



AUSTRALIAN CAPITAL TERRITORY

# Occupational Health and Safety Amendment Act 2001

No 21 of 2001

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AUSTRALIAN CAPITAL TERRITORY

# **Occupational Health and Safety Amendment Act 2001**

**No 21 of 2001**

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## **An Act to amend the *Occupational Health and Safety Act* 1989**

*[Notified in ACT Gazette No. 16: 19 April 2001]*

The Legislative Assembly for the Australian Capital Territory  
enacts as follows:

## **PART 1—PRELIMINARY**

### **1 Name of Act**

This Act is the *Occupational Health and Safety Amendment Act 2001*.

### **2 Commencement**

This Act commences on a day fixed by the Minister by notice in the Gazette.

*Note 1* The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Interpretation Act 1967*, s 10C (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

**PART 2—AMENDMENTS OF THE OCCUPATIONAL HEALTH  
AND SAFETY ACT 1989**

**3 Act amended by pt 2**

This Part amends the *Occupational Health and Safety Act 1989*.

**4 Interpretation**

Section 5 is amended by inserting the following definitions:

*“administering authority*, for Part 5A (Infringement notices for certain offences)—see section 75.

*authorised person*, for Part 5A (Infringement notices for certain offences)—see section 75.

*date of service*, for Part 5A (Infringement notices for certain offences)—see section 75.

*infringement notice*—see section 75.

*infringement notice offence*, for Part 5A (Infringement notices for certain offences)—see section 75.

*infringement notice penalty*, for Part 5A (Infringement notices for certain offences)—see section 75.

*reminder notice*, for Part 5A (Infringement notices for certain offences)—see section 75L (Reminder notices).”.

**5 Duties of employers in relation to employees**

Section 27 is amended by inserting after subsection (3) the following subsections:

**“(4)** In working out whether an employer has taken all reasonable steps to protect the health, safety and welfare at work of the employer’s employees, regard may be had to all relevant matters, including for example—

- (a) whether copies of codes of practice applicable to the workplace are available to employees or whether employees are given

information about where copies of the codes may be inspected or obtained; and

- (b) whether the codes have been complied with.

“(5) This section does not limit section 35 (Reliance on information supplied or results of research).”.

## **6 Duty of employers in relation to third-parties**

Section 28 is amended—

- (a) by inserting “(1)” before “An employer”; and
- (b) by inserting at the end the following subsections:

“(2) In working out whether an employer has taken all reasonable steps to ensure that the employer has complied with subsection (1), regard may be had to all relevant matters, including for example—

- (a) whether copies of codes of practice applicable to the workplace are available to employees or whether employees are given information about where copies of the codes may be inspected or obtained; and
- (b) whether the codes have been complied with.

“(3) This section does not limit section 35 (Reliance on information supplied or results of research).”.

## **7 Duty of persons in control of workplaces**

Section 29 is amended—

- (a) by inserting “(1)” before “A person”; and
- (b) by inserting at the end the following subsections:

“(2) In working out whether a person has taken all reasonable steps to ensure that a workplace which the person has, to any extent control of, is safe and without risk to health, regard may be had to all relevant matters, including for example—

- (a) whether copies of codes of practice applicable to the workplace are available to employees or whether employees are given information about where copies of the codes may be inspected or obtained; and
- (b) whether the codes have been complied with.

“(3) This section does not limit section 35 (Reliance on information supplied or results of research).”.

## **8 Duties of persons erecting or installing plant in a workplace**

Section 34 is amended—

- (a) by omitting ‘A person’ and substituting ‘(1) A person’; and
- (b) by adding at the end the following subsection:

“(2) In working out whether a person has taken all reasonably practicable steps to comply with subsection (1), regard may be had to all relevant matters, including for example—

- (a) whether copies of codes of practice applicable to the workplace are available to employees or whether employees are given information about where copies of codes may be inspected or obtained; and
- (b) whether the codes have been complied with.

“(3) This section does not limit section 35.”.

## **9 Insertion**

After section 74 the following Part is inserted:

### **“PART 5A—INFRINGEMENTS NOTICES FOR CERTAIN OFFENCES**

#### ***“Division 5A.1—Interpretation***

#### **“75 Definitions for pt 5A**

In this Part:



***administering authority***, for an infringement notice offence, means the entity that, under the regulations, is the administering authority for the offence.

***authorised person*** means—

- (a) for an infringement notice for an infringement notice offence—
  - (i) the administering authority; or
  - (ii) a person who is authorised, in writing, by the administering authority to serve an infringement notice for the offence; or
  - (iii) anyone else who, under the regulations, may serve an infringement notice for the offence; or
- (b) for a reminder notice for an infringement notice offence—
  - (i) the administering authority; or
  - (ii) a person who is authorised, in writing, by the administering authority to serve a reminder notice for the offence; or
  - (iii) anyone else who, under the regulations, may serve a reminder notice for the offence.

***date of service***, of an infringement notice or reminder notice that has been, or is to be, served on a person, means the date the notice is served on the person.

***infringement notice*** means a notice under section 75C (Service of infringement notices).

***infringement notice offence*** means an offence against this Act or an associated law declared under the regulations to be an offence to which this Part applies.

***infringement notice penalty***, for a person for an infringement notice offence, means—

- (a) the amount prescribed under the regulations as the penalty payable by the person for the offence under an infringement notice for the offence; or
- (b) if a reminder notice has also been served on the person for the offence—the total of the amount mentioned in paragraph (a) and the amount prescribed under the regulations as the amount payable by the person for the cost of serving the reminder notice.

***reminder notice*** means a notice under section 75L (Reminder notices).

***“Division 5A.2—Service of documents generally***

**“75A Service of documents**

**“(1)** Sections 17A and 18 of the *Interpretation Act 1967* apply to the service of a document on a person under this Part (whether the word ‘serve’, ‘give’ or ‘send’ or any other word is used).

**“(2)** However, section 18 of the *Interpretation Act 1967* does not affect the operation of section 160 of the *Evidence Act 1995* (Cwlth).

*Note* Interpretation Act, section 17A is about service of documents generally, and section 18 is about service of documents by post. Cwlth Evidence Act section 160 provides a rebuttable presumption that a postal article sent by prepaid post addressed to a person at an address in Australia or an external Territory was received at that address on the 4th working day after having been posted.

***“Division 5A.3—Infringement and reminder notices***

**“75B Purpose and effect of div 5A.3**

**“(1)** The purpose of this Division is to create a system of infringement notices for certain offences against this Act as an alternative to prosecution.

**“(2)** This Division does not—

- (a) require an infringement or reminder notice to be served on a person; or
- (b) affect the liability of a person to be prosecuted for an offence if—

- (i) an infringement or reminder notice is not served on the person for the offence; or
- (ii) the person does not comply with an infringement or reminder notice served on the person for the offence; or
- (iii) an infringement notice served on the person is withdrawn; or
- (c) prevent the service of 2 or more infringement notices on a person for an offence; or
- (d) limit or otherwise affect the penalty that may be imposed by a court on a person convicted of an offence.

**“75C Service of infringement notices**

“(1) If an authorised person believes, on reasonable grounds, that a person has committed an infringement notice offence, the authorised person may serve a notice (an ***infringement notice***) on the person for the offence.

“(2) If the infringement notice offence is an offence by an employer, the authorised person may serve an infringement notice on the employer at the time of the offence.

“(3) If an infringement notice is to be served on a person under this section by post, the notice may be addressed to the person at the person’s last home or business address known to the authorised person.

**“75D Contents of infringement notices**

“(1) An infringement notice served on a person by an authorised person for an infringement notice offence must—

- (a) be identified by a unique number; and
- (b) state the date of service of the notice; and
- (c) state—
  - (i) the full name, or surname and initials, and address of the person on whom the notice is served; or
  - (ii) the particulars that are, under the regulations, identifying particulars of the employer concerned; and

- (d) give brief details of the offence, including the provision of this Act contravened by the person, and the place where the offence was committed and the date and approximate time of the offence; and
- (e) state the infringement notice penalty payable by the person for the offence; and
- (f) contain the information required by section 75E; and
- (g) identify the authorised person in accordance with the regulations; and
- (h) include any other information required under the regulations and any additional information that the administering authority considers appropriate.

“(2) The regulations may provide that paragraph (1) (c) does not apply to an infringement notice.

**“75E Additional information in infringement notices**

“(1) The infringement notice must also tell the person on whom it is served that—

- (a) the person may pay the infringement notice penalty for the offence or dispute liability for the offence within 28 days after the day when the notice is served on the person (the *date of service* of the notice); and
- (b) the person may apply to the administering authority for additional time in which to pay the penalty or dispute liability for the offence; and
- (c) the notice may be withdrawn before or after the penalty is paid; and
- (d) if the person pays the penalty within the 28 days (or any additional time allowed by the administering authority), then, unless the infringement notice is withdrawn and any penalty refunded—
  - (i) any liability of the person for the offence is discharged; and

- (ii) the person will not be prosecuted in court for the offence; and
    - (iii) the person will not be taken to have been convicted of the offence; and
  - (e) if the person wishes to dispute liability for the offence, the issue may be referred to the Magistrates Court; and
  - (f) if the Magistrates Court finds against the person or the person is prosecuted in court for the offence, the person may be convicted of the offence and ordered to pay a penalty and costs, and be subject to other court orders; and
  - (g) if the person does not pay the infringement notice penalty, or disputes liability for the offence, within the 28 days (or any additional time allowed by the administering authority), a reminder notice may be served on the person for the offence or the person may be prosecuted in court for the offence; and
  - (h) if a reminder notice is served on the person, the infringement notice penalty is increased by the amount payable by the person for the cost of serving the reminder notice.
- “(2) In addition, the infringement notice must—
- (a) explain how the person may pay the infringement notice penalty or dispute liability for the offence; and
  - (b) explain how the person may apply for additional time to pay the infringement notice penalty or dispute liability for the offence.

**“75F Time for payment of infringement notice penalty**

The infringement notice penalty payable by a person under an infringement notice or reminder notice is payable—

- (a) within 28 days after the date of service; or
- (b) if the person applies to the administering authority within the 28 days for additional time to pay and the additional time is allowed—within the additional time allowed by the administering authority; or

- (c) if the person applies to the administering authority within the 28 days for additional time to pay and the application is refused—within 7 days after the day the person is told of the refusal or 28 days after the date of service, whichever is later.

**“75G Extension of time to pay penalty**

“(1) The person on whom an infringement notice or reminder notice is served may apply, in writing, to the administering authority, within 28 days after the date of service, for a stated additional time in which to pay the infringement notice penalty.

“(2) The administering authority must—

- (a) allow or refuse to allow the additional period; and
- (b) tell the person in writing of the decision and, if the decision is a refusal, the reasons for it.

**“75H Effect of payment of infringement notice penalty**

“(1) This section applies if—

- (a) an infringement notice has been served on a person for an infringement notice offence; and
- (b) the person pays the infringement notice penalty for the offence in accordance with this Part; and
- (c) when the payment is made, the infringement notice had not been withdrawn and an information had not been laid in the Magistrates Court against the person for the offence.

*Note* Section 75J provides for the withdrawal at any time of an infringement notice that has been served on a person. If section 75H applied to the infringement notice, it ceases to apply and is never taken to have applied, on the withdrawal of the notice (see s 75J (4)).

“(2) If this section applies—

- (a) any liability of the person for the offence is discharged; and
- (b) the person must not be prosecuted in a court for the offence; and
- (c) the person is not taken to have been convicted of the offence.

“(3) If 2 or more infringement notices were served on the person for the offence, then, unless all the infringement notices have been withdrawn, subsection (2) applies to the person in relation to the offence if the person pays, in accordance with this Part, the infringement notice penalty in relation to any of the notices (together with any costs and disbursements payable under this Part in relation to the notice).

**“75I Application for withdrawal of infringement notice**

“(1) The person on whom an infringement notice for an infringement notice offence is served may apply to the administering authority, in writing, for the withdrawal of the notice within 28 days after the day when the infringement notice, or a reminder notice for the offence, is served on the person (or any additional time allowed by the administering authority).

“(2) The administering authority must—

- (a) withdraw the notice or refuse to withdraw the notice; and
- (b) tell the person, in writing, of the decision and, if the decision is a refusal, the reasons for it.

**“75J Withdrawal of infringement notice**

“(1) This section applies to an infringement notice that has been served on a person for an infringement notice offence.

“(2) The administering authority may, by notice served on the person, withdraw the infringement notice, whether or not—

- (a) the person has made an application for the withdrawal of the infringement notice; or
- (b) the infringement notice penalty (or part of it) has been paid for the offence; or
- (c) the person has disputed liability for the infringement notice offence.

“(3) The notice must—

- (a) include the infringement notice number and the date of service of the infringement notice; and

- (b) tell the person that the infringement notice is withdrawn and, in general terms, about subsection (4).

**“(4) On service of the notice—**

- (a) this Part ceases to apply to the infringement notice; and
- (b) if the infringement notice penalty (or part of it) has been paid—the amount paid must be repaid by the administering authority; and
- (c) if section 75H (Effect of payment of infringement notice penalty) applies to the offence—this section ceases to apply to the offence; and
- (d) a proceeding for the offence may be taken against anyone (including the person) as if the infringement notice had not been served on the person.

**“75K Guidelines about withdrawal of infringement notices**

**“(1)** The Minister may, in writing, issue guidelines about the exercise of an administering authority’s functions under section 75I (Application for withdrawal of infringement notice), 75J (Withdrawal of infringement notice) or 75P (Extension of time to dispute liability).

**“(2)** The administering authority for an infringement notice must comply with any guidelines applying to the offence.

**“(3)** Guidelines are disallowable instruments.

**“75L Reminder notices**

**“(1)** An authorised person may serve a notice (a *reminder notice*) on a person if—

- (a) an infringement notice has been served on the person for an infringement notice offence; and
- (b) the infringement notice has not been withdrawn; and
- (c) the infringement notice penalty has not been paid to the administering authority within the time for payment under this Part; and



- (d) written notice disputing liability has not been given to the administering authority in accordance with this Part; and
- (e) a reminder notice has not previously been served on the person for the offence.

**“(2)** Subsection 75C (3) (Service of infringement notices) applies to the service of the reminder notice on the person in the same way as it applies to the service of an infringement notice on the person.

**“75M Contents of reminder notices**

A reminder notice served on a person by an authorised person for an infringement notice offence must—

- (a) be identified by a unique number; and
- (b) include the following information:
  - (i) the provisions of this Act contravened by the person;
  - (ii) the number of the infringement notice served on the person for the offence;
  - (iii) the date of service of the infringement notice; and
- (c) state the date of service of the reminder notice; and
- (d) state the infringement notice penalty that is now payable by the person for the offence; and
- (e) contain the information required by section 75E (Additional information in infringement notices); and
- (f) identify the authorised person in accordance with the regulations; and
- (g) include any other information required under the regulations and any additional information that the administering authority considers appropriate.

**“75N Additional information in reminder notices**

**“(1)** The reminder notice must also tell the person on whom it is served that—

- (a) the infringement notice penalty for the offence has not been paid; and
- (b) the infringement notice has not been withdrawn; and
- (c) written notice disputing liability has not been received by the administering authority from the person for the offence; and
- (d) the infringement notice penalty for the offence has been increased by the amount payable by the person for the cost of serving the reminder notice; and
- (e) the person may pay the infringement notice penalty that is now payable by the person for the offence or dispute liability for the offence within 28 days after the day when the reminder notice is served on the person (the *date of service* of the notice); and
- (f) the person may apply to the administering authority for additional time in which to pay the penalty or dispute liability for the offence; and
- (g) the notice may be withdrawn before or after the penalty is paid; and
- (h) if the person pays the penalty within the 28 days (or any additional time allowed by the administering authority), then, unless the infringement notice is withdrawn and any penalty refunded—
  - (i) any liability of the person for the offence is discharged; and
  - (ii) the person will not be prosecuted in court for the offence; and
  - (iii) the person will not be taken to have been convicted of the offence; and
- (i) if the person wishes to dispute liability for the offence, the issue may be referred to the Magistrates Court; and
- (j) if the Magistrates Court finds against the person or the person is prosecuted in court for the offence, the person may be convicted of the offence and ordered to pay a penalty and costs, and be subject to other court orders; and

- (k) if the person does not pay the infringement notice penalty, or dispute liability for the offence, within the 28 days (or any additional time allowed by the administering authority), the person may be prosecuted in court for the offence.

“(2) In addition, the reminder notice must—

- (a) explain how the person may pay the infringement notice penalty or dispute liability for the offence; and
- (b) explain how the person may apply for additional time to pay the infringement notice penalty or dispute liability for the offence.

***“Division 5A.4—Disputing liability***

**“750 Disputing liability for an infringement notice offence**

“(1) A person on whom an infringement notice or reminder notice has been served for an infringement notice offence may dispute liability for the offence by written notice given to the administering authority.

“(2) The notice must set out the grounds on which the person relies.

“(3) The notice must be given to the administering authority—

- (a) within 28 days after the date of service of the infringement notice or reminder notice; or
- (b) if the person applies to the administering authority within the 28 days for additional time to dispute liability for the offence and the additional time is allowed—within the additional time allowed by the administering authority; or
- (c) if the person applies to the administering authority within the 28 days for additional time to dispute liability for the offence and the application is refused—within 7 days after the day the person is told of the refusal or 28 days after the date of service, whichever is later.

**“75P Extension of time to dispute liability**

“(1) The person on whom an infringement notice or reminder notice is served may apply, in writing, to the administering authority, within 28 days

after the notice is served on the person, for a stated additional time in which to dispute liability for the offence.

“(2) The administering authority must—

- (a) allow or refuse to allow the additional time; and
- (b) tell the person in writing of the decision and, if the decision is a refusal, the reasons for it.

**“75Q Procedure if liability disputed**

“(1) This section applies if a person disputes liability for an infringement notice offence by giving the administering authority a notice in accordance with section 75O (Disputing liability for an infringement notice offence).

“(2) The administering authority may lay an information in the Magistrates Court against the person for the offence within 60 days after being given the notice.

“(3) The administering authority must discontinue a proceeding instituted against the person for the offence if, before the hearing of the proceeding, the person pays the total of—

- (a) the infringement notice penalty; and
- (b) the costs (if any) prescribed under the regulations for beginning the proceeding; and
- (c) the disbursements (if any) incurred by the administering authority up to the day payment is made.

“(4) If subsection (3) applies, section 75H (Effect of payment of infringement notice penalty) also applies to the person in relation to the offence, even though the person paid the infringement notice penalty for the offence after an information had been laid in the Magistrates Court against the person for the offence.

“(5) If the administering authority does not lay an information in the Magistrates Court against the person for the offence within 60 days after being given the notice, the administering authority must—

- (a) tell the person, in writing, that no further action will be taken against the person for the offence; and

- (b) take no further action in relation to the person for the offence.

***“Division 5A.5—Miscellaneous***

**“75R Issue of notices of noncompliance**

“(1) If an authorised person could serve an infringement notice on a person under section 75C (1) (Service of infringement notices) if the person were not the Territory or an agent of the Territory, the authorised officer may serve a notice of noncompliance on the person.

“(2) In this section:

*agent*, of the Territory, includes—

- (a) an instrumentality, officer or employee of the Territory; and
- (b) a contractor or someone else who exercises a function on behalf of the Territory.

**“75S Report about notices of noncompliance**

“(1) Within 14 days after the end of each financial year, the commissioner must give the Minister a report about notices of noncompliance (if any) served under section 75R in that year.

“(2) The Minister must give a copy of each report under subsection (1) to the relevant committee of the Legislative Assembly within 14 days after receiving the report.

“(3) In subsection (2):

*relevant committee*, of the Legislative Assembly, means—

- (a) the standing committee of the Legislative Assembly nominated by the Speaker for subsection (2); or
- (b) if there is no nomination under paragraph (a)—the standing committee of the Legislative Assembly responsible for the scrutiny of public accounts.

**“75T Power of delegation**

“(1) The administering authority for an infringement notice offence may, in writing, delegate all or any of the authority’s functions under this Part to an authorised person or a person prescribed under the regulations.

“(2) A person prescribed under the regulations for subsection (1) may delegate a power delegated to the person under that subsection to anyone else.

**“75U Evidentiary certificates**

“(1) This section applies to a proceeding for an infringement notice offence.

“(2) A certificate purporting to be signed by or on behalf of the administering authority and stating any matter relevant to anything done or not done under this Part in relation to the infringement notice offence is evidence of the matter.

“(3) Without limiting subsection (2), a certificate given under that subsection may state any of the following:

- (a) a stated infringement notice or reminder notice was served by a stated authorised person in a stated way on a stated person for a stated infringement notice offence;
- (b) the administering authority did not allow further time, or allowed a stated further time, for payment of the infringement notice penalty or to dispute liability for the offence;
- (c) the infringement notice penalty was not paid within the time in which it was required to be paid under this Part;
- (d) the infringement notice has not been withdrawn or was withdrawn on a stated date;
- (e) a stated person was the employer of a stated person on a stated date (and, if relevant, at a stated time on that date);
- (f) a stated address was on a stated date the last home or business address of a stated person known to the commissioner;

- (g) a stated address was on a stated date the latest home or business address of a stated person in the record kept under a law of a State or another Territory corresponding to Part 3;
- (h) an infringement notice penalty has not been paid by, or a penalty has not been imposed on, a stated person or anyone for the offence.

“(4) A court must accept a certificate under this section as proof of the matters stated in it if there is no evidence to the contrary.”.

## **10 Codes of practice**

Section 87 (1) is amended by omitting “to employers, self-employed persons and employees” and substituting “for this Act”.

**PART 3—AMENDMENTS OF THE OCCUPATIONAL HEALTH  
AND SAFETY REGULATIONS 1991**

**11 Regulations amended by pt 3**

This Part amends the *Occupational Health and Safety Regulations 1991*.

**12 Insertion—Part 3A**

After regulation 10 the following Part is inserted:

**“PART 3A—INFRINGEMENT NOTICES**

**“10A Infringement notice offences and penalties**

“(1) An offence against the Act that is described in an item of Schedule 1 and is a contravention of the provision of the Act mentioned in the item is an offence to which Part 5A of the Act applies (an *infringement notice offence*).

“(2) The penalty payable by an individual under an infringement notice for an infringement notice offence is the amount mentioned in the item of the schedule applying to the offence.

“(3) The cost of serving a reminder notice for an infringement notice offence is \$34.

**“10B Administering authority**

The administering authority for every infringement notice offence is the commissioner.

**“10C Authorised persons for infringement notices**

An authorised officer may serve an infringement notice for any infringement notice offence.

**“10D Authorised person for reminder notices**

An authorised officer may serve a reminder notice for any infringement notice offence.



**“10E Persons authorised for infringement notices etc to have unique number**

The administering authority for an infringement notice offence must give a unique number to each person who is authorised by the administering authority to serve infringement or reminder notices for the offence.

**“10F Identifying particulars—authorised persons**

For paragraph 75D (1) (g) (Contents of infringement notices) of the Act, an infringement notice must identify the authorised person using the number given to the person by the administering authority under regulation 10E.”.

**13 Insertion—Schedule 1**

After regulation 22 the following Schedule is inserted:

**SCHEDULE 1**

(See reg 10A)

**OFFENCES AND PENALTIES**

column 1 item	column 2 provision contravened	column 3 on-the-spot fine \$
1	27	1 000
2	28	1 000
3	29	1 000
4	30	1 000
5	31	1 000
6	32 (1)	1 000
7	32 (2)	1 000
8	33 (1)	1 000
9	34	1 000
10	37 (3)	100
11	38 (7)	100
12	40 (7)	100
13	41 (6)	100
14	42 (2)	100
15	45 (1)	200
16	45 (2)	200
17	45 (3)	100
18	51 (8)	100
19	52	100
20	53	400
21	59 (1)	100
22	59 (4)	100
23	71	100
24	76 (5)	100
25	77 (4)	100
26	78 (5)	100
27	79	400
28	86	100

## **Endnotes**

### **Act amended—pt 2**

1 Reprinted as in force on 1 August 2000 (Republication No 8). See also Act 2000 No 62.

### **Regulations amended—pt 3**

2 Republished as in force on 23 October 2000 (Republication No 3).

*[Presentation speech made in Assembly on 29 November 2000]*