



DANGEROUS SUBSTANCES (EQUIPMENT AND PERMITS) AMENDMENT ACT 1992

No. 81 of 1992

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ELIZABETHAE II REGINAE

A.D. 1992

No. 81 of 1992

An Act to amend the Dangerous Substances Act 1979.

[Assented to 3 December 1992]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Dangerous Substances (Equipment and Permits) Amendment Act 1992*.

(2) The *Dangerous Substances Act 1979* is referred to in this Act as “the principal Act”.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 5—Interpretation

3. Section 5 of the principal Act is amended—

(a) by striking out the definition of “the Chief Inspector”;

(b) by striking out paragraph (a) of the definition of “the Director” and substituting the following definition:

(a) the person for the time being holding, or acting in, the office of the Chief Executive Officer of the Department of the Minister to whom the administration of this Act is committed;

and

(c) by striking out the definition of “inspector” and substituting the following definitions:

“inspector” means a person appointed to be an inspector under Part II of this Act:

“plant” includes—

(a) any machine, engine, equipment, container or device;

(b) any component, fitting, pipe or accessory used in or in connection with any machine, engine, equipment, container or device.

Amendment of s. 8—Inspectors

4. Section 8 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The Minister may, by notice in the *Gazette*, appoint a person to be an inspector for the purposes of this Act.

Amendment of s. 9a—Delegation by Director

5. Section 9a of the principal Act is amended by striking out from subsection (1) “to the Chief Inspector or any other” and substituting “to any”.

Insertion of s. 12a

6. The following section is inserted immediately after section 12 of the principal Act:

Duty in relation to plant

12a. (1) This section applies to any plant that is used, or that is reasonably expected to be used, in connection with any dangerous substance.

(2) A person who is in charge of any plant to which this section applies must—

(a) take such precautions and exercise such care as is reasonable in the circumstances in order to ensure that the plant is in a safe condition whenever it is used in connection with a dangerous substance;

and

(b) ensure that the plant is in a safe condition when it is not in use.

(3) A person who uses any plant to which this section applies must—

(a) ensure that the plant is in a safe condition;

(b) take such precautions and exercise such care as is reasonable in the circumstances in order to avoid endangering the health or safety of any other person, or the safety of any other person’s property (whether during the use of that plant, or as a result of the use of that plant);

and

(c) ensure that the plant is left in a safe condition after use.

(4) A person who performs, or supervises the performance of, any work on, or in relation to, plant to which this section applies must take such precautions and exercise such care as is reasonable in the circumstances in order to avoid endangering the health or safety of any other person, or the safety of any other person’s property (whether during the performance of that work, or as a result of the performance of that work).

(5) A person must not misuse or damage any plant to which this section applies.

(6) A person who contravenes or fails to comply with a provision of this section is guilty of an offence.

Penalty:

(a) in the case of a body corporate—Division 2 fine;

(b) in any other case—Division 5 fine or division 5 imprisonment, or both.

Repeal of s. 23

7. Section 23 of the principal Act is repealed.

Amendment of s. 23a—Improvement notices**8. Section 23a of the principal Act is amended—**

(a) by striking out paragraph (b) of subsection (1) and substituting the following paragraph:

(b) has contravened a provision of this Act in circumstances that make it—

(i) likely that the contravention will be repeated;

or

(ii) reasonable to require that the contravention be remedied,;

and

(b) by striking out subparagraph (ii) of paragraph (a) of subsection (2) and substituting the following subparagraph:

(ii) has contravened a provision of this Act in circumstances that make it—

(A) likely that the contravention will be repeated;

or

(B) reasonable to require that the contravention be remedied,.

Insertion of s. 24a**9. The following section is inserted after section 24 of the principal Act:****Appeal to Industrial Court**

24a. (1) A right of appeal to the Industrial Court lies against—

(a) a decision of the Director relating to a licence under Part III;

(b) a decision of the Director on an application for an exemption under section 24;

or

(c) a decision of the Director relating to a permit under the regulations.

(2) An appeal must be instituted within one month of the date of the decision appealed against but the Industrial Court may, if it thinks fit, dispense with the requirement that the appeal should be instituted within that time.

(3) The Industrial Court may on the hearing of an appeal, taking into account what is just and reasonable in the circumstances—

(a) affirm, vary or quash the decision appealed against and make any incidental or other order that may be just and reasonable in the circumstances;

(b) remit the decision for reconsideration.

Amendment of s. 29—Proceedings for offences

10. Section 29 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

(2) A prosecution for an offence against this Act must be commenced within three years after the date on which the offence is alleged to have been committed or such further period as the Attorney-General may, in a particular case, allow.

(3) A document apparently signed by the Attorney-General and stating that the Attorney-General allows a specified extension of the period for commencing a particular prosecution is to be accepted, in the absence of proof to the contrary, as proof of the fact so stated.

Amendment of s. 30—Regulations

11. Section 30 of the principal Act is amended:

(a) by striking out from paragraph (1b) of subsection (2) “Chief Inspector” and substituting “Director”;

(b) by striking out from paragraph (1c) of subsection (2) “Chief Inspector” and substituting “Director”;

and

(c) by inserting after subsection (3) the following subsections:

(4) Where—

(a) the regulations prohibit an activity unless carried on by a person who is the holder of a permit;

and

(b) a person who is the holder of such a permit carries out that activity (as an employee or contractor) for another person (“the principal”) in the course of a trade or business carried on by the principal,

the principal—

(c) must ensure, so far as is reasonably practicable, that the activity is carried out—

(i) safely;

(ii) in accordance with any requirements prescribed by the regulations;

and

(iii) in a proper and competent manner;

(d) must ensure, so far as is reasonably practicable, that any plant used, installed, repaired or maintained as part of, or for the purposes of, that activity is safe and suitable for use, and complies with any requirements prescribed by the regulations;

and

(e) must comply with any other duty imposed by the regulations for the purposes of this provision.

Penalty: Division 5 fine.

(5) The regulations under this Act may—

(a) leave any matter or thing to be determined, modified, dispensed with or regulated according to the discretion of the Director (either generally or in a particular case or class of case);

and

(b) confer other forms of discretionary powers.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor