

2007

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**OCCUPATIONAL HEALTH AND SAFETY (REGULATORY SERVICES)
LEGISLATION AMENDMENT BILL 2007**

EXPLANATORY STATEMENT

Circulated with the authority of
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OCCUPATIONAL HEALTH AND SAFETY (REGULATORY SERVICES) LEGISLATION AMENDMENT BILL 2007

Overview of Bill

The Occupational Health and Safety (Regulatory Services) Legislation Amendment Bill 2007 (the Bill) amends the *Occupational Health and Safety Act 1989* (the Act) and makes consequential amendments to a series of related legislation.

The Bill puts in place governance arrangements for the independent Occupational Health and Safety Commissioner (OH&S commissioner) to discharge the OH&S commissioner's statutory functions under the Act within the Office of Regulatory Services (ORS).

As part of Budget 2006/07, the government consolidated various ACT regulatory agencies into a single, coordinated ORS agency to achieve economies of scale and remove unnecessary duplication of regulatory costs across government.

The ORS essentially brings together capability from across ACT government to undertake licensing, registration and accreditation, dispute resolution and consumer and trader assistance, compliance and enforcement/litigation and education.

The ORS, within the Department of Justice and Community Safety, combines a range of regulatory activities previously undertaken within a number of government departments and includes regulatory activities related to occupational health and safety, scaffolding and lifts, machinery and boiler pressure vessels and dangerous substances, registration of various titles and deeds, parking operations, including parking review, tobacco licensing and smoke free area regulation, approvals and administration of a range of business activities associated with the use of public land including outdoor café approvals, verge parking for motor vehicle dealers and hawkers' licences, and the licensing and regulatory responsibilities of charitable collections. The ORS also has responsibility for the enforcement of consumer protection and fair trading laws in the Territory.

Previously, the statutory provisions cast responsibility for discharging the functions in relation to occupational health and safety variously on the OH&S commissioner and the responsible chief executive. Under the proposed changes, all of the regulatory and operational responsibilities in relation to occupational health and safety will be cast on the chief executive. Under the administrative arrangements, responsibility for the regulation of the occupational health and safety legislation will be administered by the Department of Justice and Community Safety.

Staff of the OH&S commissioner will be directly responsible to the

OH&S commissioner, and through the OH&S commissioner, to the Minister for Industrial Relations, in the performance of the OH&S commissioner's statutory functions. Staff of the OH&S commissioner will be answerable to the chief executive of the Department of Justice and Community Safety, but only in relation to administrative matters under *the Public Sector Management Act 1994*.

To maintain the independence of the work of the OH&S commissioner, the OH&S commissioner will be appointed by the Executive and will be assisted by a small support staff to enable the commissioner to independently discharge the OH&S commissioner's statutory functions.

Under section 27 of the Act, the OH&S commissioner will be required to promote an understanding, acceptance of and compliance with the Act and associated laws, undertake research and development of educational programs to promote occupational health and safety principles in workplaces, and advise the Minister on any proposed or existing ACT legislation which may be inconsistent with the Act.

In terms of transparency and accountability, the Bill makes further provision for both the OH&S commissioner and the chief executive of the Department of Justice and Community Safety to report at six-monthly intervals through their relevant Ministers to the Legislative Assembly on their respective regulatory and statutory occupational health and safety related functions.

Clause Notes

Clause 1 - Name of Act names the Act as the *Occupational Health and Safety (Regulatory Services) Legislation Amendment Act 2007*.

Clause 2 - Commencement – commences the Act on the day after its notification day.

Clause 3 - Legislation amended lists the legislation, which the Act amends.

Clause 4 - Functions – Section 27(2) prohibits the chief executive of an administrative unit from interfering with the exercise of the statutory functions in section 27(1)(a) to (e) of the Act by the OH&S commissioner and the commissioner's staff.

Clause 5 – Staff - Section 34(2) and (3) repeals two subsections, which are now obsolete.

Clause 6 - Section 35 substitutes a new section 35 which permits the OH&S commissioner to delegate her or his functions under a Territory law to a member of the OH&S commissioner's staff.

Clause 7 - Meaning of *inspector* in div 8.2, Section 183 is repealed because the OH&S commissioner is no longer an inspector for the purposes of the *Occupational Health and Safety Act 1989*.

Clause 8 - Internally reviewable decisions, reviewable decisions and eligible people, Section 184 (c) and (d) substitutes two new subsections. Subsection 184(c) makes a decision of the chief executive, rather than the OH&S commissioner, a reviewable decision and removes a reference to part 1.3 which is now obsolete. New subsection 184(d) removes a reference to part 1.3 of the Act, which is now obsolete.

Clause 9 - Inspectors Section 201(1) is repealed as the OH&S commissioner is no longer an inspector for the purposes of the Act. Enforcement of the Occupational Health and Safety Act will now be undertaken by the ORS within the Department of Justice and Community Safety.

Clause 10 – Identity cards Section 202(1) is repealed, as it is now obsolete.

Clause 11 – New section 203A inserts a new section in Part 9, which empowers the Minister to give general or particular directions to the chief executive of the Department of Justice and Community Safety (rather than the OH&S commissioner who is no longer responsible for the operational/regulatory aspects of the Act) in relation to his or her functions with which the chief executive must comply. The Minister must present a copy of any direction given to the chief executive to the Legislative Assembly within six sitting days after the day it was given to the chief executive.

Clause 12 - Section 227 substitutes a new **section 227 – Chief executive’s annual report** - which requires the chief executive of the Department of Justice and Community Safety (rather than the OH&S commissioner who no longer is responsible for the operational/regulatory aspects of the Act) to include in her or his annual report, a copy of any direction given by the Minister under section 203A of the Act during the year, and a report about action taken to give effect to any direction given under section 203A of the Act.

Clause 11 also inserts a new **section 227A - Additional reports by chief executive**, which ensures accountability to the Legislative Assembly by the chief executive of the Department of Justice and Community Safety who will be responsible for reporting on the operation and enforcement of occupational health and safety matters under the Act in March of each year. This reporting requirement is additional to the annual report prepared by the chief executive for each financial year. The Minister must present the report to the Legislative Assembly within six sitting days after receiving the report.

Clause 13 - Section 228 substitutes a new **section 228 – Commissioner’s half-yearly reports** - which requires the OH&S commissioner to prepare

six-monthly reports to the Minister on the OH&S commissioner's activities, including a copy of any direction given by the Minister during the half-year and a statement about any action taken to give effect to any direction given under section 32 of the Act, whether before or during the half-year. Half-year means a period of six months commencing on 1 July or 1 January in a year.

The Minister must present a copy of the OH&S commissioner's report to the Legislative Assembly within six sitting days after the day the Minister receives the report.

Clause 14 – Schedule 1, parts 1.2 and 1.3 substitutes a new **Part 1.2 entitled Reviewable decisions of chief executive**, which combines former Parts 1.2 and 1.3. Part 1.2 prescribes those decisions of the chief executive, which are reviewable under the legislation. Any reference to former Part 1.2 of Schedule 1 is now obsolete, because the OH&S commissioner will no longer be making decisions about the operational/regulatory aspects of the legislation.

Clause 15 – Dictionary, definition of *inspector* substitutes a new definition of inspector, which means a public servant.

Clause 16 – Further amendments, mentions of *commissioner* replaces the word 'commissioner' with the words 'chief executive' in the Act to reflect the new regulatory role of the chief executive of the Department of Justice and Community Safety.

SCHEDULE 1 Operational Health and Safety Act 1989 – technical amendments

Clause 1.1 – Section 26 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 section 216 of the Legislation Act 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 subsection 206(2) of the Legislation Act 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 section 208 of the Legislation Act provides that the power to appoint includes the power to reappoint. A standard note about reappointment is added.

Clause 1.2 – Section 27(1), new note adds a standard note about the powers of an entity and is consequential on the omission of subsection 27(2) by another amendment.

Clause 1.3 – Section 30(2) 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.

Clause 1.4 - Section 33 omits an unnecessary provision about acting appointments.

Subsection 33(1) is about the circumstances of when an acting appointment may be made. This provision is unnecessary because section 209 of the Legislation Act provides the circumstances in which acting appointments may be made, including during any period when an appointee cannot for any reasons, 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 section 225 of the Legislation Act has the same effect.

Clause 1.5 - Section 61(1)(a) substitutes a new paragraph, which brings it into line with current drafting practice.

Clause 1.6 - Section 65 substitutes a new section, which brings it 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.

Clause 1.7 – Section 86(1), new note adds a standard note about the powers of an entity and is consequential on the omission of subsection 86(2) by the amendment below.

Clause 1.8 – Section 86(2) omits an unnecessary provision. It states that the OH&S commissioner has power to do all things, which are necessary or convenient to be done in relation to the performance of the OH&S commissioner's functions. This is unnecessary because section 196 of the Legislation Act, provides that a provision of a law which 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 subsection 86(1) by the amendment above.

Clause 1.9 – Section 88 substitutes a new section to bring it 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.

Clause 1.10 – Dictionary, definition of *involved union*, paragraph (a) substitutes a new definition to bring the paragraph into line with current drafting practice.

SCHEDULE 2 Consequential amendments

PART 2.1 Crimes Act 1900

Clause 2.1 – Section 49A, definition of *commissioner for OH&S* is a consequential amendment, which omits the definition of ‘commissioner for OH&S’, which is now obsolete.

Clause 2.2 – Section 49E(7) is a consequential amendment which substitutes a new subsection to reflect the changed responsibility for the regulation of occupational health and safety matters by the chief executive of the Department of Justice and Community Safety.

Clause 2.3 – Section 49E(8) is a consequential amendment which substitutes a new subsection to reflect the changed responsibility for the regulation of occupational health and safety matters by the chief executive of the Department of Justice and Community Safety.

PART 2.2 Magistrates Court (Occupational Health and Safety Infringement Notices) Regulation 2004

Clause 2.4 – Section 6 is a consequential amendment which substitutes a new section to reflect the new regulatory role of the chief executive of the Department of Justice and Community Safety for the *Occupational Health and Safety Act 1989*.

Clause 2.5 - Section 12, note is a consequential amendment which repeals section 12, as it is now obsolete.

PART 2.3 Magistrates Court (Workers Compensation Infringement Notices) Regulation 2006

Clause 2.6 – Section 6 is a consequential amendment, which substitutes ‘commissioner’ to reflect the new regulatory role of the chief executive of the Department of Justice and Community Safety for occupational health and safety matters.

Clause 2.7 – Dictionary, note 2 is a consequential amendment, which repeals the reference to ‘OH&S commissioner’, which is now obsolete in this context.

Clause 2.8 - Dictionary, definition of *commissioner* is a consequential amendment, which repeals the definition of ‘commissioner’, which is now obsolete.

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

Clause 2.9 – Mentions of *commissioner* is a consequential amendment, which substitutes the words ‘chief executive’ for the word ‘commissioner’, wherever occurring in the Regulation, as it is now obsolete.

Clause 2.10 – Dictionary, note 3, dot point is a consequential amendment, which removes a reference to ‘commissioner’, which is now obsolete and substitutes the word ‘inspector’.

PART 2.5 Occupational Health and Safety Regulation 1991

Clause 2.11 – Mentions of *commissioner* is a consequential amendment, which substitutes the word ‘commissioner’ for the words ‘chief executive’, wherever occurring in the Regulation, to reflect the new regulatory role of the chief executive of the Department of Justice and Community Safety.

PART 2.6 Public Sector Management Act 1994

Clause 2.12 – Section 25(2)(b), example 4 is a consequential amendment, which repeals this example, as it is now obsolete.