



AUSTRALIAN CAPITAL TERRITORY

Occupational Health and Safety (Amendment) Act (No. 2) 1999

No. 82 of 1999

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AUSTRALIAN CAPITAL TERRITORY

Occupational Health and Safety (Amendment) Act (No. 2) 1999

No. 82 of 1999

An Act to amend the *Occupational Health and Safety Act 1989* and for related purposes

[Notified in ACT Gazette S65: 23 December 1999]

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

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Occupational Health and Safety (Amendment) Act (No. 2) 1999*.

2 Commencement

- (1) Sections 1, 2 and 3 commence on the day this Act is notified in the *Gazette*.
- (2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.
- (3) However, if a provision has not commenced within 6 months after the day mentioned in subsection (1), it commences on the first day after that period.

3 Principal Act

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

PART 2—AMENDMENTS OF PRINCIPAL ACT

4 Interpretation

Section 5 of the Principal Act is amended—

- (a) by omitting from subsection (1) the definitions of “associated law” and “designated work group” and substituting the following definitions:

“ ‘associated law’ means any of the following laws:

- (a) the *Dangerous Goods Act 1984*;
- (b) the *Fuels Control Act 1979*;
- (c) the *Machinery Act 1949*;
- (d) the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth);
- (e) the *Scaffolding and Lifts Act 1957*;
- (f) the *Workers’ Compensation Act 1951*;
- (g) the *Workers’ Compensation Supplementation Fund Act 1980*;
- (h) any other Act or subordinate law, or provision of an Act or subordinate law, prescribed under the regulations.

‘designated work group’ means—

- (a) a group of employees established as a designated work group under subsection 37 (1) or (2) or 38 (1) or (2); and
 - (b) such a group as varied under subsection 37 (4) or 38 (3).”; and
- (b) by omitting from subsection (1) the definition of “Registrar”; and
- (c) by inserting in subsection (1) the following definitions:

“ ‘appointed member’ means a member appointed under paragraph 13 (1) (a), (b) or (c);

‘commissioner’ means the Occupational Health and Safety Commissioner appointed under section 25A;”.

5 Membership

Section 13 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (b) “and”; and
- (b) by omitting paragraph (1) (c) and substituting the following paragraphs:
 - “(c) 3 other members appointed by the Minister; and
 - (d) the commissioner.”.

6 Terms of appointment

Section 14 of the Principal Act is amended—

- (a) by omitting from subsection (1) “members” (first occurring) and substituting “appointed members”; and
- (b) by omitting from subsection (2) “A member” and substituting “An appointed member”.

7 Resignation

Section 20 of the Principal Act is amended by omitting “A member” and substituting “An appointed member”.

8 Termination of appointment

Section 21 of the Principal Act is amended by omitting from subsections (1) and (3) “a member” and substituting “an appointed member”.

9 Acting members

Section 22 of the Principal Act is amended by omitting from subsection (1) “a member” and substituting “an appointed member”.

10 Insertion

After Part 2 of the Principal Act the following Part is inserted:

**“PART 2A—OCCUPATIONAL HEALTH AND SAFETY
COMMISSIONER**

“25A. Appointment

“(1) There shall be an Occupational Health and Safety Commissioner, who shall be appointed in writing by the Executive.

“(2) The commissioner holds office, subject to this Part, for the period (not exceeding 7 years) specified in the instrument of appointment, and is eligible for reappointment.

“25B. Functions

“(1) In addition to any other functions conferred on the commissioner by or under this Act, the commissioner has the following functions:

- (a) to promote an understanding and acceptance of, and compliance with, this Act and the associated laws;
- (b) to undertake research, and develop educational and other programs, for the purpose of promoting occupational health, safety and welfare;
- (c) to review the laws of the Territory for the purpose of ascertaining whether any of those laws is inconsistent with this Act, and to report to the Minister on the results of the review;
- (d) when requested to do so by the Minister—to examine any proposed law for the purpose of ascertaining whether the proposed law, if enacted, would be inconsistent with this Act, and to report to the Minister on the results of the examination;
- (e) to advise the Minister on any matter relevant to the operation of this Act;
- (f) such functions (if any) as are conferred on the commissioner by or under any other law of the Territory.

“(2) The commissioner has power to do all things that are necessary or convenient to be done in relation to the performance of the commissioner’s functions.

“25C. Resignation

The commissioner may resign by writing given to the Minister.

“25D. Retirement

The Executive may, with the consent of the commissioner, retire the commissioner on the ground of physical or mental incapacity.

“25E. Removal of commissioner

“(1) The Executive may remove the commissioner from office—

- (a) if an address praying for his or her removal on the ground of misbehaviour or physical or mental incapacity has been presented to the Executive by the Legislative Assembly; or

- (b) if the commissioner is absent from duty, except on leave granted by the Minister, for 14 consecutive days or for 28 days in any 12 months.

“(2) The Executive shall remove the commissioner from office if the commissioner—

- (a) becomes bankrupt;
- (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
- (c) compounds with his or her creditors; or
- (d) makes an assignment of his or her remuneration for the benefit of his or her creditors.

“(3) The commissioner shall not be removed from office except as provided by this section or section 25F.

“25F. Suspension and removal of commissioner

“(1) The Executive may suspend the commissioner from office on the ground of misbehaviour or physical or mental incapacity.

“(2) Where the Executive suspends the commissioner from office, the Minister shall cause a statement of the grounds of the suspension to be laid before the Legislative Assembly within 7 sitting days after the suspension.

“(3) Where a statement referred to in subsection (2) has been laid before the Legislative Assembly, the Legislative Assembly may, within 15 sitting days after the day on which the statement has been laid before it, by resolution, declare that the commissioner should be removed from office.

“(4) If the Legislative Assembly passes a resolution referred to in subsection (3), the Executive shall remove the commissioner from office.

“(5) If, at the end of 15 sitting days after the day on which the statement has been laid before it, the Legislative Assembly has not passed such a resolution, the suspension terminates.

“(6) The commissioner may not be suspended from office except as provided by this section.

“25G. Ministerial directions

“(1) The Minister may, by instrument, give directions to the commissioner in relation to the performance of his or her functions, either generally or in relation to a particular matter.

“(2) The commissioner shall comply with a direction given under subsection (1).

“(3) The Minister shall cause a copy of any direction under subsection (1) to be tabled in the Legislative Assembly within 5 sitting days after it is given to the commissioner.

“(4) The Territory must pay to the authority the reasonable costs of complying with a direction.

“(5) The amount payable is an amount agreed between the authority and the Minister or, failing agreement, determined by the Chief Minister.

“25H. **Acting commissioner**

“(1) The Minister may appoint a person to act as commissioner—

- (a) during a vacancy in the office of commissioner (whether or not an appointment has previously been made to that office); or
- (b) during any period, or during all periods, when the commissioner is or is expected to be absent from duty or from the Territory or is, for any reason, unable to perform the duties of office;

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

“(2) Anything done in good faith by or in relation to a person purporting to act in the office of commissioner is not in doubt merely because—

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

“25I. **Staff**

“(1) The staff assisting the commissioner shall be employed under the *Public Sector Management Act 1994*.

“(2) The *Public Sector Management Act 1994* applies in relation to the management of the staff assisting the commissioner.

“(3) The commissioner may make an arrangement with a chief executive who has control of an administrative unit or other appropriate person for the use of the services of the staff or facilities of an administrative unit or of a Territory authority.

“25J. Delegation

The commissioner may, in writing, delegate to a member of the staff assisting the commissioner any of the commissioner’s powers or functions under a law of the Territory, other than the commissioner’s powers under section 83.”.

11 Repeal

Sections 69 and 75 of the Principal Act are repealed.

12 Inconsistency with associated laws

Section 96 is amended by adding at the end the following new subsection:

“(2) This section does not apply in relation to an associated law that is a law of the Commonwealth.”.

13 Insertion

After section 96A of the Principal Act the following sections are inserted:

“96B. Information to be included in annual report

A report prepared by the commissioner, or information provided by the commissioner, under section 8 of the *Annual Reports (Government Agencies) Act 1995* shall include—

- (a) particulars of any direction given by the Minister under section 25G during the period to which the report or information relates; and
- (b) if, during the period to which the report or information relates, effect has been given to any direction under section 25H (whether the direction was received during that period or during an earlier period)—a statement by the commissioner indicating how the direction was given effect to.

“96C. Quarterly reports

“(1) The authority must, as soon as practicable after the end of each quarter, prepare and give to the Minister a report on the operations of this Act and of the authority during that quarter.

“(2) The Minister must cause a copy of a quarterly report to be laid before the Legislative Assembly within 6 sitting days after he or she receives the report.

“(3) In this section—

‘quarter’ means a period of 3 months commencing on 1 July, 1 October, 1 January or 1 April in a financial year.”.

14 Insertion

The Principal Act is amended by adding at the end the following Part:

“PART 9—TRANSITIONAL PROVISIONS

“98. Definition

In this Part—

‘registrar’ means the registrar within the meaning of the *Occupational Health and Safety Act 1989* as in force immediately before the commencement of this section.

“99. Acts of registrar

Subject to this Part, anything done or not done under a law of the Territory by, on behalf of, or in relation to, the registrar before the commencement of this section shall be taken on and after that day to have been done or not done by, on behalf of, or in relation to, the commissioner.

“100. Time periods

The *Occupational Health and Safety (Amendment) Act (No. 2) 1999* does not affect a period of time that commenced to run before the commencement of this section.

“101. Service on registrar

A document or other thing given to, served on, or lodged with, the registrar before the commencement of this section shall be taken on and after that day to have been given to, served on, or lodged with, the commissioner when it was given to, served on, or lodged with the registrar.

“102. Instruments

An instrument made, granted or issued by the registrar before the commencement of this section and in force immediately before that day has effect on and after that day (except in relation to matters that occurred before that day) as if it had been made, granted or issued by the commissioner.

“103. References in instruments

A reference to the registrar in any instrument made, granted or issued before the commencement of this section and in force immediately before that day has effect on and after that day as if the reference were (except in relation to matters that occurred before that day) a reference to the commissioner.

“104. Contracts and agreements

A contract or agreement entered into by the registrar and in force immediately before the commencement of this section continues in force on and after that day as if—

- (a) the commissioner were substituted for the registrar as a party to the contract or agreement; and
- (b) any reference in the contract or agreement to the registrar were (except in relation to matters that occurred before that day) a reference to the commissioner.

“105. Rights and liabilities

The rights, privileges, obligations and liabilities of the registrar existing immediately before the commencement of this section are, on and after that day, the rights, privileges, obligations and liabilities of the commissioner.

“106. Legal proceedings

“(1) Where, before the commencement of this section, a cause of action by or against the registrar had arisen but proceedings in respect of that cause of action had not been instituted before that day, such proceedings may be instituted by or against the commissioner.

“(2) Where, before the commencement of this section, proceedings had been instituted by or against the registrar in a court, tribunal, commission or other body but those proceedings had not been completed before that day, those proceedings may be continued by or against the commissioner.

“(3) In proceedings instituted or continued under this section, each party to the proceedings has the same rights, and is subject to the same obligations, as if the commissioner were the registrar, and the proceedings had been instituted or continued by or against the registrar.

“107. Certificates as evidence

A certificate issued by the registrar and in force immediately before the commencement of this section is, on and after that day (except in relation to matters that occurred before that day), evidence of the matters stated in the certificate as if it had been issued by the commissioner.

“108. Modification of operation of this Part

“(1) The regulations may modify this Part to make provision with respect to any matter that is not already, or is not adequately, dealt with in this Part.

“(2) A regulation that is expressed to modify the operation of this Part may take the form of a change to the text of this Part (whether by omission, insertion, addition or substitution) so that this Part operates as modified but the regulation does not amend its text.

“(3) A regulation made under this section ceases to have effect 6 months after the day on which it commences.”.

15 Schedule

The Schedule to the Principal Act is amended—

- (a) by omitting from the heading to Part 2 “Registrar’s” and substituting “commissioner’s”; and
- (b) by omitting from Item 10 of Part 2 “Registrar” and substituting “commissioner”.

PART 3—CONSEQUENTIAL AMENDMENTS

16 Consequential amendments

(1) The Principal Act is further amended as set out in Part 1 of the Schedule.

(2) The Acts specified in Part 2 of the Schedule are amended as set out in that Part.

(3) The *Occupational Health and Safety Regulations* are amended as set out in Part 3 of the Schedule.

SCHEDULE

(See s 16)

PART 1—FURTHER AMENDMENTS OF PRINCIPAL ACT

The following provisions are amended by omitting “Registrar” (wherever occurring) and substituting “commissioner”:

Subsections 38 (1), (2), (3) and (5), 39 (2), (3) and (4) and 41 (2) and (3), paragraph 41 (4) (a), subsections 48 (1), (3), (4) and (5), paragraph 51 (8) (a), subsections 54 (2), 55 (1) and (3) and 56 (3) and (4), paragraph 70 (3) (b), subsections 71 (1) and (2), paragraphs 71 (4) (a) and (b), sections 74 and 80C, subsections 81 (2), 82 (3), 83 (1), (2), (5) and (6), 85 (1), 86 (1), 87 (5) and (6).

PART 2—AMENDMENTS OF OTHER ACTS

Public Sector Management Act 1994

Schedule 3 (paragraph 40 (4) (c), subsection 43 (3), sections 62A and 71A and subsections 91B (1), (2) and (3) of the *Occupational Health and Safety Act 1989* as modified)—

Omit “Registrar”, substitute “commissioner”.

Schedule 3 (heading to Part 2 of the Schedule to the *Occupational Health and Safety Act 1989* as modified)—

Omit “Registrar’s”, substitute “commissioner’s”.

Workers’ Compensation Act 1951

Section 26G (definition of “Registrar”)—

Omit the definition.

Section 26G—

Insert the following definition:

“ ‘commissioner’ means the Occupational Health and Safety Commissioner;”.

Further amendments—

The following provisions are amended by omitting “Registrar” (wherever occurring) and substituting “commissioner”:

Section 26G (definition of “relevant period for payment”, paragraph (c)), subsections 26H (2), 26J (2), 26L (1), 26M (1), (2), (4), (5) and (6), 26N (1) and (3), 26 R (1) and (2).

SCHEDULE—continued

PART 3—AMENDMENTS OF OCCUPATIONAL HEALTH AND SAFETY REGULATIONS

The following provisions are amended by omitting “Registrar” (wherever occurring) and substituting “commissioner”:

Subregulations 6 (2), (3) and (4), regulation 7, subregulations 8 (2) and 9 (1).

NOTES

Principal Act

1. Reprinted as at 31 December 1998. See also Act No. 24, 1999.

Section heading

On the day on which the *Occupational Health and Safety Act 1989* is amended by this Act, the heading to section 38 of the Principal Act is altered as set out in the following table:

Section	Alteration
38	Omit “ Registrar ”, substitute “ commissioner ”.

[Presentation speech made in Assembly on 30 June 1999]