



AUSTRALIAN CAPITAL TERRITORY

Occupational Health and Safety (Amendment) Act 1991

No. 11 of 1991

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

[Notified in ACT Gazette S19: 3 April 1991]

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

Short title

1. This Act may be cited as the *Occupational Health and Safety (Amendment) Act 1991*.

Principal Act

2. In this Act, “Principal Act” means the *Occupational Health and Safety Act 1989*.¹

Interpretation

3. Section 5 of the Principal Act is amended—
- (a) by inserting in subsection (1) the following definitions:
 - “ ‘Commission’ means the Australian Industrial Relations Commission;
 - ‘President’ means the President of the Commission;
 - ‘Review Authority’ means the Occupational Health and Safety Review Authority established by section 80;”;
 - (b) by omitting “section 39” from the definition of “health and safety representative” in subsection (1) and substituting “section 40”.

Annual report

4. Section 12 of the Principal Act is amended by inserting in subsection (1) “and the operation of this Act” after “the activities of the Council”.

Duties of employers

5. Section 45 of the Principal Act is amended—
- (a) by omitting from paragraph (1) (e) “and” (last occurring); and
 - (b) by inserting after paragraph (1) (e) the following paragraph:
 - “(ea) permit the representative to take such time off work, without loss of remuneration or other entitlements, as is necessary and reasonable to allow him or her to undertake a training program approved under the regulations; and”.

Deputy health and safety representatives

6. Section 50 of the Principal Act is amended by adding at the end the following subsection:

“(4) The employer of the employees included in a designated work group for which there is a deputy health and safety representative shall permit the deputy to take such time off work, without loss of remuneration or other entitlements, as is necessary and reasonable to allow him or her to undertake a training program approved under the regulations.”.

Substitution

7. Section 80 of the Principal Act is repealed and the following Division and heading are substituted:

“Division 1—Review Authority

Establishment

“80. There is established by this section a review authority called the Occupational Health and Safety Review Authority.

Constitution

“80A. (1) The Review Authority shall be constituted by a member of the Commission appointed by the President.

“(2) Where—

- (a) the person constituting the Authority for a proceeding ceases to be available to complete the proceeding; and
- (b) in accordance with subsection (1) the Authority is reconstituted by another member of the Commission;

the reconstituted Authority shall complete the proceeding and, for that purpose, may have regard to any record of the Authority as previously constituted, including any transcript of evidence taken in the proceeding.

Disclosure of interest

“80B. (1) Where the person constituting the Review Authority has any interest, pecuniary or otherwise, that could conflict with the proper performance of the person’s functions in relation to a proceeding—

- (a) the person shall disclose the interest to the parties to the proceeding; and
- (b) unless all the parties to the proceeding consent, the person shall not take part or any further part in the proceeding.

“(2) Where the President directs the member who constitutes the Authority not to take part or any further part in a proceeding before the Authority, the member shall not act, or act further, in the proceeding.

“Division 2—Reconsideration and review of decisions”

Review of decisions

8. Section 84 of the Principal Act is amended—

- (a) by omitting from subsection (1) “reviewing authority” and substituting “Review Authority”;

- (b) by omitting from subsections (2), (3), (4) and (5) “reviewing” (wherever occurring);
- (c) by omitting from subsections (2), (3), (4) and (5) “authority” (wherever occurring) and substituting “Authority”;
- (d) by omitting from subsection (4) “shall review” and substituting “shall, subject to this Part, review”; and
- (e) by adding at the end the following subsection:
 - “(6) The Authority shall give written notice of its decision to each party to the proceeding, setting out the reasons for its decision.”.

Insertion

9. After section 84 of the Principal Act the following sections and Division are inserted in Part VII:

Parties to proceedings before Review Authority

“84A. (1) For the purposes of this Part, the parties to a proceeding before the Review Authority are—

- (a) any eligible person who, in writing, requests the Authority to review the reviewable decision;
- (b) the person who made the decision; and
- (c) any other person joined as a party to the proceeding by the Authority in accordance with subsection (2).

“(2) The Review Authority may—

- (a) on application in writing by a person—
 - (i) who is an eligible person in relation to a reviewable decision; or
 - (ii) whose interests are affected by a reviewable decision; and
- (b) by notice in writing given to the applicant;

join the applicant as a party to a proceeding for the review of the decision.

Representation before Review Authority

“84B. A party to a proceeding before the Review Authority may appear in person or may be represented by some other person.

Notice of proceeding

“84C. Before commencing a proceeding, the Review Authority shall give each party a notice specifying—

- (a) the time and place for the proceeding; and
- (b) the matters to which the proceeding relates.

Procedure of Review Authority

“84D. (1) In proceedings before the Review Authority—

- (a) the Authority is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate;
- (b) the procedure of the Authority is, subject to this Part, within the discretion of the Authority;
- (c) the proceedings shall be conducted with as little formality and technicality, and with as much expedition as the requirements of this Act and the substantial merits of the case permit; and
- (d) the Authority may give directions relating to procedure, including directions that it considers will enable costs to be reduced and will help to achieve a prompt hearing of the matters in issue between the parties to the proceeding.

“(2) Without limiting the generality of subsection (1), the Review Authority shall ensure that each party to a proceeding is given a reasonable opportunity to—

- (a) call or give evidence;
- (b) examine or cross-examine witnesses;
- (c) inspect any documents to which the Authority proposes to have regard in reaching a decision in the proceeding; and
- (d) make submissions.

Hearings to be in public except in special circumstances

“84E. (1) Subject to this section, a proceeding before the Review Authority shall be in public.

“(2) Where the Review Authority believes on reasonable grounds that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the Authority may—

- (a) direct that a proceeding or part of a proceeding shall take place in private and give directions as to the persons who may be present;

- (b) give directions prohibiting or restricting the publication of evidence given before the Authority, whether in public or in private, or of matters contained in documents lodged with the Authority or received in evidence by the Authority; and
- (c) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the Authority, or of the contents of a document lodged with the Authority or received in evidence by the Authority, in relation to the proceeding.

“(3) A person shall not, without reasonable excuse, contravene a direction given by the Authority under subparagraph (2) (b) or (c).

Penalty:

- (a) if the offender is a natural person—\$5,000 or imprisonment for 6 months, or both; or
- (b) if the offender is a body corporate—\$25,000.

Reference of questions of law to Supreme Court

“84F. (1) The Review Authority may, of its own motion or at the request of a party, refer a question of law arising in a proceeding before it to the Supreme Court for decision.

“(2) The Supreme Court has jurisdiction to hear and determine a question of law referred to it under this section.

“(3) Where a question of law arising in a proceeding has been referred to the Supreme Court under this section, the Authority shall not, in that proceeding—

- (a) give a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the determination of the Supreme Court on the question.

Appeals to the Supreme Court

“84G. (1) A party to a proceeding before the Review Authority may appeal to the Supreme Court on a question of law from any decision of the Review Authority in that proceeding.

- “(2) An appeal by a person under subsection (1) shall be instituted—
- (a) not later than the 28th day after the day on which a document setting out the terms of the decision of the Tribunal is given to the person or within such further time as the Supreme Court (whether before or after the end of that day) allows; and
 - (b) in such manner as is prescribed by the Rules of Court made under the *Australian Capital Territory Supreme Court Act 1933* of the Commonwealth.

“(3) The Supreme Court has jurisdiction to hear and determine appeals instituted in that Court in accordance with subsection (1).

“(4) The Supreme Court shall hear and determine the appeal and may make—

- (a) an order affirming or setting aside the decision of the Authority;
- (b) an order remitting the case to be heard and decided again, either with or without the hearing of further evidence by the Authority in accordance with the directions of the Court; or
- (c) such other order as the Court thinks appropriate.

“Division 3—Miscellaneous

Powers of Review Authority

“84H. (1) For the purposes of a proceeding, the Review Authority may—

- (a) take evidence on oath or affirmation and for that purpose—
 - (i) may require a person attending before the Authority to take an oath or make an affirmation; and
 - (ii) may administer an oath or affirmation to such a person;
- (b) proceed in the absence of a party who has been given notice of the proceeding under section 84C; and
- (c) adjourn the proceeding from time to time.

“(2) The Authority may, in writing, direct a person to attend a proceeding at the time and place specified in the notice and to give evidence and produce any document in the person’s custody or under the person’s control that the person is required by the notice to produce.

“(3) Where a person is directed to produce a document and the document is not—

- (a) in writing;

- (b) written in the English language; or
- (c) decipherable on sight;

the person shall produce, in addition to the document if it is in writing, or instead of the document if it is not in writing, a statement written in the English language and decipherable on sight, containing the whole of the information in the document.

Inspection and retention of documents

“84J. (1) The Review Authority may inspect any document produced before it and may retain the document for such period as is necessary for the purposes on this Part and may make copies of, or take extracts from, the document.

“(2) Where a document is retained by the Authority under subsection (1)—

- (a) a person otherwise entitled to possession of the document is, on request, entitled to be supplied with a copy certified by the Authority to be a true copy of the document; and
- (b) a person who would be entitled to inspect the document, if it were not in the possession of the Authority, or a person authorised by such a person, may at any reasonable time inspect, make copies of, or take extracts from, the document.

Failure to attend etc.

“84K. (1) A person directed under subsection 84H (2) to attend proceedings before the Review Authority shall not, without reasonable excuse, fail—

- (a) to comply with the direction;
- (b) to attend from day-to-day unless released or excused from further attendance by the Authority; or
- (c) produce a document in accordance with the direction.

Penalty: \$5,000 or imprisonment for 6 months, or both.

“(2) A person appearing as a witness before the Authority, shall not, without reasonable excuse, fail to take an oath or make an affirmation when so required under subsection 84H (1).

Penalty: \$5,000 or imprisonment for 6 months, or both.

Contempt

“84M. A person shall not, without reasonable excuse—

- (a) obstruct or hinder the Review Authority in the performance of its functions; or
- (b) disrupt proceedings of the Authority.

Penalty: \$5,000 or imprisonment for 6 months, or both.

False information

“84N. A person shall not—

- (a) give the Review Authority information that is, to the person’s knowledge, false or misleading in a material particular; or
- (b) give the Authority a document containing information that is, to the person’s knowledge, false or misleading in a material particular.

Penalty:

- (a) if the offender is a natural person—\$5,000 or imprisonment for 6 months, or both; or
- (b) if the offender is a body corporate—\$25,000.

Operation and implementation of a decision that is subject to appeal

“84P. (1) Subject to this section, the institution of an appeal to the Supreme Court from a decision of the Review Authority does not affect the operation of the decision or prevent the taking of action to implement the decision.

“(2) Where an appeal is instituted in the Supreme Court from a decision of the Authority, the Court or a Judge of the Court sitting in chambers may make such order staying or otherwise affecting the operation or implementation of either or both of the following:

- (a) a decision of the Authority or a part of that decision;
- (b) the decision to which the proceeding before the Authority related or a part of that decision;

as the Court or Judge considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

“(3) Where an order is in force under subsection (2) (including an order that has been varied under this subsection), the Supreme Court or a Judge of the Court sitting in chambers may make an order varying or revoking the first-mentioned order.

“(4) An order in force under subsection (2) (including an order that has been varied under subsection (3))—

- (a) is subject to such conditions as are specified in the order; and
- (b) has effect until—
 - (i) if a period for the operation of the order is specified in the order—the end of that period or, if a decision is given on the appeal before the end of that period, the giving of the decision; or
 - (ii) if no period is so specified—the giving of a decision on the appeal.

Protection of Review Authority etc.

“84Q. (1) The Review Authority has, in the performance of its functions, the same protection and immunity as a Judge of the Supreme Court.

“(2) A barrister, solicitor or other person appearing before the Authority on behalf of a party, or if the party appears personally, the party, has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

“(3) Subject to this Act, a person directed to attend or appearing before the Authority as a witness has the same protection, and is subject to the same liabilities, as a witness in proceedings in the Supreme Court.

Fees

“84R. (1) The Minister may, by notice in the *Gazette*, determine the fees payable for applications to the Review Authority.

“(2) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Notice of events

10. Section 85 of the Principal Act is amended—

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

“(1) Where an employer is aware of the occurrence of any of the following events at or near the workplace:

- (a) the death of a person;

- (b) an injury to a person other than an employee of the employer;
- (c) an injury to an employee as a result of which the employee is incapacitated for work for the prescribed period;
- (d) a dangerous occurrence;

and the event is attributable to the conduct of the employer's undertaking at the workplace, the employer shall, in accordance with the regulations, give notice of the event to the Registrar.”; and

- (b) by omitting from subsection (3) “(1) (a) (iii)” and substituting “(1) (c)”.

Regulations

11. Section 97 of the Principal Act is amended—

- (a) by inserting in paragraph (2) (u) “deputy health and safety representatives” after “health and safety representatives,”;
- (b) by inserting in subparagraphs (2) (u) (iii) and (iv) “, deputy health and safety representatives” after “health and safety representatives”.

NOTE

1. Act No. 18, 1989.

[Presentation speech made in Assembly on 14 March 1991.]