

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY

2005

**OCCUPATIONAL HEALTH AND SAFETY LEGISLATION
AMENDMENT BILL 2005**

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Industrial Relations
Katy Gallagher MLA

OCCUPATIONAL HEALTH AND SAFETY LEGISLATION AMENDMENT BILL 2005

OUTLINE

The *Dangerous Substances Act 2004* (the Dangerous Substances Act) establishes a modern duty-based framework for the regulation of dangerous goods and hazardous substances in the Australian Capital Territory. The objective of the Dangerous Substances Act is to protect the health and safety of people and to protect property and the environment from damage from the hazards associated with dangerous substances.

The *Occupational Health and Safety Act 1989* (the OHS Act) provides a legislative framework to secure the health, safety and welfare of employees at work. The OHS Act also fosters a cooperative consultative relationship between employers and employees on the health, safety and welfare of employees at work.

The Occupational Health and Safety Legislation Amendment Bill 2005 amends the review-of-Act provisions in the Dangerous Substances Act and the OHS Act. Clause 4 substitutes a new section 224 (Review of Act) into the Dangerous Substances Act. Clause 6 substitutes a new section 230 (Review of Act) into the OHS Act.

The amendments refocus the reviews on the broad operation of the regulatory regimes established by the Acts, provide the Minister with more flexibility in determining the arrangements for their conduct, and align their timing by delaying the commencement of the review of the Dangerous Substances Act until 2007 to coincide with the review of the OHS Act.

Alignment of the two reviews recognises the complementarity of the regulatory regimes established in the two Acts—in particular, the compliance and enforcement provisions which were effected through the passage of the *Occupational Health and Safety Amendment Act 2004*, on the one hand, and the repeal of the *Dangerous Goods Act 1975* and the passage of the Dangerous Substances Act, on the other hand.

The amendments require the Minister to review the operation of the Dangerous Substances Act and the OHS Act as soon as practicable after 30 June 2007. Reports of the outcome of the reviews must be presented to the Legislative Assembly on or before the third sitting day in 2008.

The Bill also makes a technical amendment to the *Long Service Leave Act 1976* (the LSL Act). Clause 5 of the Bill amends the LSL Act to remedy unintended changes to the treatment of service by the *Long Service Leave Amendment Act 2005* (LSL Amendment Act). Prior to the passage of the LSL Amendment Act temporary employment outside the territory and certain Defence Force service were counted as periods of service with an employer. The LSL Amendment Act changed the treatment of these types of service recognising them as not breaking continuity of service, but not counting them as contributing to an employees period of service for long service leave purposes.

Notes on Clauses

Clause 1 – Name of Act

This clause provides that the name of the proposed legislation is the Occupational Health and Safety Legislation Amendment Act 2005.

Clause 2 – Commencement

This clause provides that the Act will automatically commence on the day after the Act is notified on the ACT Legislation Register.

Clause 3 – Legislation amended

This is a formal provision which states that the proposed Act amends the *Dangerous Substances Act 2004*, the *Long Service Leave Act 1976* and the *Occupational Health and Safety Act 1989*.

Clause 4 – Dangerous Substances Act 2004 Section 224

Clause 4 substitutes a new section 224 (Review of Act) into the Dangerous Substances Act.

The new section 224 requires the Minister to review the operation of the Dangerous Substances Act as soon as practicable after 30 June 2007.

A report of the outcome of the review must be presented to the Legislative Assembly on or before the third sitting day in 2008. Section 224 expires on 30 June 2008.

Clause 5 - Long Service Leave Act 1976, section 2G (2)(g), (3) and (4) (but not the example for the section)

Clause 5 substitutes subsections 2G(2) (g), (3) and (4) with subsections 2G(2)(g), (3), (4) and (5). The new sub-sections effectively restore the treatment of certain Defence Force service and temporary employment outside the ACT, prior to the passage of the LSA Amendment Act, as types of service that count as qualifying periods of service under the LSL Act. The new sub-sections also clarify the limitations on the operation of provisions governing these employment situations.

New paragraph 2G(2)(g) clarifies that employment outside the ACT counts as service if that service would have otherwise counted had that employment occurred in the ACT. New subsection 2G(4) applies in the case of Defence Force service (other than as a member rendering continuous full-time service), and ensures that the employer for long service leave purposes is the person by whom the employee was employed immediately before the employee began the relevant Defence Force service.

New subsection 2G(5) contains an exception referring to paragraphs 2(f) and (g). This exception ensures that a period of temporary service outside the ACT or a period of relevant Defence Force service, will count towards the period of service to qualify for long service leave.

Clause 6 – Occupational Health and Safety Act 1989

Section 230

Clause 5 substitutes a new section 230 (Review of Act) into the OHS Act.

The new section 230 requires the Minister to review the operation of the OHS Act as soon as practicable after 30 June 2007.

A report of the outcome of the review must be presented to the Legislative Assembly on or before the third sitting day in 2008. Section 230 expires on 30 June 2008.