



TASMANIA

**INDUSTRIAL SAFETY, HEALTH, AND WELFARE
AMENDMENT ACT 1991**

No. 47 of 1991

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AN ACT to amend the *Industrial Safety, Health, and Welfare Act 1977*

[Royal Assent 18 December 1991]

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 *Industrial Safety, Health, and Welfare Amendment Act 1991*.

Commencement

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

Principal Act

3—In this Act, the *Industrial Safety, Health, and Welfare Act 1977** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4—Section 3 of the Principal Act is amended as follows:—

(a) by inserting after the definition of “construction work” the following definition:—

“**constructor**” means—

(a) a person who makes a contract with the owner of a project to perform, otherwise than as a servant, construction work in relation to the project; or

(b) in relation to a project where—

(i) more than one such contract is made with the owner; or

(ii) the owner undertakes construction work as an employer—

the owner of the project;

(b) by inserting after the definition of “employees’ safety representative” the following definition:—

“**employer**” means a person who employs a person or persons under a contract of service and for whom work is done by a person or persons under a contract of service;

(c) by omitting “public stand” from the definition of “gear” and substituting “temporary public stand”;

(d) by omitting the definition of “occupier” and substituting the following definition:—

“**occupier**”, in relation to a work place, means a person who has the management or control of the workplace and includes—

(a) an employer; and

(b) an owner; and

(c) a constructor; and

- (d) a sub-contractor; and
- (e) in the case of a body corporate—a responsible officer;
- (e) by omitting the definition of “owner” and substituting the following definition:—
 - “owner” means—
 - (a) in relation to construction work—the person or persons whose property it is, whether jointly or severally, or for whose direct benefit the construction work exists or will exist upon completion; or
 - (b) in relation to a work place or any other place other than construction work—the person or persons whose property it is, whether jointly or severally, (including a mortgagee in possession and a lessee); or
 - (c) in relation to machinery—the person whose property it is or the person who has control, charge or management of it and any lessee, mortgagee, hirer or borrower of it;
- (f) by inserting after the definition of “pressure vessel” the following definition:—
 - “project” means a plan or scheme that requires the performance of construction work for its fulfilment, and includes the product of such a plan or scheme;
- (g) by omitting the definition of “public stand” and substituting the following definition:—
 - “responsible officer” has the meaning assigned to that expression in section 46A (2);
- (h) by inserting after the definition of “shoring” the following definitions:—
 - “sub-contractor” means a person who contracts with a constructor to perform construction work otherwise than as an employee;
 - “temporary public stand” means a stand that is temporarily erected or temporarily set up to support members of the public attending any gathering, and includes the supporting structure and access structure;

Section 10A inserted

5—After section 10 of the Principal Act, the following section is inserted in Division 1 of Part II:—

Delegation by Secretary

10A—(1) The Secretary may, by written instrument, delegate any of the Secretary's powers or duties under this Act (except this power of delegation) to a person employed in the Agency, as defined by the *Tasmanian State Service Act 1984*, administering this Act.

(2) A delegation under subsection (1) is revokable at will and does not prevent the exercise by the Secretary of any power or duty so delegated.

(3) If the exercise of a power by the Secretary is dependent on the opinion or belief of the Secretary, a delegate of the Secretary may, in exercising that power, act on the delegate's own opinion or belief.

Section 11 amended (Powers of authorized officers)

6—Section 11 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) "public stand" and substituting "temporary public stand";
- (b) by inserting the following subsection after subsection (2):—

(2A) Without prejudice to the generality of subsection (1) (c), regulations made for the purpose of that subsection may authorize an authorized officer, if the officer suspects on reasonable grounds that an offence under this Act has been committed, to seize and retain anything that affords evidence of that offence, or in relation to which the offence is suspected of having been committed.

Section 13 amended (Power of authorized officer in respect of safety and health risks)

7—Section 13 (4) of the Principal Act is amended by omitting from paragraph (a) "of the authorized officer issuing the notice" and substituting "of an authorized officer".

Section 14 substituted

8—Section 14 of the Principal Act is repealed and the following section is substituted:—

Authorized officer not to divulge information nor to have financial interest

14—(1) An authorized officer shall not divulge any information obtained in the exercise of the officer's powers or duties under this Act except—

- (a) in the course of official duties; or
- (b) when required to do so by law.

(2) Subsection (1) does not prevent the Secretary from—

- (a) providing a brief factual report of an accident in which a person was injured to that person or to that person's legal representative; or
- (b) making public a brief account of an accident with identifying details omitted and with recommendations for preventing its recurrence in the interests of industrial safety.

(3) An authorized officer shall not have any direct or indirect financial interest, other than an interest the officer has disclosed in writing to the Secretary, in any premises or place which is subject to the exercise of the officer's powers and functions as an authorized officer.

Section 16 amended (The Industrial Safety, Health, and Welfare Board)

9—Section 16 (1) of the Principal Act is amended as follows:—

- (a) by omitting "5 members" and substituting "6 members";
- (b) by inserting the following paragraph after paragraph (b):—
 - (ba) one shall be the Chairman of the Workers Compensation Board nominated to that position in accordance with section 9 (1) (a) of the *Workers Compensation Act 1988*;

Section 30 substituted

10—Section 30 of the Principal Act is repealed and the following section is substituted:—

Notice of certain accidents and incidents to be given

30—Where in or about a work place—

- (a) a person is killed or suffers serious injury; or
- (b) an incident occurs whereby a person could have been killed or seriously injured and the incident involved an explosion, fire, electric shock or exposure to any form of liquid, gas vapour, dirt or fumes—

the employer of that person must immediately inform the Secretary of the accident or incident by the quickest available means.

Section 31 amended (Notice of accidents in connection with amusement devices, &c., and scaffolding, &c.)

11—Section 31 of the Principal Act is amended by omitting “public stand”, wherever occurring, and substituting “temporary public stand”.

Section 46 substituted

12—Section 46 of the Principal Act is repealed and the following section is substituted:—

Offences

46—A person shall not—

- (a) fail to comply with a direction given or a requirement made by an authorized officer pursuant to this Act; or
- (b) contravene, or fail to comply with, a provision of this Act.

Penalty: Fine not exceeding—

- (a) in the case of an offence committed by a body corporate—500 penalty units and if the offence is a continuing offence, a daily fine of 20 penalty units; or

- (b) in any other case—100 penalty units and if the offence is a continuing offence, a daily fine of 5 penalty units.

Section 46A inserted

13—After section 46 of the Principal Act, the following section is inserted:—

Offences by bodies corporate

46A—(1) Where the commission of an offence against this Act by a body corporate is attributable to the act or omission of a responsible officer of the body corporate, that responsible officer is also guilty of an offence and is liable to the same penalty as is prescribed for the principal offence.

(2) For the purpose of subsection (1)—

(a) each company carrying on business in the State shall nominate a director or executive officer of the company as a responsible officer who is responsible for the health, safety and welfare of the company's employees at work; and

(b) if—

(i) a company fails to nominate a responsible officer in accordance with paragraph (a); or

(ii) the body corporate is not a company—
responsible officer means—

(iii) a director or executive officer of the body corporate; or

(iv) any person in accordance with whose direction the directors of the body corporate are accustomed to act.

(3) A responsible officer may be proceeded against and convicted pursuant to subsection (1) whether or not the body corporate has been convicted in respect of the principal offence.

(4) Subsection (1) does not prejudice or affect any liability imposed by this Act on a body corporate.

Section 47 substituted

14—Section 47 of the Principal Act is repealed and the following section is substituted:—

Evidentiary provisions

47—In proceedings for an offence against this Act, an allegation in the complaint that, at a specified time—

- (a) a person was an employee at a specified work place; or
- (b) a person was an occupier of a specified work place; or
- (c) a notice was given under this Act; or
- (d) a notice required to be given under this Act was not given; or
- (e) a prescribed fee has not been paid; or
- (f) a person was an authorized officer; or
- (g) a specified building, structure or place was a work place—

is evidence of those facts.

Section 48A inserted

15—After section 48 of the Principal Act, the following section is inserted:—

Collection of unpaid fees

48A—Any prescribed fee that is due and payable under this Act may be recovered by the Crown as a debt due to the Crown.

Section 49 amended (Regulations)

16—Section 49 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:—

(5) The regulations may provide for a penalty for a breach of, or a failure to comply with, a regulation of a fine not exceeding—

- (a) in the case of an offence by a body corporate—
250 penalty units; or
- (b) in any other case—50 penalty units.

**Schedule 2 amended (Matters in respect of which regulations
may be made under section 49)**

17—Schedule 2 to the Principal Act is amended by inserting after item 3 the following item:—

3A. The licensing of people engaged in prescribed work.

Transitional provisions

18—The provisions of the Principal Act as amended by this Act in respect of offences and penalties under the Principal Act apply in respect of offences committed after the commencement of this Act.

