

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**OCCUPATIONAL HEALTH AND SAFETY BILL (AMENDMENT)  
BILL (No. 2) 1999**

**EXPLANATORY MEMORANDUM**

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**Wayne Berry MLA**

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**OUTLINE**

The *Occupational Health and Safety Act 1989* has been in operation for 10 years. During that time we have seen an improvement in occupational health and safety in the workplace as well as a fall in workers' compensation premiums.

The establishment of a statutory authority with responsibility for occupational health and safety matters is recognised as a way of strengthening and reinforcing measures to make workplaces safer. For this reason the Labor Party made a commitment to establish a statutory authority.

This Bill seeks to implement that commitment by amending the *Occupational Health and Safety Act 1989* to establish the Statutory Office of Occupational Health and Safety Commissioner.

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**PART 1 - PRELIMINARY**

**Clauses 1 and 2** are formal requirements. Clause 1 refers to the short title of the Bill and clause 2 sets out the commencement arrangements.

**Clause 3** defines the "Principal Act" as the *Occupational Health and Safety Act 1989*.

**PART 2 - AMENDMENTS OF THE PRINCIPAL ACT**

**Clause 4** amends clause 5 (Interpretation) of the Principal Act to replace the definition of a "designated work group", to remove the definition of the "registrar" and to insert two new definitions - for "appointed member" and "commissioner".

**Clause 5** changes the structure of the Occupational Health and Safety Council, currently consisting of 12 members, to remove one member appointed by the Minister and replace him or her with the commissioner.

**Clause 6** replaces the current references in clause 14 (Terms of appointment) to "member" with the newly defined "appointed member" of the Council.

**Clause 7** replaces the current references in clause 20 (Resignation) to "member" with the newly defined "appointed member".

**Clause 8** makes the necessary changes in subsections 21 (1) and (3) (Termination of appointment) to remove reference to "a member" and replace with "an appointed member".

**Clause 9** amends section 22 (Acting members) to replace the reference to "member" with "appointed member"

**Clause 10** inserts a new part into the Principal Act to establish office of Occupational Health and Safety Commissioner. The part includes:

- Appointment of the commissioner by instrument and not exceeding 7 years. The commissioner is eligible for reappointment;
- Functions which are to:
  - (a) promote an understanding of the Act, acceptance of and compliance with the Act;

- (b) undertake research, developing educational and other programs to promote occupational health and safety and welfare;
  - (c) review the laws of the Territory to ascertain whether any of those laws is inconsistent with the Principal Act;
  - (d) examine any proposed law to ascertain any inconsistencies with the Principal Act;
  - (e) advise the Minister on the operation of the Principal Act;
  - (f) any other functions conferred by or under any other Territory law; and
- any other functions conferred by or under the Principal Act;
- Resignation in writing to the Minister;
  - Retirement – the Executive can retire the commissioner on the ground of physical or mental incapacity (only with the consent of the commissioner);
  - Removal of the commissioner – the Executive can remove the commissioner :
    - (1) By a motion from the Assembly for an address to the Executive requesting the removal of the commissioner on the ground of misbehaviour or physical or mental incapacity or if the commissioner is absent from duty without leave granted by the Minister for 14 consecutive days or 28 days in any 12 months;
    - (2) The Executive must remove the commissioner if the commissioner is bankrupt; seeks benefit under any law for the relief of bankrupt or insolvent debtors; compounds with his or her creditors; or makes an assignment of his or her remuneration for the benefit of his or her creditors;
    - (3) Suspension and removal of commissioner – the Executive may suspend the commissioner on the ground of misbehaviour or physical or mental incapacity. Having done so, the Minister must table a statement of reasons in the Legislative Assembly within 7 sitting days. The Assembly has 15 sitting days in which to declare the commissioner be removed from office. If a resolution is passed the Executive must remove the commissioner from office. If, at the end of 15 sitting days after the tabling of the statement, the Assembly has not passed the resolution, the suspension terminates.
  - Ministerial directions - the Minister may use an instrument to issue directions to the commissioner in relation to the performance of his or her functions which the commissioner must comply with.
- Any direction must be tabled in the Assembly within 5 sitting days.
- Acting Commissioner - the Minister can appoint an acting commissioner :
    - during a vacancy in the office of the commissioner; or
    - during any or all periods when the commissioner is expected to be absent from duty or from the Territory or is unable to perform the duties of the office.

A person cannot continue to act for more than 12 months.

This clause also provides for the probity of any action taken by or in relation to an acting commissioner if it was taken in good faith and in ignorance of any ground of invalidity.

- Staff - the commissioner can arrange with the Chief Executive who controls an administrative unit (or another appropriate person) for use of the services of public servants and facilities to assist in the performance of his or her duties. The *Public Sector Management Act 1994* is to apply to such public servants.
- Delegation - the commissioner can delegate, in writing, any power or function except the commissioner's powers under section 83 (Reconsideration of inspectors' decisions) of the Principal Act.

**Clause 11** repeals sections 69 (Occupation Health and Safety Registrar) and 75 (Delegation by Registrar) of the Principal Act to delete reference to the registrar.

**Clause 12** inserts a new section requiring the commissioner to provide a report or information which complies with section 8 (Annual reports of public authorities) of the *Annual Reports (Government Agencies) Act 1995*. The report or information must include particulars of any direction issued in the period by the Minister under section 25G (Ministerial directions) and a statement of how the commissioner responded in the period to any direction given under section 25G, even if the direction was received before the reporting period.

**Clause 13** inserts a new Part 9 which outlines the transitional arrangements required to implement this Bill.

**Clause 14** amends the Schedule to the Principal Act by replacing "Registrar's" in the heading to Part 2 with "Commissioner's" and "Registrar" in Part 2, Item 10 with "commissioner".

### **PART 3 - CONSEQUENTIAL AMENDMENTS**

**Clause 15** makes the necessary consequential amendments to the Principal Act, the *Public Sector Management Act 1994*, the *Workers' Compensation Act 1951* and the *Occupational Health and Safety Regulations*.

The changes in the Schedule relate to amendments to replace the existing registrar with the new commissioner.