for any penalty that it may impose—

(a) order the convicted person to undertake, or to arrange for one or more employees to undertake, a course of training or education of a kind specified by the court;

(b) order the convicted person to carry out a specified activity or project for the general improvement of occupational health, safety and welfare in the State, or in a sector of activity within the State;

(c) order the convicted person to take specified action to publicise the offence, its consequences, any penalty imposed, and any other related matter;

(d) order the convicted person to take specified action to notify specified persons or classes of persons of the offence, its consequences, any penalty imposed, and any other related matter (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the convicted persons's conduct).

(2) The court may, in an order under subsection (1), fix a period for compliance and impose any other requirements the court considers necessary or expedient for the enforcement of the order.

(3) If the person to whom an order is directed under subsection (1) fails to comply with the order, that person is guilty of a further offence.

Maximum penalty: Division 4 fine.

26—Amendment of section 61—Offences by bodies corporate

Section 61—after subsection (2) insert:

(2a) A person who is appointed as a responsible officer under this section and who has not previously attended a course of training recognised or approved by the Authority for the purposes of this section must attend such a course of training within 3 months after his or her appointment.

Maximum penalty: Division 7 fine.

- (2b) The requirement for a person to attend a course of training under subsection (2a) lapses if the person ceases to be a responsible officer during the 3 month period referred to in that subsection.

27—Amendment of section 62—Health and safety in the public sector

5 Section 62—after its present contents as amended by Schedule 2 (now to be designated as subsection (1)) insert:

- (2) For the purposes of this Act, an administrative unit will be taken to be the employer of any Public Sector employees assigned to work in the administrative unit (and may be held to be liable for any offence for which an employer may be liable).

28—Amendment of section 63—Codes of practice

- (1) Section 63(1)—delete "the Advisory Committee" and substitute:

the Authority

- (2) Section 63(4)—delete "the Advisory Committee" and substitute:

the Authority

29—Repeal of section 65

Section 65—delete the section

30—Amendment of section 67—Exemption from Act

Section 67(3)(a)—delete "the Advisory Committee" and substitute:

the Authority

31—Amendment of section 67A—Registration of employers

- (1) Section 67A(3)—delete "The Corporation" and substitute:

WorkCover

- (2) Section 67A(5)—delete "the Corporation" wherever occurring and substitute in each case:

WorkCover

- (3) Section 67A(6)(c)—delete "the Corporation" and substitute:

WorkCover

- (4) Section 67A(7)—delete "for Industrial Affairs"

- (5) Section 67A(8)—delete "the 1994/1995 financial year, and for each succeeding financial year," and substitute:

a financial year

- (6) Section 67A(8c)—delete "the Corporation" and substitute:

WorkCover

- (7) Section 67A(8d)—delete "the Corporation" and substitute:

WorkCover

- (8) Section 67A(9)—delete "for Industrial Affairs"
(9) Section 67A(9)—delete "the Corporation" and substitute:

WorkCover

- (10) Section 67A(11)—delete subsection (11)

5 **32—Insertion of sections 67B and 67C**

After section 67A insert:

67B—Portion of WorkCover levy to be used to improve occupational health and safety

- 10 (1) A part of the levy paid to WorkCover under Part 5 of the *Workers Rehabilitation and Compensation Act 1986* in any financial year will be payable by WorkCover to the Department to be applied towards the costs associated with the administration of this Act.
- (2) The amount payable under subsection (1) will be—
- 15 (a) a set amount in respect of a particular financial year; or
- (b) a percentage of the levy paid to WorkCover in respect of a particular financial year,
- as determined by the Minister by notice in the Gazette.
- (3) A payment to the Department with respect to a financial year must be made (according to a determination of the Minister)—
- 20 (a) by instalments paid over a period specified by the Minister after consultation with the Treasurer; or
- (b) by a lump sum paid by a date specified by the Minister after consultation with the Treasurer.
- (4) The Minister may, by notice in the Gazette, vary an earlier notice published under subsection (2).
- 25

67C—Five-yearly reports

- (1) The Minister must, on a five-yearly basis, undertake or initiate a review of this Act.
- (2) A review must encompass—
- 30 (a) the work of the Authority; and
- (b) the operation of this Act and the extent to which its objects are being attained; and
- (c) other matters determined by the Minister to be relevant to a review of this Act.
- (3) The results of the review must be embodied in a written report.
- 35 (4) The Minister must cause copies of the report to be laid before both Houses of Parliament within 12 sitting days after the report is prepared.

33—Amendment of section 68—Consultation on regulations

Section 68—delete "the Advisory Committee" and substitute:
the Authority

34—Amendment of section 69—Regulations

- 5 (1) Section 69(8a)—delete "the Corporation" and substitute:
WorkCover
- (2) Section 69(8b)—delete subsection (8b) and substitute:
(8b) The Department is entitled to information relating to work-related
injuries obtained by WorkCover under subsection (8a).
- 10 (3) Section 69(9)(a)—delete "the Advisory Committee" and substitute:
the Authority

35—Substitution of Schedule 3

After Schedule 2 insert:

Schedule 3—The Mining and Quarrying Occupational Health and Safety Committee

1—The Committee

- 15
- (1) The Mining and Quarrying Occupational Health and Safety
Committee (the *Committee*) continues in existence.
- 20 (2) The Committee will consist of 7 persons appointed by the Minister,
of whom—
- (a) 2 will be persons working in the field of occupational health
and safety nominated by the Authority; and
- (b) 1 will be a member of the Department who has experience
in the mining and quarrying industries; and
- 25 (c) 1 will be a person nominated by the South Australian
Chamber of Mines and Energy, and 1 will be a person
nominated by the Extractive Industries Association, to
represent the interests of employers involved in the mining
and quarrying industries; and
- 30 (d) 2 will be persons nominated by the United Trades and Labor
Council to represent the interests of workers who work in
the mining and quarrying industries.
- (3) The Minister will appoint one of the members of the Committee
appointed under subclause (2)(a) to be the presiding member of the
Committee.
- 35 (4) The Minister may appoint a suitable person to be a deputy of a
member of the Committee and to act as a member of the Committee
during any period of absence of the member.

- 5
- (5) A member of the Committee may be appointed for a term not exceeding 3 years determined by the Minister and will, on the expiration of a term of appointment, be eligible for reappointment.
- (6) The Minister may, on reasonable grounds, remove a member of the Committee from office at any time.
- (7) A member of the Committee may resign by written notice to the Minister.
- 10
- (8) An act or proceeding of the Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
- (9) 4 members of the Committee constitute a quorum of the Committee.
- (10) In the absence of the presiding member at a meeting of the Committee, the members present may decide who is to preside.
- 15
- (11) A decision carried by at least 4 members of the Committee is a decision of the Committee.
- (12) Each member present at a meeting of the Committee is entitled to 1 vote on any matter arising for decision at the meeting.
- (13) The Committee must cause an accurate record to be kept of its proceedings.
- 20
- (14) Subject to this Schedule, the business of the Committee will be conducted in a manner determined by the Committee.
- (15) A member of the Committee who has a direct or indirect pecuniary interest in a matter under consideration by the Committee—
- 25
- (a) must disclose the nature of the interest to the Committee; and
- (b) must not take part in any deliberation or decision of the Committee with respect to the matter.
- Maximum penalty: \$2 000.
- 30
- (16) A disclosure under subclause (15) must be recorded in the minutes of the Committee.
- (17) The Committee may, in connection with the performance of its functions, make use of the services, facilities and staff of the Authority.

2—Application of funds

- 35
- (1) Money available to the Committee from the Mining and Quarrying Industries Fund under Schedule 1 of the *Workers Rehabilitation and Compensation Act 1986* may be used for any of the following purposes:
- 40
- (a) to promote and support practices, procedures and arrangements designed to protect workers from silicosis;
- (b) to support education in the field of occupational health or safety in the mining and quarrying industries;

- 5
- 10
- 15
- 20
- 25
- 30
- 35
- (c) to initiate or support research and studies into occupational health or safety that could benefit workers in the mining and quarrying industries;
 - (d) to promote and support persons or organisations working to prevent, alleviate or treat the kinds of disabilities suffered by workers in the mining and quarrying industries;
 - (e) to support any other kind of activity that could directly or indirectly improve occupational health or safety in the mining and quarrying industries or assist in the rehabilitation of disabled workers in those industries.
- (2) The Committee has all such powers as are reasonably necessary for the effective performance of its functions (including the power to establish sub committees and to engage, as may be appropriate, experts or consultants to assist the Committee in the performance of its functions).
- (3) The Committee must, in making grants of money under this Schedule, give preference to supporting projects directed at improving occupational health or safety in those industries that involve exposure to silica dust and in particular to supporting specialised research and training projects directed at that purpose in South Australia.
- (4) The Committee must not spend any part of the principal standing to the credit of Part B of the Mining and Quarrying Industries Fund without the specific approval of the Minister and in any case the Committee is not to spend in any financial year more than 20% of the principal that, at the commencement of that financial year, is standing to the credit of that part of the fund.
- (5) The Committee must after the end of each financial year prepare a report on its operations during that financial year.
- (6) The report must be submitted to the Minister in conjunction with the annual report of the Authority for the relevant financial year (and laid before each House of Parliament by the Minister together with the Authority's annual report).

3—Ministerial control

The Committee is, in the performance of its functions, subject to the control and direction of the Minister.

Schedule 1—Related amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

40 In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *WorkCover Corporation Act 1994*

2—Amendment of section 13—Functions

- (1) Section 13(1)(a)(i)—delete subparagraph (i)
- (2) Section 13(1)(b)—delete paragraph (b)
- 5 (3) Section 13(1)(j)—delete paragraph (j) and substitute:
- (j) to devise, promote or approved courses of training in workers rehabilitation and, with the approval of the Minister, to accredit service providers in the field of workers rehabilitation and compensation;
- 10 (4) Section 13(1)(k)(i)—delete subparagraph (i)
- (5) Section 13(1)—after paragraph (k) insert:
- (ka) to support activities and other initiatives relating to occupational health, safety or welfare;
- (6) Section 13(1)(m)—delete paragraph (m)

3—Amendment of section 16—Committees

Section 16(3)—delete subsection (3) and substitute:

- (3) The Corporation must allocate sufficient resources to ensure that the committees established under this Act and the *Workers Rehabilitation and Compensation Act 1986* can operate effectively.

4—Amendment of Schedule

Schedule, clauses 1, 2, 3 and 4—delete clauses 1, 2, 3 and 4 and substitute:

1—References

A reference in an instrument to the Workers Rehabilitation and Compensation Corporation will be construed as a reference to the Corporation.

Part 3—Amendment of *Workers Rehabilitation and Compensation Act 1986*

5—Amendment of section 64—The Compensation Fund

Section 64(3)—after paragraph (d) insert:

- (e) any payment that the Corporation is required to make under the *Occupational Health, Safety and Welfare Act 1986*.

6—Amendment of Schedule 1

- (1) Schedule 1, clause 4(3)—delete "established under schedule 4" and substitute:
under Schedule 3 of the *Occupational Health, Safety and Welfare Act 1986*
- (2) Schedule 1, clause 4(8)(b)—delete paragraph (b)

7—Repeal of Schedule 4

Schedule 4—delete Schedule 4

Part 4—Transitional provisions

8—Staff

- 5 (1) The Minister may, by notice in the Gazette, transfer a person who is a member of the staff of WorkCover immediately before the commencement of this subclause to—
- (a) the Department; or
 - (b) another administrative unit in the Public Service of the State.
- 10 (2) The Minister must obtain the concurrence of the board of management of WorkCover before he or she may act under subclause (1).
- (3) The conditions of employment that will apply to a person on his or her transfer under subclause (1) will be determined by the Commissioner for Public Employment after consultation with—
- 15 (a) the Chief Executive of the Department and, if a person is being transferred to another administrative unit under subclause (1)(b), the Chief Executive of that other administrative unit; and
 - (b) any registered association that represents the interests of any person who is being transferred; and
 - (c) WorkCover.
- 20 (4) Despite subclause (2), a transfer under subclause (1) will occur without prejudice to any continuity of service of a person and without affecting any accrued right to leave.

9—Property

- (1) The Governor may, by proclamation made on the recommendation of the Minister, vest an asset, right or liability of WorkCover in—
- 25 (a) the Crown; or
 - (b) the Minister.
- (2) The Governor may, by proclamation made on the recommendation of the Minister, transfer a monetary amount from WorkCover to the Department on account of the arrangements or functions that are to be established or assumed by the Authority or the Department after the enactment of this Act.
- 30 (3) The Minister must obtain the concurrence of the board of management of WorkCover before he or she may make a recommendation under subclause (1) or (2).
- (4) Any money transferred from WorkCover under subclause (2) will be paid from the Compensation Fund (without further authorisation under the *Workers Rehabilitation and Compensation Act 1986*).
- 35

10—Review of conciliation and mediation scheme

- (1) The Minister to whom the administration of the principal Act is committed must cause a review to be undertaken in relation to the operation of section 55A of the principal Act after that section has been in operation for a period of 12 months

- (2) The results of the review must be embodied in a written report and incorporated into the Department's annual report for the financial year during which the review is completed.

11—Training

- 5 (1) The period within which a person must attend a course of training under section 61(2a) of the principal Act (as enacted by this Act) if the person is appointed as a responsible officer within the first 12 months after the commencement of this clause will be extended from 3 months to 12 months after his or her appointment.
- 10 (2) A person who is a responsible officer under section 61 of the principal Act on the commencement of this clause must attend a course of training recognised or approved by the Authority for the purposes of subsection (2a) of that section within 3 years after the commencement of this clause.
- (3) However—
- 15 (a) the requirement for a person to attend a course of training under subclause (2) lapses if the person ceases to be a responsible officer for the relevant body corporate (but this paragraph does not derogate from the operation of section 61(2a) of the principal Act); and
- (b) a person is not required to attend a course of training under subclause (2) if he or she has, before the commencement of this clause, attended a course of training recognised by the Authority for the purposes of this provision.
- 20 (4) A person who fails to comply with subclause (2) will be guilty of an offence and liable to the same penalty as the penalty that applies to a failure to comply with section 61(2a) of the principal Act.

12—Committee membership

- 25 The persons holding office as members of the Mining and Quarrying Occupational Health and Safety Committee immediately before the commencement of this clause may continue to hold office after the commencement of this clause.

13—Regulations

- 30 The Governor may, by regulation, make other provisions of a saving or transitional nature consequent on the enactment of this Act.

14—Interpretation

In this Part—

Authority means SafeWork SA;

35 **Compensation Fund** means the Compensation Fund under Part 5 of the *Workers Rehabilitation and Compensation Act 1986*;

Department means the administrative unit of the Minister to whom the administration of the principal Act is committed;

principal Act means the *Occupational Health, Safety and Welfare Act 1986*;

40 **registered association** has the same meaning as in the *Occupational Health, Safety and Welfare Act 1986*;

WorkCover means the WorkCover Corporation of South Australia.

Schedule 2—Statute law revision amendment of the *Occupational Health, Safety and Welfare Act 1986*

Long title	Delete "to repeal the <i>Industrial Safety, Health and Welfare Act 1972</i> ; to make related amendments to the <i>Industrial Conciliation and Arbitration Act 1972</i> and the <i>Mines and Works Inspection Act 1920</i> ;"
Section 2	Delete the section
Section 4(1) paragraph (b) of definition of <i>the designated person</i>	Delete " <i>Petroleum Act 1940</i> " and substitute: <p style="text-align: center;"><i>Petroleum Act 2000</i></p>
Section 4(1) definition of <i>the Industrial Commission</i>	Delete the definition and substitute: <p style="text-align: center;"><i>Industrial Commission</i> means the Industrial Relations Commission of South Australia;</p>
Section 4(1) definition of <i>the Industrial Court</i>	Delete the definition and substitute: <p style="text-align: center;"><i>Industrial Court</i> means the Industrial Relations Court of South Australia;</p>
Section 4(1) paragraph (b) of definition of <i>inspector</i>	Delete " <i>Petroleum Act 1940</i> " and substitute: <p style="text-align: center;"><i>Petroleum Act 2000</i></p> Delete "inspector" and substitute: <p style="text-align: center;">authorised officer</p>
Section 4(1) definition of <i>metropolitan area</i>	Delete " <i>Planning Act 1982</i> " and substitute: <p style="text-align: center;"><i>Development Act 1993</i></p> Delete "Municipality of Gawler" and substitute: <p style="text-align: center;">the Corporation of the Town of Gawler</p>
Section 4(1) paragraph (a) of definition of <i>registered association</i>	Delete " <i>Industrial Relations Act (S.A.) 1972</i> " and substitute: <p style="text-align: center;"><i>Industrial and Employee Relations Act 1994</i></p>
Section 4(2)	Delete "shall be deemed" and substitute: <p style="text-align: center;">will be taken</p>
Section 4(3)	Delete "shall be deemed" and substitute: <p style="text-align: center;">will be taken</p>
Section 19	Delete "shall" wherever occurring and substitute in each case: <p style="text-align: center;">must</p>
Section 19(1) penalty provision	Delete the penalty provision and substitute: Maximum penalty: <p style="text-align: center;">(a) for a first offence—Division 2 fine; (b) for a subsequent offence—Division 1 fine.</p>

Occupational Health, Safety and Welfare (Safework SA) Amendment Bill 2004

Schedule 2—Statute law revision amendment of the *Occupational Health, Safety and Welfare Act 1986*

Section 20(1)	Delete "shall" and substitute: must
Section 23	Delete "shall" and substitute: must
Section 23 penalty provision	Delete the penalty provision and substitute: Maximum penalty: (a) for a first offence—Division 2 fine; (b) for a subsequent offence—Division 1 fine.
Section 23A(1) penalty provision	Delete the penalty provision and substitute: Maximum penalty: (a) for a first offence—Division 2 fine; (b) for a subsequent offence—Division 1 fine.
Section 23A(2) penalty provision	Delete the penalty provision and substitute: Maximum penalty: (a) for a first offence—Division 2 fine; (b) for a subsequent offence—Division 1 fine.
Section 24	Delete "shall" wherever occurring and substitute in each case: must
Section 24 penalty provisions	Delete all penalty provisions and substitute in each case: Maximum penalty: (a) for a first offence—Division 2 fine; (b) for a subsequent offence—Division 1 fine.
Section 24A(1) penalty provision	Delete the penalty provision and substitute: Maximum penalty: (a) for a first offence—Division 2 fine; (b) for a subsequent offence—Division 1 fine.
Section 25(1)	Delete "shall" and substitute: must
Section 28	Delete "shall" first, third, fourth and fifth occurring and substitute in each case: must
Section 28(7)(b)	Delete "shall be deemed" and substitute: is taken
Section 30(1)	Delete "shall" and substitute: will
Section 30(2)(a)	Delete "as a health and safety representative expires"
Section 30(7)	Delete "shall" and substitute: must

Section 31	Delete "shall" first, second, third, fourth, sixth and seventh occurring and substitute in each case: must Delete "shall" fifth occurring and substitute: will
Section 32(6)	Delete "shall" and substitute: may
Section 34(1)(g)(ii)	Delete "shall" and substitute: must
Section 35	Delete "shall" first, second, third, fourth, fifth and seventh occurring and substitute in each case: must
Section 35(3)	Delete "Notwithstanding" and substitute: Despite
Section 35(11)	Delete "shall, pending the attendance of the inspector, be" and substitute: is, pending the attendance of the inspector,
Section 36	Delete "shall" wherever occurring and substitute in each case: must
Section 36(3)	Delete "Notwithstanding" and substitute: Despite
Section 37	Delete "shall" wherever occurring and substitute in each case: must
Section 38	Delete "shall" wherever occurring and substitute in each case: must
Section 41	Delete "shall" wherever occurring and substitute in each case: must
Section 42(3)	Delete "shall" and substitute: will
Section 43(2)	Delete "shall" and substitute: must
Section 46	Delete "shall" and substitute: will
Section 47	Delete "shall" first, second and third occurring and substitute in each case: will
Section 47(4)	Delete "shall cease" and substitute: ceases
Section 48(1)	Delete "shall" and substitute: will

Occupational Health, Safety and Welfare (Safework SA) Amendment Bill 2004

Schedule 2—Statute law revision amendment of the *Occupational Health, Safety and Welfare Act 1986*

- Section 48(3) Delete "shall" and substitute:
must
- Section 48(4) Delete "shall" first occurring and substitute:
must
Delete "shall" second occurring
- Section 48(8) Delete "shall be" and substitute:
is
- Section 49(6) Delete "shall" and substitute:
will
- Section 51(2) Delete "shall lie" and substitute:
lies
- Section 55(2) Delete "shall" and substitute:
must
- Section 56 Delete "shall" first and second occurring and substitute in each case:
must
- Section 56(3) Delete "shall lie" and substitute:
lies
- Section 60(4) Delete "shall" and substitute:
must
- Section 62 Delete "under the *Government Management and Employment Act 1985*" and substitute:
in the Public Service of the State
- Section 63 Delete "shall" first and second occurring and substitute in each case:
must
- Section 63(7) Delete "shall" and substitute:
will
- Section 64(1) Delete "shall, in the absence of proof to the contrary, be" and substitute:
is, in the absence of proof to the contrary,
- Section 64(2) Delete "shall" and substitute:
may
- Section 66(1) Delete "shall for the purposes of this Act be deemed" and substitute:
is for the purposes of this Act taken
- Section 66(2) Delete "shall" and substitute:
must
- Section 66(3) Delete "shall" and substitute:
must
- Section 66(6) Delete "shall continue" and substitute:
continues

Section 67(1)(b)(i)	After "person;" insert: and
Section 68	Delete "shall" and substitute: must
Section 69(3)(a)	Delete "in pursuance of" and substitute: under
Section 69(7)	Delete "shall" and substitute: will
Section 69(10)	Delete "shall" and substitute: must
Section 70	Delete the section
Section 71	Delete the section