

This notice is a variation and replaces the originally issued notice

Occupational Health and Safety Act 2004

Improvement notice



Ref: WS-53920

Stuart Hanson
BOROUGH OF QUEENSCLIFFE
50 LEARMONTH ST
QUEENSCLIFF VIC 3225

Issued to

Date of issue	19/05/2022
Issued by:	Tristen Miles White, an inspector appointed under the Occupational Health and Safety Act 2004
Notice issued to:	BOROUGH OF QUEENSCLIFFE 134 Hesse St, QUEENSCLIFF, VIC, 3225, Australia
ABN:	47294157406
Service method:	Email
Email:	stuart.hansen@queenscliffe.vic.gov.au
Notice given to:	Stuart Hanson

Contravention details

Provision of this Act and / or the Regulations that is being contravened:

I reasonably believe that the named Person has contravened a provision in circumstances that make it likely that the contravention will continue to be repeated. The specific provision is Section 26(1) of the Occupational Health and Safety Act 2004

Basis for this belief:

I observed at this workplace that BOROUGH OF QUEENSCLIFFE as the person who has management and control of the workplace has not ensured, so far as is reasonably practicable, that the workplace and the means of entering and leaving it are safe and without risk to health.

During my inspection I was informed that BOROUGH OF QUEENSCLIFFE has management and control of the Recreational Reserve and Victoria Park, this includes the management of trees and vegetation.

I was informed that the BOROUGH OF QUEENSCLIFFE engaged an

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ARBORICULTURAL CONSULTANT to conduct a visual tree assessment and to update the annual risk assessment carried out within Queenscliff Recreational Reserve and Victoria Park, Queenscliff. The update was regarded as necessary based on the level of tree and branch failure that has continued to occur since the storm event that occurred on the 29th October 2021.

The Tree Risk Assessment is dated 17/1/22 and highlights that there are 102 trees throughout the Recreational Reserve and Victoria Park that have identified risk ratings ranging from low, medium and high. Each risk rating has remedial action noted and time frames ranging from ASAP, 3 months, 6 months and 12 months.

I was informed of and observed that remedial actions have not been completed, as evidenced below;

- Tree No. 32 (Medium Risk), remedial action is noted; Consider cable and bracing system to prevent large branch or trunk failures affecting persons or assets below, or remove access below the tree completely. I was informed and observed this has not been completed, within the time frame of 3 months (17 April 2022) as noted within the report.
- Tree No. 41 (High Risk), remedial action is noted; To retain this tree in its current condition, a cable and bracing system will be required to prevent further trunk failure at the fracture point. Remove access below the tree completely. Remove indigenous ground cover growing over base of tree so complete structural integrity assessment can be carried out. I was informed and observed no rectification works have been undertaken, within the time frame of 3 months (17 April 2022) as noted within the report.
- Tree No. 82 (High Risk) 3 month time-frame (17 April 2022), consider cable and bracing system to prevent large branch or trunk failures affecting persons or assets below, or remove access below the tree completely. I was informed and observed no cable and bracing system has been installed and temporary fencing does not restrict access to the area outside of the potential fall zone. As noted within the report.

I observed that Tree No. 53 has had a nylon cable installed to alleviate the risk of further trunk failure causing serious injury or damage. I observed that the front area within Victoria Park is fenced off by temporary fencing, however unrestricted access into the area can be gained via the adjacent nature strip.

I was informed of and observed that the area(s) are freely open to the general public.

I observed that there is no signage located upon entry or throughout the park areas alerting persons of the hazardous trees.

Risk summary:

From the information provided and observations made, I reasonably believe that persons accessing the park areas are at a risk of serious injury, or death should a tree that has been identified as a risk of falling/failure.

Inspector's directions

Directions to remedy the contravention:

The duty holder must ensure, so far as is reasonably practicable, that the workplace and the means of entering and leaving it are safe and without risk to health arising from damaged/unsafe trees.

Compliance may be achieved by, but is not limited to:

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- Engaging a competent and/or qualified person to complete currently overdue remedial action recommended in the Tree Risk Assessment.

(over 3 months since the Tree Risk Assessment was issued)

Guidance may be obtained by contacting an arborist or suitably competent tree consultant.

Interim directions or conditions on the ongoing conduct of an activity/ activities to which this notice relates:

Restrict free access around the base of any tree that is classified as high risk, which is equal to or greater than 1.5 times the height of the tree; and

Restrict free access around the base of any tree that is classified as medium risk which is greater to or equal than 1.5 times the height of the tree until such time that an assessment is completed and implemented by a suitably competent and/or qualified person on the safe distance of an exclusion zone (if one is required)

Install fixed signage upon entry and throughout the park areas alerting persons of the hazardous trees and restricted areas.

This contravention must be remedied by **9:00 AM** on **22/08/2022**

Review and offence provisions

Notice issued under

This notice is issued under section 111 of the *Occupational Health and Safety Act 2004*. This notice requires the person (which can mean a body corporate) to whom it is issued to remedy a contravention of the Act or its Regulations. Section 115(2) places obligations on the person to whom an improvement notice is issued. If that person is an employee, he or she must give a copy of the notice to the employer. Failure to do so may result in a penalty.

Otherwise, and for an employer given a copy of a notice issued to an employee, the person must:

- * bring the notice to the attention of all persons whose work is affected by the notice,
- * give a copy to each health and safety representative who represents employees whose work is affected by the notice; and
- * display a copy of the notice in a prominent place at or near the workplace or part of the workplace where the affected work is being performed.

Internal review rights

You, a person acting on your behalf or another eligible person (an applicant), may apply to have an inspector's decision to issue an improvement notice internally reviewed by WorkSafe Victoria's Internal Review Unit (IRU), within 14 days after the day on which an applicant first becomes aware of the inspector's decision. If an application for internal review is not made within this timeframe, an applicant may request that the time limit for lodging an internal review application be extended, which IRU will allow or deny.

Applications must be completed using WorkSafe's internal review form:

- **online** (visit www.worksafe.vic.gov.au/request-review-ohs-inspector-decision or if your improvement notice relates to a return to work matter visit www.worksafe.vic.gov.au/review-worksafe-return-work-inspectors-decision); or
- **download the form** (visit www.worksafe.vic.gov.au/resources/internal-review-ohs-inspectors-decision-application-form or if your improvement notice relates to a return to work matter visit <https://www.worksafe.vic.gov.au/resources/internal-review-application-form-request-review-return-work-inspector-decision>)

and submit to WorkSafe Victoria by email (internalreviewunit@worksafe.vic.gov.au), or post to *Internal Review Unit, WorkSafe Victoria, PO Box 279, Geelong VIC 3220*

When lodging an application for internal review, an applicant may also request that IRU stay (stop) the operation of the improvement notice, until the outcome of the internal review application. IRU must make a decision to grant or deny a stay (with or without conditions) and communicate that decision within 24-hours of receiving the stay request, otherwise WorkSafe is deemed to have granted a stay of the improvement notice. If no request for a stay is made by an applicant or if the stay is requested and it is denied, the improvement notice remains in effect.

The authority may request in writing that an applicant provides further information in relation to an application. The request will specify a period (not exceeding 7 days) during which the applicant may provide the requested information. If the Authority requests further information, the period (7 days) referred to in section 128(4) of the Occupational Health and Safety Act 2004 to provide written notice to the applicant, is suspended until the earlier of the following:

- (a) the applicant has provided all the information requested; or
- (b) the period specified by the Authority in its most recent request has expired.

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If the requested information is not provided within the specified period, the Authority may make the decision on the application without the information.

The IRU must make and communicate a decision on an internal review application within 14 days after a valid application is made. If the IRU fails to make a decision within this time-frame, it is deemed to have affirmed the decision of the inspector to issue the improvement notice. If an applicant is dissatisfied with an IRU decision, an application may be made to the Victorian Civil and Administrative Tribunal for an external review within 14 days after first becoming aware of the decision:

- made by the IRU; or
- that is deemed to have been made by IRU because it was not made within the required time frame.

The IRU can be contacted by telephone (03) 4243 7060 or email internalreviewunit@worksafe.vic.gov.au

Offence

A person issued with an improvement notice that does not comply and thereby contravenes the notice shall be guilty of an indictable offence against the Act. In the case of a natural person, the indictable offence carries a penalty of not more than **\$90,870.00**. In the case of a body corporate, the indictable offence carries a penalty of not more than **\$454,350.00**.

Privacy and confidentiality notice

The information contained in this document may contain privileged and confidential information and is not to be used (including copied, distributed and disclosed) for any other purpose than the prescribed purpose. All use of the information contained in this document must only be used in a manner that is consistent with the objects and purposes of Victorian occupational health and safety acts and regulations. If you have received this document in error, please notify the sender immediately and delete it or securely destroy as appropriate. Views expressed in this message are those of the sender, and are not necessarily the views of WorkSafe.

Notes

The issue, variation or cancellation of this notice does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the notice was issued.

Compliance with this notice does not indicate that the person to whom it is issued complies with all health and safety requirements, nor does it affect the continuing obligation to ensure workplace health and safety.

[end of notice]