

NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH AMENDMENT ~~BILL~~ 1990

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Work Health Act*
and to repeal certain other Acts

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Work Health Amendment Act 1990*.

2. COMMENCEMENT

(1) This Act, other than sections 21 and 22, shall come into operation on assent.

(2) Sections 21 and 22 shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Work Health Act* is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 3 of the Principal Act is amended -

(a) by inserting after the definition of "insurer" the following:

"'plant' includes machinery, pressure vessels, equipment, appliances, implements, scaffolding and tools, any component thereof and anything fitted, connected or appurtenant thereto;"

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- (b) by inserting after the definition of "ship" the following:

"'substance' means a natural or artificial substance, whether in solid, liquid, gas or vapour form;"

- (c) by omitting from the definition of "worker" -

- (i) paragraph (f) and substituting the following:

"(f) subject to subsection (8A), employed by a householder;" and

- (ii) paragraphs (n) and (p) and substituting the following:

"(n) a magistrate;

(p) a member of the Police Force; and

(q) a person, or a member of a class of persons, prescribed for the purposes of this definition;"

- (d) by omitting from subsection (2) "A member" and substituting "A prescribed member";

- (e) by omitting from subsection (3) -

- (i) ", the nature of whose employment and estimated remuneration (by whatever name called) for his services as a director" and substituting "whose name, nature of employment and estimated remuneration (by whatever name called)"; and

- (ii) "the services of that director are first rendered" and substituting "of the appointment of the director"; and

- (f) by inserting after subsection (8) the following:

"(8A) A prescribed employee employed by a householder who earns more than, or is paid at a rate that would exceed, the prescribed amount is a worker of the householder for the purposes of this Act."

5. HEADING TO PART III

The heading to Part III of the Principal Act is amended by omitting "MINISTERIAL" and substituting "WORK HEALTH".

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6. DEFINITIONS

Section 19 of the Principal Act is amended by omitting from the definition of "Council" the word "Ministerial" and substituting "Work Health".

7. WORK HEALTH ADVISORY COUNCIL

Section 20(1) of the Principal Act is amended by omitting "Ministerial" and substituting "Work Health".

8. DEFINITIONS

Section 28 of the Principal Act is amended -

- (a) by omitting the definitions of "plant" and "substance"; and
- (b) by adding at the end the following:

"'worker' means a natural person who, under a contract or agreement of any kind (whether expressed or implied, oral or in writing or under a law of the Territory or not), performs work or a service of any kind for another person."

9. DUTIES OF EMPLOYERS

Section 29 of the Principal Act is amended by omitting subsection (1) and substituting the following:

- "(1) An employer shall, so far as is practicable -
- (a) provide and maintain a working environment at a workplace that is safe and without risk to the health or safety of the workers working at the workplace; and
 - (b) ensure that the health and safety of any other person is not adversely affected as a result of the work in which the employer or any worker is engaged.

Penalty: In the case of a body corporate - \$50,000.

In the case of a natural person - \$5,000."

10. DUTIES OF WORKERS

Section 31 of the Principal Act is amended by adding at the end "Penalty: \$5,000."

11. AUTHORITY MAY ISSUE PROHIBITION NOTICE

Section 41 of the Principal Act is amended by adding at the end the following:

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"(5) Where the Authority issues a prohibition notice in respect of an act relating to the use of any plant at a workplace, the Authority may place a mark on the plant, or any part of the plant, to indicate that the plant, or the part so marked, is not to be used until the Authority certifies, under subsection (1), in respect of the act in respect of which the prohibition notice was issued.

"(6) A person who -

- (a) uses any plant, or a part of any plant, on which a mark has been placed; or
- (b) without the permission of the Authority, removes, obliterates or otherwise interferes with a mark placed on any plant, or a part of any plant,

under subsection (5) is guilty of a regulatory offence.

Penalty: In the case of a body corporate - \$10,000.

In the case of a natural person - \$2,000 or imprisonment for 6 months.

Default Penalty: In the case of a body corporate - \$500.

In the case of a natural person - \$100."

12. NEW SECTION

The Principal Act is amended by inserting after section 41 the following:

"41A. ISSUING OF NOTICES

"(1) For the purposes of sections 40 and 41, a notice under those section may be issued to a person by -

- (a) delivering it personally to the person;
- (b) leaving it at the person's usual or last known place of residence or business with some other person, apparently resident or employed there and who is apparently in charge or in a position of authority; or
- (c) posting it in a prepaid letter addressed to the person at the person's usual or last known place of residence or business.

"(2) Subsection (1) is in addition to and not in derogation of sections 220 and 363 of the Corporations Law."

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13. NEW SECTIONS

The Principal Act is amended by inserting after section 48 the following:

"48A. NOTIFICATION OF ACCIDENTS

"Where -

- (a) an accident occurs at a workplace, whether or not it causes the death of, or bodily injury to, any person; or
- (b) there is an occurrence at or in relation to a workplace which affects the health or safety of any person at the workplace,

which is a prescribed accident or occurrence required to be notified under this section -

- (c) the employer at the workplace; or
- (d) such other person as is prescribed,

shall give notice of the accident or occurrence in the prescribed form and manner.

"48B. DUTIES OF SELF-EMPLOYED PERSONS

"A self-employed person shall -

- (a) take reasonable care to ensure that his health or safety at a workplace; and
- (b) so far as is practicable, ensure that the health or safety of other persons at a workplace,

is not adversely affected as a result of the work in which the self-employed person is engaged at the workplace.

Penalty: \$5,000.

"48C. DUTIES OF MANUFACTURERS, &c.

"(1) A person who designs, manufactures, imports or supplies any plant or substance for use at a workplace shall, so far as is practicable -

- (a) ensure that the design and construction of the plant, or the characteristics of the substance, are such that a person who properly uses the plant or substance is not exposed to hazards in doing so;
- (b) test and examine, or arrange for the testing and examination of, the plant or substance to ensure that it complies with paragraph (a); and

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- (c) ensure that adequate information in respect of -
- (i) any danger associated with the plant or substance;
 - (ii) the specifications of the plant or substance and the data obtained at the testing of the plant or substance under paragraph (b); and
 - (iii) the conditions necessary to ensure that a person properly using the plant or substance is not exposed to hazards in so doing,

is provided when the plant or substance is supplied.

"(2) A person who erects or installs any plant for use at a workplace shall, so far as is practicable, ensure that it is erected or installed so that a person who properly uses the plant is not subjected to any hazard that arises from, or is increased by, the way in which the plant is erected or installed.

"(3) A person who manufactures, imports or supplies any substance for use at a workplace shall, so far as is practicable, ensure that adequate toxicological data in respect of the substance and such other data as is relevant to the safe use, handling, processing, storage, transportation and disposal of the substance is provided when the substance is supplied and thereafter whenever requested.

Penalty: In the case of a body corporate - \$50,000.

In the case of a natural person - \$5,000."

14. LUMP+SUM COMPENSATION IN RESPECT OF DEATH

Section 62 of the Principal Act is amended -

- (a) by omitting subsection (1)(b) and substituting the following:
- "(b) for the benefit of the worker's ~~or self-insured person's~~ dependants -
 - (i) where the dependants are a spouse, a child or children, or a spouse and a child or children, the prescribed proportions; or
 - (ii) such proportions as the Court determines on an application under subsection (2) having regard to the relative needs and degrees of dependency of the dependants,

of an amount equal to 156 times average weekly earnings at the time the payment is made.";

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(b) by omitting from subsection (2) "the Authority or"; and

(c) by adding at the end the following:

"(3) For the purposes of subsection (1)(b)(i), the prescribed proportions are those specified in column 2 of the Table in respect of the dependants specified opposite in Column 1 of that Table.

"TABLE"

Column 1	Column 2
Dependants	Proportion
Spouse	100%
one child	100%
2 or more children	Equally between children
Spouse and one child	10% to child, balance to spouse
Spouse and not more than 5 children	5% to each child, balance to spouse
Spouse and more than 5 children	25% divided equally between children, balance to spouse

15. EMPLOYER TO FORWARD INCIDENT REPORT AND CLAIM

Section 84 of the Principal Act is amended -

(a) by omitting subsection (2) and substituting the following:

"(2) An insurer who is given notice of a claim under section 81 or receives a claim forwarded under subsection (1) shall, within 10 working days after the notice is given or the claim received, forward a copy to the Authority."; and

(b) by omitting from subsection (4) "3 working days" and substituting "10 working days".

16. STATEMENT TO BE SUPPLIED TO INSURER

Section 130 of the Principal Act is amended by omitting from subsection (1)(a) subparagraphs (i) and (ii) and substituting the following:

"(i) the issue of the policy;

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- (ii) the date for renewal of the policy; or
- (iii) the policy expires,".

17. NEW SECTION

The Principal Act is amended by inserting after section 138 the following:

"138A. EXPIRATION OF POLICY

- "(1) An insurer shall, not later than 28 days -
 - (a) before the day on which a policy of insurance or indemnity against liability under this Act is due to expire, notify the employer who obtained the policy, in writing, of the date on which the policy is due to expire and that any cover under the policy shall cease 28 days after the expiry date unless the premium, as specified in the notice, is paid on or before the date on which the cover shall cease; and
 - (b) after a policy of insurance or indemnity against liability under this Act expires, notify the Authority, in writing, of the expiration.
- "(2) Where -
 - (a) an approved insurer fails to comply with subsection (1)(a); and
 - (b) before the policy referred to in that subsection expired, the employer who obtained the policy had not obtained another policy of insurance or indemnity against liability under this Act,

then, by force of this section, there exists between the approved insurer and the employer a policy of insurance or indemnity against liability under this Act which shall provide the same cover as provided by the expired policy commencing on the date of the expiration of that policy and expiring 28 days after a notice as required by subsection (1)(a) is given to the employer."

18. NEW SECTION

The Principal Act is amended by inserting after section 186 the following:

"186A. CONTRACTING OUT

"(1) This Act applies notwithstanding anything to the contrary contained in any contract or agreement, whether entered into before or after the commencement of this section.

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"(2) A contract or agreement which purports to exclude or limit the application of this Act or to exclude or limit the rights or entitlements of a person under this Act is, to that extent, null and void.

"(3) A person who urges, prevails on, persuades or offers an inducement to another person to enter into a contract or agreement whereby that other person would, but for this section, consent or agree to the application of this Act being excluded or limited in respect of that other person, or to waive or limit that other person's rights, benefits or entitlements under this Act, is guilty of an offence.

Penalty: \$5,000."

19. REGULATIONS

Section 187 of the Principal Act is amended -

(a) by inserting after paragraph (q) the following:

"(qa) regulating or prohibiting -

(i) the manufacture, supply or use of any plant;

(ii) the manufacture, supply, use, storage or transport of any substance; or

(iii) the carrying on of any process or the carrying out of any operation;

(qb) relating to the safety of workers engaged in construction and other work;

(qc) relating to the registration of a workplace or any plant or substance;

(qd) relating to the licensing of person carrying out processes or activities under this Act;

(qe) relating to the imposition of conditions applying to registrations and licences (including the imposition of conditions by prescribed persons);

(qf) relating to the service of notices under the Regulations;

(qg) relating to matters of evidence, including the averring of facts, in respect of prosecutions of offences against the Regulations;" and

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(b) by adding at the end the following:

"(2) The Regulations may incorporate or adopt by reference the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether -

- (a) wholly or partly, or as amended by the Regulations;
- (b) as formulated, issued, prescribed or published at the time the Regulations are made or at any time before then; or
- (c) as amended after the making of the Regulations, but only where the Minister has published in the *Gazette* a notice that the particular amendment is to be incorporated in the Regulations."

20. SCHEDULE 2

Schedule 2 of the Principal Act is amended by omitting from condition 13 of the employer's indemnity policy "or lapse" and "or lapsed".

21. REPEAL OF *CONSTRUCTION SAFETY ACT* AND *INSPECTION OF MACHINERY ACT*

The Acts specified in the Schedule are repealed.

22. SAVINGS AND TRANSITIONAL

(1) Where, immediately before the commencement of this section -

- (a) a certificate of competency within the meaning of the *Inspection of Machinery Act*; or
- (b) a licence issued under regulation 7 of the *Construction Safety Rules*,

was in force, that certificate or licence shall, on that commencement, be deemed to be a licence of an equivalent type, if any, granted under the Regulations and, in respect of a licence referred to in paragraph (a), subject to the same conditions, if any, to which it was subject, and such licence may be varied, cancelled, suspended or revoked in accordance with the Regulations.

(2) Where, immediately before the commencement of this section, a certificate issued under section 39 of the *Inspection of Machinery Act* was in force, that certificate shall, on that commencement, be deemed to be a certificate

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of registration of an equivalent type, if any, granted under the Regulations for the same period for which it was issued under the *Inspection of Machinery Act*, and such certificate may be varied, cancelled, suspended or revoked in accordance with the Regulations.

SCHEDULE

Section 21

Number and year	Short title
No. 14, 1941	<i>Inspection of Machinery Ordinance 1941</i>
No. 7, 1945	<i>Inspection of Machinery Ordinance 1945</i>
No. 7, 1956	<i>Inspection of Machinery Ordinance 1956</i>
No. 36, 1962	<i>Inspection of Machinery Ordinance 1962</i>
No. 76, 1973	<i>Inspection of Machinery Ordinance 1973</i>
No. 7, 1976	<i>Inspection of Machinery Ordinance 1976</i>
No. 73, 1978	<i>Inspection of Machinery Ordinance 1978</i>
No. 3, 1980	<i>Inspection of Machinery Amendment Act 1980</i>
No. 44, 1982	<i>Inspection of Machinery Amendment Act 1982</i>
No. 100, 1978	<i>Construction Safety Ordinance 1975</i>
No. 102, 1978	<i>Construction Safety Ordinance 1976</i>
No. 88, 1978	<i>Construction Safety Ordinance 1978</i>
No. 5, 1981	<i>Construction Safety Amendment Act 1980</i>
No. 43, 1982	<i>Construction Safety Amendment Act 1982</i>

