

1995

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

OCCUPATIONAL HEALTH AND SAFETY (AMENDMENT) BILL 1995

EXPLANATORY MEMORANDUM

**Circulated by Authority of the Minister for Business, Employment and Tourism
Tony De Domenico MLA**

OCCUPATIONAL HEALTH AND SAFETY (AMENDMENT) BILL 1995

The Bill in conjunction with the *Workers' Compensation (Amendment) Bill (No.2) 1995* extends the role of the Occupational Health and Safety Council (the Council), which is established under the *Occupational Health and Safety Act 1989* to provide advice to the Minister on occupational health and safety matters to include providing advice to the Minister on workers' compensation and occupational rehabilitation matters

This is achieved by the Bill amending the *Occupational Health and Safety Act 1989* to widen the functions of the Council to include advising the Minister on workers' compensation and occupational rehabilitation. The Bill also increases the maximum number of Council members from 11 to 12, changes the requirements for a quorum, and makes provision for protecting Council members from lawsuits. The Bill deletes a discriminatory provision relating to the maximum age of members.

The supporting *Workers' Compensation (Amendment) Bill (No.2) of 1995* amends the *Workers' Compensation Act 1951* to change the requirement for the Minister to consult with representatives of employers, unions and insurers when approving a protocol or an amendment to a protocol to a requirement to consult with the Council. The Council has representatives of employers, unions and insurers.

Details of the Bill are as follows

Clause 1 and 2 and 3 are formal. They contain the short title, the commencement date and a short reference to the Principal Act.

Clause 4(a) amends section 10 of the Principal Act to add to the existing functions of the Council, functions relating to the Council providing advice on workers' compensation and occupational rehabilitation matters.

Replacement paragraph 10(1)(a) extends the function of Council to provide advice to the Minister on occupational health and safety matters to cover providing advice to the Minister on workers' compensation or occupational rehabilitation matters.

Replacement paragraph 10(1)(b) extends the functions of Council to inquire into and report to the Minister on referred matters regarding occupational health and safety to cover providing a similar service in regard to referred matters concerning workers' compensation or occupational rehabilitation.

Clause 4(b) amends subsection 10(2) of the Principal Act, which contains specific matters on which the Council may advise the Minister, but which does not limit the general provisions contained in subsection 10(1), to include additional specific matters relating to workers' compensation and occupational rehabilitation.

New paragraph 10(2)(e) provides that the Council may advise the Minister on the operation of the *Workers' Compensation Act 1951*.

New paragraph 10(2)(f) provides that the Council may advise the Minister on the approval of a protocol or an amendment to a protocol under section 15F of the *Workers' Compensation Act 1951*. This provision in conjunction with an amendment contained in the supporting *Workers' Compensation (Amendment) Bill (No.2) 1995* will supersede the need for the Minister to consult directly with representatives of employers, unions and insurers and replace that requirement with a requirement to consult with the Council. The Council has representatives of employers and unions as members and the Bill provides for enlargement of the Council by one member which will allow the Minister to appoint a member representing the interests of workers' compensation insurers.

New paragraph 10(2)(g) provides that the Council may advise the Minister on the provision of education or training in relation to workers' compensation or occupational rehabilitation.

New paragraph 10(2)(h) provides that the Council may advise the Minister on the promotion of occupational rehabilitation.

Clause 5 amends paragraph 13(2)(c) of the Principal Act to increase the number of members directly appointed by the Minister from 3 to 4 members. This increases the total membership of the Council from 11 members to 12 and will enable the Minister to appoint a member to represent the interests of workers' compensation insurers.

Clause 6 repeals section 15 of the Principal Act which imposes a 65 year age limit on members of Council. The provision is discriminatory and inappropriate in modern legislation.

Clause 7 amends subsection 24(5) of the Principal Act to change the requirements for Council to have a quorum. The previous requirement for five members to be present to constitute a quorum was part of the original Act introduced in 1989 when Council membership comprised only nine members. The Bill will now require seven members or acting members to be present to constitute a quorum. The Principal Act provides for three categories of appointees. One category represents the interests of employees, another represents the interests of employers, and the remaining category comprises direct appointees of the Minister. The Principal Act currently requires that at least one member be present from each category to constitute a quorum and the Bill amends this requirement to require two members from each category and also to introduce a further requirement that at least one of the two members from each category not be an acting member.

Clause 8 inserts new section 24A which provides members with immunity from lawsuits arising out of their Council duties. This provision protects Council members from personal liability, it being recognised that they will be providing advice to the Government on a range of matters relating to occupational health and safety, workers' compensation, and occupational rehabilitation.