

TASMANIA

**WORKPLACE HEALTH AND SAFETY
AMENDMENT BILL 2002**

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WORKPLACE HEALTH AND SAFETY AMENDMENT BILL 2002

*(Brought in by the Minister for Infrastructure, the
Honourable James Glennister Cox)*

A BILL FOR

An Act to amend the *Workplace Health and Safety Act 1995*

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:

Short title

1. This Act may be cited as the *Workplace Health and Safety Amendment Act 2002*.

Commencement

2. This Act commences on the day on which this Act receives the Royal Assent.

Principal Act

3. In this Act, the *Workplace Health and Safety Act 1995** is referred to as the Principal Act.

*No. 13 of 1995

Section 3 amended (Interpretation)

4. Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting the definition of “Chief Executive”;
- (b) by inserting the following definition after the definition of “contractor”:

“contravene” includes fail to comply with;

- (c) by omitting “dangerous” from paragraph (c) of the definition of “dangerous incident”;
- (d) by omitting the definition of “employee” and substituting the following definition:

“employee” means –

- (a) a natural person employed under a contract of service;
or
 - (b) a natural person who uses substances or plant in an educational or other training establishment;
- (e) by inserting “or were” after “are” in the definition of “industry”;
 - (f) by inserting the following definition after the definition of “industry”:

“infringement notice” means an infringement notice served under Part 6A;

- (g) by omitting the definition of “mine” and substituting the following definition:

“mine” means any place at, in, on or under which any operations or work are carried out on an area of land which is subject to a mining lease in force under Part 4 of the *Mineral Resources Development Act 1995* –

- (a) to obtain or treat minerals;
or
 - (b) to store or contain minerals or waste material generated by mining on that area; or
 - (c) in association with mining;
- (h) by inserting the following definition after the definition of “plant”:

“prescribed authority” means the Standards Association of Australia, the British Standards Institution, the International Organisation for Standardisation, the American National Standards Institute, Standards New Zealand, the National Occupational Health and Safety Commission, the National Road Transport Commission or any other similar authority prescribed by the regulations;

- (i) by inserting the following definition after the definition of “principal”:

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

- (j) by inserting the following definitions after the definition of “responsible officer”:

“safety management plan” means a written set of procedures and instructions relating to health and safety in a workplace;

“Secretary” means the Head of the State Service Agency, within the meaning of the *State Service Act 2000*, in which this Act is administered;

- (k) by inserting the following definition after the definition of “serious bodily injury or illness”:

“service provider” means a person who –

- (a) is engaged to provide a service at, or in connection with, a workplace; or
 - (b) is licensed, registered or holds a certificate issued by the Director under the regulations;
- (l) by inserting “, and includes the packaging of any such substance” after “vapour” in the definition of “substance”;
- (m) by inserting “or was” after “is” in the definition of “workplace”.

Section 3A inserted

5. After section 3 of the Principal Act, the following section is inserted in Part 1:

Application of other Acts

3A. This Act is in addition to but does not derogate from any other Act relating to the health or safety of persons in a workplace.

Section 5 amended (Secretary)

6. Section 5(2) of the Principal Act is amended by omitting “Chief Executive’s” and substituting “Secretary’s”.

Section 9 amended (Duties of employers)

7. Section 9 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(e) “of a hazardous nature”;
- (b) by omitting subsection (4) and substituting the following subsection:

(4) Any employer who exercises, or is in a position to exercise, management or control over a workplace must ensure that, so far as is reasonably practicable, any person at that workplace is safe from injury and risks to health.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 500 penalty units; or

- (b) a natural person, a fine not exceeding 500 penalty units.

Section 10 amended (Responsible officer)

8. Section 10 of the Principal Act is amended by inserting after subsection (3) the following subsection:

(4) An employer must –

- (a) notify the responsible officer in writing of his or her appointment as responsible officer; and
- (b) give notice of that appointment as far as reasonably practicable to all persons employed or engaged at the workplace.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; and
- (b) a natural person, a fine not exceeding 20 penalty units.

Section 13 substituted

9. Section 13 of the Principal Act is repealed and the following section is substituted:

Duties of self-employed persons

13. A self-employed person must ensure that, so far as is reasonably practicable, he or she and all other persons are not exposed to risks to their health or safety arising from work carried on at his or her workplace.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 500 penalty units; and
- (b) a natural person, a fine not exceeding 500 penalty units.

Section 14 amended (Duties of designers, manufacturers, importers, suppliers and installers)

10. Section 14 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or structure” after “any plant”;
- (b) by inserting in subsection (1)(a) “or structure” after “of the plant”;
- (c) by inserting in subsection (1)(a) “or structure” after “use the plant”;
- (d) by inserting in subsection (1)(b) “or structure” after “when the plant”;
- (e) by inserting in subsection (1)(b)(i) “or structure” after “plant”;
- (f) by inserting in subsection (1)(b)(ii) “or structure” after “plant”;
- (g) by inserting in subsection (3) “or structure” after “any plant”;
- (h) by inserting in subsection (3) “, structure” after “use the plant”;
- (i) by inserting in subsection (3) “, structure” after “which the plant”;

- (j) by inserting the following subsection after subsection (3):

(4) In this section, “**structure**” includes a component or fitting.

Sections 14A and 14B inserted

11. After section 14 of the Principal Act, the following sections are inserted in Part 3:

Order to recall, destroy, &c., plant, substances or structures

14A. (1) If the Director considers that any plant, substance or structure at a workplace is unsafe or dangerous, the Director may, by notice in writing, order the designer, manufacturer, importer or supplier to recall, destroy or prevent the use of the plant, substance or structure.

(2) A designer, manufacturer, importer or supplier must not contravene a notice given to him or her by the Director.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 500 penalty units; and
- (b) a natural person, a fine not exceeding 500 penalty units.

(3) In this section, “**structure**” includes a component or fitting.

Service providers

14B. A service provider must, so far as is reasonably practicable, ensure that in the provision of a service

no person is exposed, or is likely to be exposed, to a risk to his or her health or safety.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 500 penalty units; and
- (b) a natural person, a fine not exceeding 500 penalty units.

Section 15 amended (Persons in control of workplaces, &c.)

12. Section 15 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(3) A person who has control of any workplace or temporary public stand must so far as is reasonably practicable –

- (a) ensure that visitors to the workplace or temporary public stand are aware of the health and safety requirements relevant to the visitors and that they comply with those requirements; and
- (b) remove a visitor who fails to comply with any health and safety requirements relevant to visitors to the workplace or temporary public stand.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 500 penalty units; or
- (b) a natural person, a fine not exceeding 500 penalty units.

Section 20 amended (Interference, misuse, &c.)

13. Section 20 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “person.” and substituting “person; or”;
- (b) by inserting the following paragraphs after paragraph (c):
 - (d) interfere with any plant at a workplace; or
 - (e) do anything that causes, or is likely to cause, damage to plant at a workplace whether or not that activity puts at risk the health or safety of any other person.

Section 21 substituted

14. Section 21 of the Principal Act is repealed and the following section is substituted:

Duties to be satisfied by each person

21. If more than one person is under a duty or obligation imposed by this Part, each person must –

- (a) satisfy the duty or obligation imposed on the person without regard to the fact that another person may also be responsible for satisfying that duty or obligation; and
- (b) cooperate with any other person who is performing that duty or obligation.

Section 28 amended (Functions of health and safety committees)

15. Section 28(4)(d) of the Principal Act is amended by inserting “written” after “with the”.

Section 32 amended (Employees’ safety representatives)

16. Section 32(5)(d) of the Principal Act is amended by inserting “written” after “with the”.

Section 34 amended (Appointment of inspectors)

17. Section 34 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

(2) The Secretary is to issue an inspector appointed under subsection (1) with –

- (a) a certificate of appointment; and
- (b) an identity card.

(2A) An inspector is to show his or her identity card to –

- (a) the owner, principal or person who has control or management of; or
- (b) the employer at –

a workplace or place at which the inspector proposes to exercise his or her powers or perform his or her functions under this Act.

(2B) A failure by an inspector to show his or her identity card does not invalidate any subsequent exercise of the inspector's powers.

Section 36 amended (Powers and functions of inspectors)

18. Section 36 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "In" and substituting "Subject to subsection (1A) and in";
- (b) by inserting in subsection (1)(b) ", whether at that place or not," after "person";
- (c) by inserting in subsection (1)(e) ", whether or not the person is at that workplace," after "workplace";
- (d) by inserting the following subsections after subsection (1):

(1A) An inspector must not enter a residence otherwise than –

- (a) with the consent of the owner or an adult who appears to be living in the residence; or
- (b) in accordance with an authorisation granted under subsection (1C).

(1B) An inspector may apply to a court for an authorisation to enter a residence.

(1C) A court may grant an authorisation if satisfied that there are reasonable grounds for believing that the residence is –

- (a) being used as a workplace; or
- (b) being used to store a substance in excess of the quantity prescribed in respect of that substance; or
- (c) the only practical means of access to a workplace.

Section 37A inserted

19. After section 37 of the Principal Act, the following section is inserted in Part 6:

Offences relating to qualifications, &c.

37A. (1) A person must not falsely represent that he or she holds a qualification, certificate, accreditation or registration granted or issued under this Act.

Penalty: Fine not exceeding 100 penalty units.

(2) A person must not materially alter or deface a qualification, certificate, accreditation or registration granted or issued under this Act.

Penalty: Fine not exceeding 100 penalty units.

Section 38 amended (Power of inspector in respect of safety and health risks)

20. Section 38 of the Principal Act is amended as follows:

- (a) by omitting subsections (1) and (2) and substituting the following subsections:

(1) If, by reason of circumstances existing at any workplace or in respect of the

use or intended use of any amusement structure or temporary public stand, an inspector is of the opinion –

- (a) that the safety or health of persons is endangered; or
- (b) there is a contravention of this Act –

the inspector, by notice in writing served on the employer, responsible officer or other persons on whom a duty is imposed under this Act, may direct that employer, responsible officer or other person to take any steps that the inspector thinks fit and are specified in the notice to remedy or alleviate those circumstances.

(2) If, in the opinion of the inspector, the circumstances existing under subsection (1) are of sufficient urgency as to warrant immediate action to remedy or alleviate them and it is not practicable to serve a notice in writing under that subsection, the inspector may give an oral direction to the employer, responsible officer or any other person on whom a duty is imposed under this Act.

- (b) by inserting in subsection (5) “, responsible officer” after “employer”;
- (c) by omitting from subsection (7)(a) “the” and substituting “an”;
- (d) by omitting subsection (8) and substituting the following subsection:

(8) If an employer or responsible officer considers that a notice under this section would have the effect of causing the cessation

or substantial cessation of the business being carried on by the employer at the workplace, the employer or responsible officer may request the Director to confirm, modify or revoke that notice.

- (e) by inserting in subsection (9) “, modify” after “confirm”;
- (f) by omitting from subsection (9) “being requested to do so” and substituting “receiving the request”.

Section 39 amended (Prevention of accidents and risks to health)

21. Section 39 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “person, the Director, by notice in writing served on an employer at a workplace” and substituting “person at a workplace, the Director, by notice in writing served on an employer or responsible officer”;
- (b) by inserting in subsection (1)(a) “or responsible officer” after “employer”;
- (c) by inserting in subsection (1)(b) “, or stored at,” after “with”;
- (d) by inserting in subsection (2) “or responsible officer” after “an employer”;
- (e) by inserting the following paragraph after paragraph (d) in subsection (2):
 - (da) prepare and implement a safety management plan that conforms

with relevant standards of any prescribed authority;

- (f) by inserting in subsection (3) “or responsible officer” after “employer”;
- (g) by inserting in subsection (4) “or responsible officer” after “an employer”;
- (h) by inserting in subsection (4) “or responsible officer” after “the employer”;
- (i) by inserting in subsection (5) “or responsible officer” after “An employer”;
- (j) by inserting in subsection (6) “or responsible officer” after “employer”.

Section 41 amended (Right of appeal)

22. Section 41 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

(1) A person who is aggrieved by –

- (a) a notice under section 14A(1), 38, 39 or 40; or
- (b) a decision made by the Director, an inspector or other person authorised under this Act –

may, within 14 days after the notice is served or the decision is made, appeal to the Secretary who may, unless he or she dismisses the appeal, revoke or vary the notice or decision.

(1A) A person who is aggrieved by a decision of the Secretary in respect of an appeal under subsection (1) may, within 14 days after being

notified of the decision, apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision.

Section 42 amended (Order to secure compliance)

23. Section 42(1) of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) that a person on whom a notice under section 14A(1), 38, 39 or 40 is served has contravened this Act by failing to comply with the notice; and

Part 6A inserted

24. After section 46 of the Principal Act, the following Part is inserted:

PART 6A – INFRINGEMENT NOTICES**Service of infringement notices**

46A. (1) An inspector may serve an infringement notice on a person, other than a person under the age of 16 years, if of the opinion that the person has committed a prescribed offence.

(2) An infringement notice is not to relate to 4 or more offences.

Form of infringement notice

46B. (1) An infringement notice –

- (a) is to be in a form approved by the Director; and
- (b) is to specify –
 - (i) the offence to which it relates; and
 - (ii) the prescribed penalty for that offence; and
 - (iii) the total amount payable; and
 - (iv) the methods by which the penalty may be paid; and
 - (v) any other prescribed details.

(2) An infringement notice is to state that the person on whom it is served may disregard the notice but that, on doing so, he or she may be prosecuted for the offence to which the notice relates.

Acceptance of infringement notice

46C. A person may accept an infringement notice by –

- (a) the payment, within 21 days after being served with the notice, of the prescribed penalty to the designated clerk of petty sessions specified in that behalf in the notice; or
- (b) lodging with that clerk of petty sessions, within 21 days after being served with the notice, a written undertaking by that person to pay the penalty by such instalments or within such time as that clerk may direct.

Extension of acceptance period

46D. If an infringement notice is not accepted before the end of the period referred to in section 46C, the clerk of petty sessions may allow a further period of 14 days commencing on that expiry for the acceptance of that notice.

Payment

46E. (1) A person who undertakes under section 46C(b) to pay any amount payable under an infringement notice may make representations to the clerk of petty sessions in relation to the person's ability to pay the amount.

(2) The clerk of petty sessions is to take the person's representations into account before determining the period within which the amount is to be paid.

(3) The clerk of petty sessions may determine the period, not exceeding 60 days from the day on which the notice was served, within which the amount must be paid.

(4) If a person fails to pay any amount in accordance with an undertaking, the same proceedings may be taken against the person in respect of the amount remaining outstanding as if it were a penalty imposed on the person on summary conviction.

Effect of acceptance

46F. (1) The acceptance of an infringement notice is not an admission of liability in any civil proceedings.

(2) Proceedings against a person for an offence to which an infringement notice relates that has not been withdrawn must not be brought –

- (a) if the person accepts the infringement notice; or
- (b) within –
 - (i) 28 days after the notice was served, if the person has not been allowed an additional period under section 46D; or
 - (ii) 42 days after the notice was served, if the person has been allowed an additional period under section 46D.

Withdrawal of infringement notice

46G. (1) The Director may withdraw an infringement notice served on a person if of the opinion that –

- (a) the infringement notice should not have been served; or
- (b) the person should be proceeded against for the offence to which the notice relates.

(2) An infringement notice may be withdrawn whether or not it has been accepted.

(3) An infringement notice is to be withdrawn –

- (a) by serving on a person a notice stating that the infringement notice has been withdrawn; and
- (b) within 108 days after service of the infringement notice.

(4) Where an infringement notice has been withdrawn under this section and any sum has been paid to a clerk of petty sessions by way of penalty under that notice, that clerk must repay that sum to the person on whom the notice was served.

Certain evidence not admissible

46H. Evidence of the service or withdrawal of an infringement notice is not admissible in any proceedings for the offence to which the notice relates.

Sums to be paid to Board

46I. Any sums paid to a clerk of petty sessions under this Part by way of penalty must be paid to the Board.

Section 47 substituted

25. Section 47 of the Principal Act is repealed and the following section is substituted:

Notice of serious accidents and dangerous incidents to be given

47. (1) If at a workplace –

- (a) a person is killed or suffers serious bodily injury or illness; or
- (b) a dangerous incident occurs as a result of which a person could have been killed or could have suffered serious bodily injury or illness –

the person having control or management of the workplace must, by the quickest available means, notify an inspector of particulars of the occurrence of the death, injury, illness or incident.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; and
- (b) a natural person, a fine not exceeding 20 penalty units.

(2) A person notifying an inspector under subsection (1) must provide the inspector with written notification of the particulars within 48 hours after the occurrence of the death, injury, illness or incident.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; and
- (b) a natural person, a fine not exceeding 20 penalty units.

Section 48 amended (Interference with accident sites)

26. Section 48 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) of the penalty under subsection (1) “50” and substituting “500”;
- (b) by omitting from paragraph (b) of the penalty under subsection (1) “20” and substituting “200”;
- (c) by inserting the following subsection after subsection (1):

(1A) If an inspector gives a person oral permission under subsection (1), the inspector must provide the person with written confirmation of the permission as soon as reasonably practicable after it is given.

Section 50 amended (Delegation by Secretary)

27. Section 50 of the Principal Act is amended by omitting “Chief Executive’s” and substituting “Secretary’s”.

Section 52A inserted

28. After section 52 of the Principal Act, the following section is inserted in Part 7:

Recovery of costs

52A. (1) In addition to any penalty imposed on a person for an offence against this Act, a court, on application by or on behalf of the Director, may order the person to pay the costs reasonably incurred in investigating the offence.

(2) In the hearing of an application under this section, a document signed by the Director specifying

details of the costs incurred is evidence of the matters so specified.

Section 54 amended (Evidentiary provisions)

29. Section 54(3) of the Principal Act is amended by omitting “the Standards Association of Australia, the British Standards Institution, the International Organisation for Standardisation, the American National Standards Institute, Standards New Zealand, the National Occupational Health and Safety Commission or any similar authority prescribed in regulations made under this Act” and substituting “a prescribed authority”.

Section 55 substituted

30. Section 55 of the Principal Act is repealed and the following sections are substituted:

Time for instituting proceedings for offences

55. (1) Notwithstanding anything in any other Act, proceedings for an offence against this Act may not be instituted later than 12 months after an inspector becomes aware of the act or omission alleged to constitute the offence.

(2) A person seeking to rely on subsection (1) must show that the inspector became aware of the relevant act or omission at least 12 months before the proceedings were instituted.

Enforcement of undertakings

55A. (1) The Secretary may accept a written undertaking given by a person for the purposes of this section in connection with a matter in respect of

which the Secretary has a power or function under this Act.

(2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Secretary.

(3) If the Secretary considers that the person who gave the undertaking has contravened any of its terms, the Secretary may apply to the Magistrates Court for an order under subsection (4).

(4) If the Magistrates Court is satisfied that the person has contravened a term of the undertaking, the Court may make all or any of the following orders:

- (a) an order directing the person to comply with that term of the undertaking;
- (b) an order directing the person to pay to the Board an amount not exceeding any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the contravention;
- (c) an order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the contravention;
- (d) any other order that the Court considers appropriate.

Section 57 amended (Regulations)

31. Section 57 of the Principal Act is amended by omitting subsection (8).

Schedule 1 amended (Regulations)

32. Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting item 19;
- (b) by inserting the following item after item 21:

21A. The production, handling, storage, use, disposal and movement of dangerous goods in a workplace.

- (c) by inserting the following item after item 26:

27. Infringement notices and the prescription of offences in respect of which an infringement notice may be issued.

Formal amendments relating to Chief Executive

33. Each of the provisions of the Principal Act specified in Column 1 of Schedule 1 is amended by omitting “Chief Executive” on the number of occurrences specified in Column 2 of that Schedule and substituting “Secretary”.

**SCHEDULE 1 – FORMAL AMENDMENTS
RELATING TO CHIEF EXECUTIVE**

Section 33

Column 1	Column 2
Provision amended	Number of occurrences
The definition of “inspector” in section 3(1)	1
The heading to Part 2	1
Section 5(1)	2
Section 5(2)	1
Section 6(c)	2
Section 6(d)	1
Section 34(1)	1
Section 34(3)	1
Section 34(4)	1
Section 34(5)	1
Section 35(1)	1
Section 36(4)	1
Section 43(2)	1
Section 43(4)	1
Section 50	1
Section 52(1)	1

Column 1	Column 2
Provision amended	Number of occurrences
Section 57(5)	1