

2007

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Occupational Health and Safety (Regulatory Services) Legislation Amendment Bill 2007

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Occupational Health and Safety (Regulatory Services) Legislation Amendment Bill 2007

A Bill for

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

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

J2006-850

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **1 Name of Act**

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

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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

8 **3 Legislation amended**

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

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

- 11 • *Crimes Act 1900*
- 12 • *Magistrates Court (Occupational Health and Safety Infringement*
13 *Notices) Regulation 2004*
- 14 • *Magistrates Court (Workers Compensation Infringement Notices)*
15 *Regulation 2006*
- 16 • *Occupational Health and Safety (Certification of Plant Users and*
17 *Operators) Regulation 2000*
- 18 • *Occupational Health and Safety Regulation 1991*
- 19 • *Public Sector Management Act 1994.*

20 **4 Functions**
21 **Section 27 (2)**

22 *substitute*

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

1	5	Staff
2		Section 34 (2) and (3)
3		<i>omit</i>
4	6	Section 35
5		<i>substitute</i>
6	35	Delegation by commissioner
7		The commissioner may delegate the commissioner's functions under
8		a Territory law to a member of the staff assisting the commissioner.
9		<i>Note</i> For the making of delegations and the exercise of delegated functions,
10		see the Legislation Act, pt 19.4.
11	7	Meaning of <i>inspector</i> in div 8.2
12		Section 183
13		<i>omit</i>
14	8	Internally reviewable decisions, reviewable decisions and
15		eligible people
16		Section 184 (c) and (d)
17		<i>substitute</i>
18		(c) a decision of the chief executive mentioned in schedule 1,
19		part 1.2 is a <i>reviewable decision</i> ; and
20		(d) a person mentioned in schedule 1, part 1.2 in relation to a
21		reviewable decision is an <i>eligible person</i> for the decision.
22	9	Inspectors
23		Section 201 (1)
24		<i>omit</i>

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

3 *omit*

4 **11 New section 203A**

5 *in part 9, insert*

6 **203A Ministerial directions to chief executive**

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

15 **12 Section 227**

16 *substitute*

17 **227 Chief executive's annual report**

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

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

25 *Note* **Financial year** has an extended meaning in the *Annual Reports*
26 *(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**

column 1 item	column 2 decision	column 3 eligible person
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

column 1 item	column 2 decision	column 3 eligible person
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

1 **15 Dictionary, definition of *inspector***

2 *substitute*

3 *inspector* means an inspector under section 201.

4 **16 Further amendments, mentions of *commissioner***

5 *omit*

6 commissioner

7 *substitute*

8 chief executive

9 *in*

- 10 • section 54 heading
- 11 • section 54 (1), (2), (3) and (5)
- 12 • section 55 (2), (3) and (4)
- 13 • section 57 (2), (3) and (4)
- 14 • section 64 (1), (3), (4) and (5)
- 15 • section 67 (8)
- 16 • section 70 (2)
- 17 • section 71 (1) and (3)
- 18 • section 72 (3) and (4)
- 19 • section 162 (2)
- 20 • section 163 (3)
- 21 • section 185 (1) and (2)
- 22 • section 186 (2), (3) and (4)
- 23 • section 204 (1)
- 24 • section 205 (1)
- 25 • section 206 (5) and (6)

1 **Schedule 1 Occupational Health and Safety**
2 **Act 1989—technical**
3 **amendments**

4 (see s 3)

5 **[1.1] Section 26**

6 *substitute*

7 **26 Appointment of commissioner**

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

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

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

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

16 **Explanatory note**

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

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

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

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

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

2 *insert*

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

7 **Explanatory note**

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

10 **[1.3] Section 30 (2)**

11 *substitute*

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

15 **Explanatory note**

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

20 **[1.4] Section 33**

21 *omit*

22 **Explanatory note**

23 This amendment omits an unnecessary provision about acting appointments.

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

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

6 **[1.5] Section 61 (1) (a)**

7 *substitute*

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

13 **Explanatory note**

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

15 **[1.6] Section 65**

16 *substitute*

17 **65 Liability**

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

21 **Explanatory note**

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

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

2 *insert*

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

7 **Explanatory note**

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

10 **[1.8] Section 86 (2)**

11 *omit*

12 **Explanatory note**

13 This amendment omits an unnecessary provision. It states that the commissioner has power to
14 do all things that are necessary or convenient to be done in relation to the performance of the
15 commissioner's functions. This is unnecessary because the Legislation Act, section 196
16 provides that a provision of a law that gives an entity (including a person) a function also gives
17 the entity powers necessary and convenient to exercise the function. A note to that effect is
18 added to section 86 (1) by another amendment.

19 **[1.9] Section 88**

20 *substitute*

21 **88 Liability**

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

25 **Explanatory note**

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

1 **[1.10] Dictionary, definition of *involved union*, paragraph (a)**

2 *substitute*

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

7 **Explanatory note**

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

1 **Schedule 2** Consequential amendments
2 (see s 3)

3 **Part 2.1** Crimes Act 1900

4 **[2.1]** Section 49A, definition of *commissioner for OH&S*
5 *omit*

6 **[2.2]** Section 49E (7)
7 *omit*
8 commissioner for OH&S, by order authorise the commissioner
9 *substitute*
10 chief executive for the *Occupational Health and Safety Act 1989*, by
11 order authorise the chief executive

12 **[2.3]** Section 49E (8)
13 *omit*
14 commissioner
15 *substitute*
16 chief executive

1 **Part 2.2** **Magistrates Court (Occupational**
2 **Health and Safety Infringement**
3 **Notices) Regulation 2004**

4 **[2.4] Section 6**

5 *omit*

6 OH&S commissioner

7 *substitute*

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

9 **[2.5] Section 12, note**

10 *omit*

11 **Part 2.3** **Magistrates Court (Workers**
12 **Compensation Infringement**
13 **Notices) Regulation 2006**

14 **[2.6] Section 6**

15 *omit*

16 commissioner

17 *substitute*

18 chief executive for the Workers Compensation Act

Amendment [2.7]

1 **[2.7] Dictionary, note 2**

2 *omit*

- 3 • OH&S commissioner

4 **[2.8] Dictionary, definition of *commissioner***

5 *omit*

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

9 **[2.9] Mentions of *commissioner***

10 *omit*

11 commissioner

12 *substitute*

13 chief executive

14 *in*

- 15 • section 6 (1)
16 • section 10 (1)
17 • section 11 (1)
18 • section 12 (1), (2) and (3)
19 • section 19
20 • section 20 (1)
21 • section 21 (1), (2) and (3)
22 • section 27 (1), (2), (3), (4), (6), (7), (8) and (9)
23 • section 28 (1), (3), (4) and (5)
24 • section 29
25 • section 29A (1) and (2)

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

6 **[2.10] Dictionary, note 3, dot point**

7 *substitute*

- 8 • inspector.

9 **Part 2.5 Occupational Health and Safety**
10 **Regulation 1991**

11 **[2.11] Mentions of *commissioner***

12 *omit*

13 commissioner

14 *substitute*

15 chief executive

16 *in*

- 17 • section 6 (2) and (3)
18 • section 7
19 • section 8 (2)
20 • section 9 (1)
21 • section 11 (1) and (2)

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

3 **[2.12] Section 25 (2) (b), example 4**

4 *omit*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2007.

2 Notification

Notified under the Legislation Act on 2007.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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