



Australian Capital Territory

# Occupational Health and Safety (Regulatory Services) Legislation Amendment Act 2007

A2007-37

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Australian Capital Territory

# Occupational Health and Safety (Regulatory Services) Legislation Amendment Act 2007

**A2007-37**

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

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

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J2006-850

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## **1 Name of Act**

This Act is the *Occupational Health and Safety (Regulatory Services) Legislation Amendment Act 2007*.

## **2 Commencement**

This Act commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

## **3 Legislation amended**

This Act amends the *Occupational Health and Safety Act 1989*.

*Note* This Act also amends the following legislation (see sch 2):

- *Crimes Act 1900*
- *Magistrates Court (Occupational Health and Safety Infringement Notices) Regulation 2004*
- *Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006*
- *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000*
- *Occupational Health and Safety Regulation 1991*
- *Public Sector Management Act 1994*.

## **4 Functions Section 27 (2)**

*substitute*

- (2) In exercising a function mentioned in subsection (1) (a) to (e), neither the commissioner nor a member of the staff assisting the commissioner is subject to direction by the chief executive.

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**5 Staff  
Section 34 (2) and (3)**

*omit*

**6 Section 35**

*substitute*

**35 Delegation by commissioner**

The commissioner may delegate the commissioner's functions under a Territory law to a member of the staff assisting the commissioner.

*Note* For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

**7 Meaning of *inspector* in div 8.2  
Section 183**

*omit*

**8 Internally reviewable decisions, reviewable decisions and eligible people  
Section 184 (c) and (d)**

*substitute*

- (c) a decision of the chief executive mentioned in schedule 1, part 1.2 is a ***reviewable decision***; and
- (d) a person mentioned in schedule 1, part 1.2 in relation to a reviewable decision is an ***eligible person*** for the decision.

**9 Inspectors  
Section 201 (1)**

*omit*

**10 Identity cards  
Section 202 (1)**

*omit*

**11 New section 203A**

*in part 9, insert*

**203A Ministerial directions to chief executive**

- (1) The Minister may, in writing, give directions to the chief executive in relation to the exercise of the chief executive's functions, either generally or in relation to a particular matter.
- (2) The chief executive must comply with a direction given under subsection (1).
- (3) The Minister must present a copy of any direction under subsection (1) to the Legislative Assembly within 6 sitting days after the day it is given to the chief executive.

**12 Section 227**

*substitute*

**227 Chief executive's annual report**

A report prepared by the chief executive under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include—

- (a) a copy of any direction given under section 203A (Ministerial directions to chief executive) during the year; and
- (b) a statement about action taken during the year to give effect to any direction given (whether before or during the year) under that section.

*Note* **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

**227A Additional reports by chief executive**

- (1) In March of each year, the chief executive must prepare and give to the Minister a report on the operation of occupational health and safety matters for which the chief executive is responsible under this Act during the period of 6 months commencing on the previous 1 July.
- (2) The Minister must present the report to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.

**13 Section 228**

*substitute*

**228 Commissioner's half-yearly reports**

- (1) The commissioner must, as soon as practicable after the end of each half-year, prepare and give to the Minister a report on the commissioner's operations during that half-year.
- (2) A report prepared under subsection (1) must include—
  - (a) a copy of any direction given under section 32 (Ministerial directions) during the half-year; and
  - (b) a statement about action taken during the half-year to give effect to any direction given (whether before or during the half-year) under that section.
- (3) The Minister must present a copy of a report prepared under subsection (1) to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.
- (4) In this section:

***half-year*** means a period of 6 months commencing on 1 July or 1 January in a year.

**14 Schedule 1, parts 1.2 and 1.3***substitute***Part 1.2 Reviewable decisions of chief executive**

<b>column 1 item</b>	<b>column 2 decision</b>	<b>column 3 eligible person</b>
1	establishing a designated work group under s 54 (1) or (2)	(a) an involved union in relation to the designated work group; or (b) an employer whose employee is in the designated work group
2	varying a designated work group under s 54 (3)	(a) an involved union in relation to the designated work group; or (b) an employer whose employee is in the designated work group
3	refusing to declare that s 55 applies to a site	the applicant for the declaration
4	disqualifying a health and safety representative under s 64 (1)	the person disqualified
5	disqualifying a person under s 76 (1)	the person disqualified
6	refusing to revoke a disqualification under s 76 (5)	the person disqualified



<b>column 1 item</b>	<b>column 2 decision</b>	<b>column 3 eligible person</b>
7	refusing to reinspect a situation or circumstances under s 162	the relevant responsible person for the prohibition notice
8	refusing to accept a safety undertaking under s 170	the person who gave the undertaking
9	refusing to agree to the relevant person for an enforceable undertaking withdrawing from, or amending, the undertaking under s 171	the relevant person for the undertaking
10	ending, or refusing to end, an enforceable undertaking under s 172	the relevant person for the undertaking
11	refusing to allow a longer period to make an application under s 185 for review of a decision	an eligible person for the decision
12	a decision on reconsideration under s 186 (2)	the applicant for reconsideration

**15 Dictionary, definition of *inspector***

*substitute*

*inspector* means an inspector under section 201.

**16 Further amendments, mentions of *commissioner***

*omit*

commissioner

*substitute*

chief executive

*in*

- section 54 heading
- section 54 (1), (2), (3) and (5)
- section 55 (2), (3) and (4)
- section 57 (2), (3) and (4)
- section 64 (1), (3), (4) and (5)
- section 67 (8)
- section 70 (2)
- section 71 (1) and (3)
- section 72 (3) and (4)
- section 162 (2)
- section 163 (3)
- section 185 (1) and (2)
- section 186 (2), (3) and (4)
- section 204 (1)
- section 205 (1)
- section 206 (5) and (6)

## Schedule 1 Occupational Health and Safety Act 1989—technical amendments

(see s 3)

### [1.1] Section 26

*substitute*

#### 26 Appointment of commissioner

- (1) The Executive must appoint a person to be the Occupational Health and Safety Commissioner.

*Note* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

- (2) The commissioner must not be appointed for more than 7 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def of *appoint*).

#### Explanatory note

This amendment remakes the section to bring it into line with current drafting practice.

Existing subsection (1) is amended by omitting a reference to ‘in writing’ because the Legislation Act, section 216 provides that an acting appointment must be made, or evidenced, by writing signed by the appointer. Standard appointment notes are also added.

Existing subsection (2) is amended by omitting the reference to holding office for the period specified in the instrument of appointment. This is unnecessary because the Legislation Act, section 206 (2) provides that if a law provides for a maximum period of appointment, the instrument of appointment must state the period for which the appointment is made.

Existing subsection (2) is also amended by omitting the reference to eligibility for reappointment. This is unnecessary because the Legislation Act, section 208 provides that the power to appoint includes the power to reappoint. A standard note about reappointment is added.

**[1.2] Section 27 (1), new note**

*insert*

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196 (1) and dict, pt 1, defs of *entity* and *function*).

**Explanatory note**

This amendment adds a standard note about the powers of an entity and is consequential on the omission of section 27 (2) by another amendment.

**[1.3] Section 30 (2)**

*substitute*

- (2) The Executive must remove the commissioner from office if the commissioner becomes bankrupt or executes a personal insolvency agreement.

**Explanatory note**

This amendment brings the paragraph into line with the concept of personal insolvency agreement under the *Bankruptcy Act 1966* (Cwlth). Under that Act, personal insolvency agreements have replaced the concepts of deed of assignment, deed of arrangement and composition.

**[1.4] Section 33**

*omit*

**Explanatory note**

This amendment omits an unnecessary provision about acting appointments.

Section 33 (1) is about the circumstances of when an acting appointment may be made. This provision is unnecessary because the Legislation Act, section 209 provides the circumstances in which acting appointments may be made, including during any period when an appointee can not for any reason exercise functions of the position.

Subsection 33 (2) provides that anything done by or in relation to an acting member is not invalid merely because the occasion for the appointment had not arisen, there was a defect or irregularity in relation to the appointment, the appointment had ceased to have effect or the occasion to act had not arisen or had ceased. This provision is unnecessary because the Legislation Act, section 225 is to the same effect.

**[1.5] Section 61 (1) (a)**

*substitute*

- (a) on being requested to do so by the representative, consult the representative on the implementation of changes at any workplace where some or all of the employees in the group perform work for the employer, if the changes may affect the health or safety at work of the employees; and

**Explanatory note**

This amendment brings the subsection into line with current drafting practice.

**[1.6] Section 65**

*substitute*

**65 Liability**

No civil or criminal proceedings lie against a health and safety representative in relation to any honest act or omission in connection with the representative's functions under this Act.

**Explanatory note**

This amendment brings the subsection more closely into line with current drafting practice. In particular, it omits a reference to 'good faith' and substitutes 'honest', which is the current drafting term.

**[1.7] Section 86 (1), new note**

*insert*

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196 (1) and dict, pt 1, defs of *entity* and *function*).

**Explanatory note**

This amendment adds a standard note about the powers of an entity and is consequential on the omission of section 86 (2) by another amendment.

**[1.8] Section 86 (2)**

*omit*

**Explanatory note**

This amendment omits an unnecessary provision. It states that 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. This is unnecessary because the Legislation Act, section 196 provides that a provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function. A note to that effect is added to section 86 (1) by another amendment.

**[1.9] Section 88**

*substitute*

**88 Liability**

No civil or criminal proceedings lie against a member of a health and safety committee in relation to any honest act or omission in connection with the representative's functions under this Act.

**Explanatory note**

This amendment brings the section more closely into line with current drafting practice. In particular, it omits a reference to 'good faith' and substitutes 'honest', which is the current drafting term.

**[1.10] Dictionary, definition of *involved union*, paragraph (a)**

*substitute*

- (a) in relation to an employee of an employer—a registered union of which the employee is a member, if the employee is qualified to be a member because of the work that the employee performs as an employee of the employer; or

**Explanatory note**

This amendment brings the paragraph into line with current drafting practice.

## **Schedule 2 Consequential amendments**

(see s 3)

### **Part 2.1 Crimes Act 1900**

**[2.1] Section 49A, definition of *commissioner for OH&S***

*omit*

**[2.2] Section 49E (7)**

*omit*

commissioner for OH&S, by order authorise the commissioner

*substitute*

chief executive for the *Occupational Health and Safety Act 1989*, by order authorise the chief executive

**[2.3] Section 49E (8)**

*omit*

commissioner

*substitute*

chief executive



## **Part 2.2**                      **Magistrates Court (Occupational Health and Safety Infringement Notices) Regulation 2004**

### **[2.4]      Section 6**

*omit*

OH&S commissioner

*substitute*

chief executive for the *Occupational Health and Safety Act 1989*

### **[2.5]      Section 12, note**

*omit*

## **Part 2.3**                      **Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006**

### **[2.6]      Section 6**

*omit*

commissioner

*substitute*

chief executive for the Workers Compensation Act

**[2.7] Dictionary, note 2**

*omit*

- OH&S commissioner

**[2.8] Dictionary, definition of *commissioner***

*omit*

**Part 2.4 Occupational Health and Safety  
(Certification of Plant Users and  
Operators) Regulation 2000**

**[2.9] Mentions of *commissioner***

*omit*

commissioner

*substitute*

chief executive

*in*

- section 6 (1)
- section 10 (1)
- section 11 (1)
- section 12 (1), (2) and (3)
- section 19
- section 20 (1)
- section 21 (1), (2) and (3)
- section 27 (1), (2), (3), (4), (6), (7), (8) and (9)
- section 28 (1), (3), (4) and (5)
- section 29
- section 29A (1) and (2)

- section 31
- section 32 (1), (2) and (4)
- section 33
- section 34 (1) and (2)
- schedule 3 heading

**[2.10] Dictionary, note 3, dot point**

*substitute*

- inspector.

## **Part 2.5 Occupational Health and Safety Regulation 1991**

**[2.11] Mentions of *commissioner***

*omit*

commissioner

*substitute*

chief executive

*in*

- section 6 (2) and (3)
- section 7
- section 8 (2)
- section 9 (1)
- section 11 (1) and (2)

**Part 2.6** **Public Sector Management  
Act 1994**

**[2.12] Section 25 (2) (b), example 4**

*omit*

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 27 September 2007.

**2 Notification**

Notified under the Legislation Act on 22 November 2007.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Occupational Health and Safety (Regulatory Services) Legislation Amendment Bill 2007, which was passed by the Legislative Assembly on 15 November 2007.

Clerk of the Legislative Assembly

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