

TASMANIA

**WORKPLACE HEALTH AND SAFETY AMENDMENT (RIGHT TO
WORK WITHOUT HINDRANCE) BILL 2011**

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Interpretation
5. Object of Act

PART 1 – ADMINISTRATION

6. Authorised officers
7. Offence to hinder, &c. authorised officers
8. Duties of authorised officers
9. Powers of authorised officers
10. Immunity

PART 2 – ENDANGERMENT IN THE WORKPLACE

- 11. Obstruction of a person entering or leaving a workplace
- 12. Creation of health or safety fears, risks or hazards in workplace
- 13. Endangering safety of, or interfering with, operations
- 14. Conspiracy or incitement to commit an offence
- 15. Right to lawful industrial action protected

PART 3 – MISCELLANEOUS

- 16. Offences by body corporate and partnerships, &c.
- 17. Prosecution of offences
- 18. Saving of civil remedies
- 19. Other laws relating to trespass, &c. not affected
- 20. Regulations
- 21. Administration of Act

WORKPLACE HEALTH AND SAFETY AMENDMENT (RIGHT TO WORK WITH HINDRANCE) BILL 2011

(Brought in by Jeremy Page Rockliff)

A BILL FOR

An Act to protect the right of workers to undertake their duties without hindrance, and to improve the protection and safety of workers and other persons by making it an offence to approach a workplace with the intention of hindering access for workers, or causing a fear, risk or hazard, or to damage equipment in a workplace.

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Workplace Health and Safety Amendment (Right to Work without Hindrance) Act 2011*.

2. Commencement

This Act commences on the day on which it receives the Royal Assent.

3. Principal Act

Unless the contrary intention appears, the Principal Act referred to in this Act is the Workplace Health and Safety Act 1995

4. Interpretation

In this Act, unless the contrary intention appears –

- (1) **“authorised officer”** means a person authorised under section 5.

"equipment" means any apparatus, machine, materials, motor vehicle, plant, substances, tools, trailer or other appliance, and any accessories, fittings or other property attached thereto being used in the course of employment;

“interfere with” means adulterate, attach to, climb onto, deface, disable, mark, lock, impede, obstruct, paint, sabotage or tamper with.

“police officer” has the same meaning as in the Police Service Act 2003;

“regulations” means the regulations made and in force under this Act;

“Secretary” means the Secretary of the Department;
“worker” means a natural person who is engaged under a contract of service, however described, and includes a person who performs work gratuitously for another person or body corporate, organisation or entity;

"workplace" means any premises or place (including any mine, aircraft, vessel or vehicle) where an employee, contractor or self employed person is or was employed or engaged in industry;

- (2) For the avoidance of doubt, a workplace includes any place where a person is employed.

5. Object of Act

The object of this Act is to enhance and protect the health and safety of people working in workplaces and other persons, and to prevent the unlawful disruption of such workplaces.

PART 1 – ADMINISTRATION

6. Authorised Officers

The following are authorised officers under this Act –

- (a) a police officer;
- (b) an inspector appointed under section 34 of the Workplace Health and Safety Act 1995;
- (c) the Director of Industry Safety appointed under section 33 of the Workplace Health and Safety Act 1995;
- (d) a State Service officer or employee appointed or employed within the Department who has been appointed by the Secretary as an authorised officer under this Act;
- (e) a State Service officer or employee appointed or employed in another Agency who has been appointed by the Secretary, with the consent of the Head of that Agency, as an authorised officer.

7. Offence to Hinder, &c. Authorised Officers

A person commits an offence if the person –

- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or
- (b) refuses or fails to comply with a requirement or direction of an authorised officer; or
- (c) when required by an authorised officer to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (d) falsely represents, by words or conduct, that he or she is an authorised officer. Penalty:

A fine not exceeding 50 penalty units.

8. Duties of Authorised Officers

An authorised officer must not, without lawful authority, unreasonably refuse to provide evidence of identity and authorisation when so required.

Penalty: A fine not exceeding 10 penalty units.

9. Powers of Authorised Officers

- (1) Subject to subsection (3) a police officer acting under this Act has the powers set out in Part VII of the Police Offences Act 1935.
- (2) Subject to subsection (4) any other authorised officer acting under this Act has the powers set out in Part 6 of the Workplace Health and Safety Act 1995.
- (3) Additional powers may be conferred on authorised officers by regulation.

10. Immunity

Any action or proceeding does not lie against a person –

- (2) who is acting in good faith in the exercise or purported exercise of a power or in the performance or purported performance of a function under this Act; or
- (3) who is acting in accordance with any instructions, or under the direction of an authorised officer.

PART 2 – ENDANGERMENT IN THE WORKPLACE

11. Obstruction of a person entering or leaving a workplace

A person commits an offence if the person, without reasonable excuse, prevents another person lawfully entering or leaving a workplace in the course of that person's employment.

Penalty: A fine not exceeding 100 penalty units.

12. Creation of health or safety fears, risks or hazards in workplace

A person commits an offence if the person intentionally, recklessly or without reasonable excuse –

- (1) creates a fear or apprehension of danger to the health or safety of people at a workplace with the intention of causing a disruption to work at that place;
- (2) Subject to subsection (4) any other authorised officer acting under this Act has the powers set out in Part 6 of the Workplace Health and Safety Act 1995.
- (3) creates a risk or hazard (or the appearance of a risk or hazard) to the health or safety of people at a workplace with the intention of causing a disruption to work at that place.

Penalty:

In the case of –

- (a) A body corporate, a fine not exceeding 500 penalty units; and
- (b) A natural person, a fine not exceeding 250 penalty units.

13. Endangering safety of, or interfering with, operations

A person who intentionally, recklessly or without reasonable excuse –

- (a) endangers safety or disrupts a workplace by approaching equipment that is, or is to be, in a workplace; or

- (b) destroys, damages, removes, prevents or hampers the operation of, or otherwise interferes with equipment that is, or is to be, in a workplace; or is guilty of an offence.

Penalty: A fine not exceeding 250 penalty units or a term of imprisonment not exceeding 2 years, or both.

14. Conspiracy or incitement to commit an offence

A person must not conspire with, or incite, another person or persons to commit an offence under this Act.

Penalty:

In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; and
- (b) a natural person, a fine not exceeding 250 penalty units, or a term of imprisonment not exceeding 2 years, or both.

15. Right to lawful industrial action protected

Lawful industrial action under the provision of the *Fair Work Act 2009 (Cth)* is not an offence under the provisions of this Act.

PART 3 – MISCELLANEOUS

16. Offences by body corporate and partnerships, &c.

- (1) If a body corporate commits an offence against this Act, each person who is a director or is concerned in the management of the body corporate is also guilty of the offence and liable to the penalty for it.

Penalty: A fine not exceeding 250 penalty units, or a term of imprisonment not exceeding 2 years, or both.

- (2) It is a defence to a charge brought under subsection (1) against a person who is the director, or is concerned in the management, of a corporation if that person proves that –
 - (a) the commission of the offence by the body corporate occurred without the knowledge of the person; or
 - (b) the person was not in a position to influence the conduct of the body corporate in relation to the commission of the offence; or
 - (c) the person, being in such a position, used all reasonable diligence to prevent the commission of the offence by the body corporate; or
 - (d) the body corporate would not have been found guilty of the offence because of a defence available under this Act.
- (3) A person who is a director, or is concerned in the management, of a body corporate may, by virtue of subsection (1), be proceeded against and be convicted of an offence whether or not the body corporate has been proceeded against or convicted in respect of the offence.
- (4) When in any proceedings under this Act it is necessary to establish the intention of a body corporate, it is sufficient to show that an employee or agent of the body corporate had that intention.
- (5) If a person who is a partner in a partnership commits an offence against this Act in the course of the activities of the partnership, each other person who is a partner in the partnership is also guilty of the offence and liable to the penalty for it.

- (6) If a person who is concerned in the management of an unincorporated association commits an offence against this Act in the course of the activities of the unincorporated association, each other person who is at the time of the commission of the offence concerned in the management of the unincorporated association is also guilty of the offence and liable to the penalty for it.
- (7) It is a defence to a charge brought under subsection (5) or (6) if the person charged proves that –
 - (a) the commission of the offence occurred without the knowledge of the person; or
 - (b) the person was not in a position to influence the conduct of the person who committed the offence; or
 - (c) the person, being in such a position, used all reasonable diligence to prevent the commission of the offence; or
 - (d) the person who committed the offence would not have been found guilty of the offence because of a defence available under this Act.

17. Prosecution of offences

- (1) An offence against this Act is an indictable offence.
- (2) However, a court of summary jurisdiction may hear and determine proceedings for any offence against this Act if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

18. Saving of civil remedies

No proceeding against or conviction of any person for an offence against this Act shall affect any civil right or remedy available against that person independently of this Act.

19. Other laws relating to trespass, &c. not affected.

For the avoidance of doubt, nothing in this Act shall restrict or affect the operation of any other law of Tasmania relating to trespass or public nuisance or loss of, or damage to property.

20. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) The regulations may be made subject to such conditions, or be made so as to apply differently to any class of persons according to such factors, as may be specified in them or according to such limitations or restrictions, whether as to time or circumstances or otherwise, as may be so specified.
- (3) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Secretary or the Director of Industry Safety.
- (4) The regulations may provide that it is an offence, punishable on summary conviction, for a person to contravene any of them and may provide in respect of any such offence for the imposition of a fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.
- (5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

21. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 the

administration of this Act is assigned to the Minister for Planning and Workplace Relations.