



TASMANIA

**MINES WORK HEALTH AND SAFETY
(SUPPLEMENTARY REQUIREMENTS)
AMENDMENT ACT 2020**

No. 39 of 2020

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**MINES WORK HEALTH AND SAFETY
(SUPPLEMENTARY REQUIREMENTS)
AMENDMENT ACT 2020**

No. 39 of 2020

**An Act to amend the *Mines Work Health and Safety
(Supplementary Requirements) Act 2012***

[Royal Assent 27 November 2020]

Be it enacted by Her 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:

1. Short title

This Act may be cited as the *Mines Work Health and Safety (Supplementary Requirements) Amendment Act 2020*.

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2. Commencement

This Act commences on the 30th day after the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Mines Work Health and Safety (Supplementary Requirements) Act 2012** is referred to as the Principal Act.

4. Section 3 amended (Object of Act)

Section 3 of the Principal Act is amended by omitting “addition to” and substituting “addition to, or in substitution of,”.

5. Section 4 amended (Incorporation of Act into *Work Health and Safety Act 2012*)

Section 4 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (b) in subsection (1):
 - (ba) a reference in any regulations made under the *Work Health and Safety Act 2012* to *these regulations* includes, unless the contrary intention appears, a

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reference to any regulations made
under this Act; and

- (b) by inserting the following note after paragraph (d) in subsection (1):

Note For example, section 191 of the *Work Health and Safety Act 2012* relates to the issuing of an improvement notice in respect of a contravention of the *Work Health and Safety Act 2012* (by reference to *this Act*). As a result of subsection (1)(b), an improvement notice may also be issued in respect of the *Mines Work Health and Safety (Supplementary Requirements) Act 2012* as the reference in section 191 to *this Act* now includes both Acts.

- (c) by omitting subsection (3) and substituting the following subsection:

(3) Despite subsection (1) –

- (a) a reference in this Act to *this Act* is not to be taken to be a reference to the *Work Health and Safety Act 2012*; and
- (b) a reference in any regulations made under this Act to *these regulations* is not to be taken to be a reference to any regulations made under the *Work Health and Safety Act 2012*.

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6. Section 5 amended (Interpretation)

Section 5 of the Principal Act is amended as follows:

- (a) by inserting “and includes any fixtures, fittings, plant or structures at such a place that are used for, or in connection with, mining operations” after “out” in the definition of *mine*;
- (b) by inserting the following definition after the definition of *mineral*:

mines inspector – see section 10A;

7. Section 6 amended (Meaning of *mining operations*)

Section 6 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (a) in subsection (1):
 - (ab) the preparation, development, construction or maintenance of a site where an activity referred to in paragraph (a), (b) or (c) is intended to occur, including the construction of infrastructure to be used in such an activity;
- (b) by inserting in subsection (1)(d) “security,” after “rehabilitation,”;

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- (c) by omitting from subsection (1)(d) “paragraph (a), (b) or (c)” and substituting “paragraph (a), (ab), (b) or (c)”;
- (d) by inserting the following paragraph after paragraph (d) in subsection (1):
 - (da) any other activity, or operation, prescribed as a mining operation;
- (e) by omitting paragraph (b) from subsection (2) and substituting the following paragraphs:
 - (b) fossicking; or
 - (c) any activity, or operation, that is prescribed as not being a mining operation; or
 - (d) any activity, or operation, that is declared under subsection (3A) to not be a mining operation.
- (f) by omitting from subsection (3) “or generally”;
- (g) by inserting the following subsection after subsection (3):
 - (3A) The regulator may, by notice in the *Gazette*, declare an activity or operation at a particular site to not be a mining operation, if the regulator is satisfied that the

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activity or operation is not being undertaken in preparation for, or in the course of or as a result of, the occurrence at that site of another activity or operation referred to in subsection (1)(a), (ab), (b) or (c).

- (h) by omitting from subsection (4) “subsection (3)” and substituting “subsection (3) or (3A)”.

8. Section 7A inserted

After section 7 of the Principal Act, the following section is inserted in Part 2:

7A. Examples and notes

For the avoidance of doubt, unless otherwise specified in this Act –

- (a) an example at the foot of a provision forms part of this Act; and
- (b) a note at the foot of a provision forms part of this Act.

9. Section 8 amended (Chief Inspector of Mines)

Section 8 of the Principal Act is amended as follows:

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(a) by inserting the following subsections after subsection (1):

(1A) The regulator may only designate an inspector to be the Chief Inspector of Mines if the regulator is satisfied that the inspector –

(a) holds a relevant degree, or equivalent qualification, as specified in subsection (1B); and

(b) has knowledge, skills and experience, relevant to mining operations, to enable the inspector to exercise effectively the powers, and perform effectively the functions, of the Chief Inspector of Mines; and

(c) holds such other qualifications, or has such other knowledge, skills and experience, as may be prescribed for this section.

(1B) For the purposes of subsection (1A)(a) –

(a) a degree is a relevant degree if the degree –

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- (i) is a bachelor degree, with a major, or honours, in the area of mining engineering; and
 - (ii) has been awarded on the completion of a program accredited, in accordance with the Washington Accord, by a full signatory to the Washington Accord; or
- (b) a qualification is an equivalent qualification if the regulator is satisfied, on reasonable grounds, that the qualification is equal to, or exceeds, the requirements of a degree referred to in paragraph (a).
- (b) by inserting the following subsection after subsection (2):
 - (3) In this section –

Washington Accord means the international agreement,

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established on
28 September 1989 and as
amended from time to
time, known as the
Washington Accord that
specifies the manner in
which programs, to satisfy
the academic
requirements for the
practice of engineering at
a professional level, are to
be accredited and
recognised by the
signatory organisations to
the agreement.

10. Section 9 amended (Chief Inspector of Mines may issue directions to mine operator and site senior officers)

Section 9(3) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$250 000; or
- (b) an individual, a fine not exceeding \$50 000.

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11. Part 3, Division 1A inserted

After section 10 of the Principal Act, the following Division is inserted in Part 3:

Division 1A – Mines inspectors

10A. Mines inspectors

An inspector is a mines inspector if the inspector –

- (a) has the knowledge, skills and experience, that the regulator and Chief Inspector of Mines have specified as relevant to mining operations, to enable the person to exercise effectively the powers, and perform effectively the functions, of a mines inspector under this Act; and
- (b) holds such other qualifications, or has such other knowledge, skills and experience, as may be prescribed for this section.

12. Section 11 amended (Appointment of mine operators)

Section 11 of the Principal Act is amended as follows:

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- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$100 000; or
- (b) an individual, a fine not exceeding \$20 000.

- (b) by omitting the penalty from subsection (7) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$500 000; or
- (b) an individual, a fine not exceeding \$100 000.

13. Section 12 amended (Advice of appointment, &c., to be given to Chief Inspector of Mines)

Section 12 of the Principal Act is amended as follows:

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

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Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$50 000; or
 - (b) an individual, a fine not exceeding \$10 000.
- (b) by omitting the penalty from subsection (3) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$50 000; or
- (b) an individual, a fine not exceeding \$10 000.

14. Section 13 amended (Chief Inspector of Mines may approve multiple persons to have responsibility for certain mining operations)

Section 13 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (3) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$500 000; or

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- (b) an individual, a fine not exceeding \$100 000.
- (b) by omitting the penalty from subsection (4) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$500 000;
or
- (b) an individual, a fine not exceeding \$100 000.

15. Section 14 amended (Site senior officers)

Section 14 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$100 000;
or
- (b) an individual, a fine not exceeding \$20 000.

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- (b) by omitting from subsection (2) “a natural person” and substituting “an individual”;
- (c) by omitting from subsection (3)(a) “a natural person” and substituting “an individual”;
- (d) by omitting from subsection (5) “a natural person” and substituting “an individual”;
- (e) by omitting the penalty from subsection (6) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$50 000; or
 - (b) an individual, a fine not exceeding \$10 000.
- (f) by omitting the penalty from subsection (7) and substituting the following:

Penalty: Fine not exceeding \$10 000.

Note For the avoidance of doubt, an action of a site senior officer is a prohibited reason for the purposes of Part 6 of the *Work Health and Safety Act 2012* and therefore a site senior officer has the protection of that Act in respect of discriminatory conduct.

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16. Section 15 amended (Site senior officer to maintain presence at mine)

Section 15 of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$100 000; or
- (b) an individual, a fine not exceeding \$20 000.

17. Section 16 amended (Additional requirements if site senior officer is not mine operator)

Section 16 of the Principal Act is amended as follows:

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

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$100 000; or
- (b) an individual, a fine not exceeding \$20 000.

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- (b) by omitting the penalty from subsection (4) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$100 000;
or
- (b) an individual, a fine not exceeding \$20 000.

- (c) by omitting the penalty from subsection (5) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$100 000;
or
- (b) an individual, a fine not exceeding \$20 000.

18. Section 17 amended (Duties of site senior officers)

Section 17 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: Fine not exceeding \$100 000.

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- (b) by omitting the penalty from subsection (3) and substituting the following penalty:

Penalty: Fine not exceeding \$100 000.

19. Section 18 amended (Absence of site senior officer)

Section 18 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$100 000; or
- (b) an individual, a fine not exceeding \$20 000.

- (b) by omitting the penalty from subsection (2) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$25 000; or
- (b) an individual, a fine not exceeding \$5 000.

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20. Section 19 amended (Compliance with directions of mine operator or site senior officer)

Section 19 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$500 000;
or
- (b) an individual, a fine not exceeding \$100 000.

- (b) by omitting from subsection (2) “mine worker who is not a person who conducts a business or undertaking at a mine” and substituting “worker at a mine, other than a person referred to in subsection (1),”;

- (c) by omitting the penalty from subsection (2) and substituting the following penalty:

Penalty: Fine not exceeding \$100 000.

21. Section 20 amended (Health and safety management system)

Section 20 of the Principal Act is amended as follows:

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- (a) by inserting in subsection (1) “both effective for and” after “is”;
- (b) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$250 000;
or
 - (b) an individual, a fine not exceeding \$50 000.
- (c) by omitting subsection (2) and substituting the following subsection:
 - (2) A mine operator must ensure that mining operations are not commenced at a mine unless a health and safety management system that complies with this Part is in place at the mine.

Penalty: In the case of –

- (a) a body corporate,
a fine not exceeding
\$250 000; or
- (b) an individual, a
fine not exceeding
\$50 000.

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- (d) by omitting subsections (3) and (4);
- (e) by omitting from subsection (5)(b) “systemically” and substituting “systematically”;
- (f) by omitting subsection (6).

22. Section 21 amended (Workers to be consulted in preparation and amendment of system)

Section 21 of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$100 000; or
- (b) an individual, a fine not exceeding \$20 000.

23. Section 22 amended (Work to be carried out in accordance with system)

Section 22 of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$250 000; or

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- (b) an individual, a fine not exceeding \$50 000.

24. Section 23 amended (Audit and review of system by mines inspector)

Section 23 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “An inspector” and substituting “A mines inspector”;
- (b) by omitting from subsection (2) “An inspector” and substituting “A mines inspector”;
- (c) by inserting in subsection (3) “mines” after “that the”;
- (d) by omitting from subsection (5) “An inspector” and substituting “A mines inspector”;
- (e) by omitting from subsection (6) “an inspector’s” and substituting “a mines inspector’s”;
- (f) by omitting the penalty from subsection (6) and substituting the following penalty:

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding \$250 000; or
- (b) an individual, a fine not exceeding \$50 000.

25. Section 24 amended (Inadequate health and safety management system)

Section 24 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “An inspector” and substituting “A mines inspector”;
- (b) by inserting in subsection (1)(a) “mines” after “by the”;
- (c) by inserting in subsection (2)(d) “mines” after “by the”;
- (d) by omitting from subsection (3) “an inspector” and substituting “a mines inspector”;
- (e) by inserting in subsection (3) “mines” after “subsection (1)(b), the”;
- (f) by omitting the penalty from subsection (4) and substituting the following penalty:

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding \$250 000; or
- (b) an individual, a fine not exceeding \$50 000.

26. Section 25 amended (Chief Inspector of Mines may require independent audit)

Section 25(3) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$250 000; or
- (b) an individual, a fine not exceeding \$50 000.

27. Section 26 amended (Exemptions)

Section 26 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “An occupier of land on which a mine is situated” and substituting “A mine operator for a mine”;
- (b) by omitting from subsection (1) “Mines” and substituting “Mines, in writing”;

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- (c) by omitting from subsection (2) “grant” and substituting “grant, in writing,”;
- (d) by omitting from subsection (3) “under the *Work Health and Safety Act 2012*”.

28. Section 27 amended (Notification of commencement of operations)

Section 27(1) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$50 000; or
- (b) an individual, a fine not exceeding \$10 000.

29. Section 28 amended (Persons conducting operations to consult about work health and safety)

Section 28 of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$100 000; or
- (b) an individual, a fine not exceeding \$20 000.

30. Section 29 amended (Visitors to comply with health and safety requirements)

Section 29 of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: Fine not exceeding \$100 000.

31. Section 30 amended (Record book)

Section 30 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$50 000; or
- (b) an individual, a fine not exceeding \$10 000.

- (b) by omitting the penalty from subsection (3) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$50 000; or

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- (b) an individual, a fine not exceeding \$10 000.

32. Section 31 amended (Management structure to be maintained)

Section 31 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$250 000;
or
- (b) an individual, a fine not exceeding \$50 000.

- (b) by omitting the penalty from subsection (4) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$250 000;
or
- (b) an individual, a fine not exceeding \$50 000.

33. Section 32 amended (Mine layout, design and construction)

Section 32 of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$500 000; or
- (b) an individual, a fine not exceeding \$100 000.

34. Section 33A inserted

After section 33 of the Principal Act, the following section is inserted in Part 5:

33A. Codes of practice for mining operations

If the Minister approves a code of practice in respect of mines, or mining operations, under section 274 of the *Work Health and Safety Act 2012*, section 274(2) of that Act does not apply to the code of practice if the development of the code of practice involved consultation between –

- (a) the unions and organisations that are prescribed for the purposes of this section; or

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- (b) if no unions and organisations are prescribed under paragraph (a) –
 - (i) the unions representing workers in mines in Tasmania; and
 - (ii) the employer, and industry, organisations that represent the interests of mine operators in Tasmania –

that the Minister considers relevant to the code of practice being developed.

35. Section 35 amended (Transitional and savings provisions)

Section 35 of the Principal Act is amended as follows:

- (a) by omitting subsection (3);
- (b) by omitting subsection (6);
- (c) by omitting subsection (9).

36. Section 37 amended (Regulations)

Section 37(4) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

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- (b) in respect of such an offence, provide for the imposition of a fine not exceeding \$30 000.

37. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.

*[Second reading presentation speech made in:—
House of Assembly on 17 September 2020
Legislative Council on 12 November 2020]*