

1999

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

WORKCOVER AUTHORITY BILL 1999

EXPLANATORY MEMORANDUM

**Circulated by authority of
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Minister for Urban Services**

WorkCover Authority Bill 1999

Outline

This Bill establishes ACT WorkCover as a Statutory Authority. The authority will provide an integrated approach to regulation and service provision that covers the health and safety rights and other responsibilities of employers and employees in the ACT.

The Government's objective in establishing the authority is to ensure the independence of the authority, and improve the provision of service delivery to the ACT community.

The functions of the authority include the administration of a range of legislation. There are provisions to enable other legislation to come under the authority where considered appropriate to the scope of the authority's functions.

The Bill establishes the membership of the authority and makes provision for the appointment of a general manager to administer the day to day functions of the authority. The authority consists of the general manager and six part-time directors, who are appointed by the Minister. The general manager can only be engaged by the Minister on the recommendation of the authority.

The operations of the authority are subject to detailed planning and reporting requirements, which will be subject to scrutiny by the Legislative Assembly.

Revenue/Cost Implications

Appropriate funding to establish the authority will be considered during the budget process.

PART 1 - PRELIMINARY

Name of Act

- Clause 1 States the name of the Bill. The title will enable quick location of the Act having regard to the matters it deals with.

Commencement

- Clause 2 Sets the date of commencement of the Act, which is the day of notification in the *Gazette*.

Dictionary

- Clause 3 Specifies that the dictionary contained at the end of the Act defines certain words and expressions used throughout the Act.

What is workcover legislation?

- Clause 4 Specifies those Acts and their subordinate laws that are covered by the term "workcover legislation". Paragraph (1)(i) allows other Acts or subordinate laws not listed, to be included by regulation, as "workcover legislation".

- Subclause (1) Subclause (2) Where regulations are made for the purpose of paragraph (1)(i), those regulations may also make any necessary amendments to the effected Act or subordinate law, for the proper functioning of that Act as "workcover legislation".

- Subclause (3) Subclause (2) Where regulations are made under subclause (2), they cease to have effect one year after they are made, unless an Act confirms their operation before the expiry of the one year period. This will enable the transfer of any additional and necessary functions to the authority or general manager during the establishment phase of the authority.

PART 2 – WORKCOVER AUTHORITY

Division 2.1 – Establishment, functions and powers

Establishment

- Clause 5 Establishes the statutory authority known as the WorkCover Authority.
Subclause (1)

Subclause (2) The authority is to be a body corporate and must have a common seal.

Functions

Clause 6 Sets out the authority's functions under the Act.

Paragraph (a) Requires the authority to administer and enforce workcover legislation as prescribed in the Act.

Paragraph (b) Specifies that the authority can collect payments required to be made under workcover legislation.

Paragraph (c) Specifies the authority's responsibilities in relation to education and advice about workcover legislation.

Paragraph (d) Requires the authority to provide database services on workcover legislation.

Paragraph (e) Authorises the authority to advise the Minister about the administration and enforcement of workcover legislation. This advice can include proposals for legislative change.

Paragraph (f) The authority is required to perform any other functions that are directed in writing by the Minister, or that are required by this Act or another Territory law.

Paragraph (g) Allows the authority to do anything else considered necessary or convenient to perform the functions outlined in this clause.

Ministerial directions

Clause 7
Subclauses (1)-(2) This provision enables the Minister to give written directions to the authority in relation to the performance of its functions. The directions may be either general or relate to a specific matter. The authority is required to give effect to any written direction of the Minister.

Subclause (3) Where the Minister has given a written direction, it must be tabled in the Legislative Assembly within six sittings days of the direction being given to the authority.

Subclauses (4)-(5) Where the authority is required to incur costs to give effect to a written direction of the Minister, the Territory must pay the authority those costs, where they are considered reasonable. The amount to be paid to the authority is agreed between the authority and the Minister. If agreement cannot be reached, then the Chief Minister will determine the amount to be paid

to the authority.

Companies, partnerships and joint ventures

- Clause 8**
Subclause (1) Requires the authority to gain the written approval of the Minister if it seeks to form a company, purchase shares or securities, enter into partnership or joint ventures.
- Subclause (2)** The Minister's approval must be specific, and can be subject to conditions.
- Subclause (3)** Where the Minister approves the authority entering into a partnership or joint venture, the Minister must table a statement in the Legislative Assembly detailing the particulars and reason for the partnership or joint venture.
- The statement must be tabled in the Legislative Assembly with the next due Quarterly report, which is prepared under section 30 of the Act.

Division 2.2 – Membership

Who are the members of the authority?

- Clause 9**
Subclause (1) Establishes the membership of the authority. The authority consists of six directors who are appointed by the Minister, by instrument, and the general manager of the authority.
- Any vacancy in the membership of the authority does not affect the validity of the authority's actions while the vacancy exists.

Appointments

- Clause 10**
Subclause (1) Persons appointed to the authority by the Minister as directors must have relevant managerial, commercial or other qualifications or experience. This is to ensure that the authority has the necessary expertise to perform its functions, as specified in the Act.
- Subclause (2)** Members of the Insurers Advisory Committee cannot be appointed as directors of the authority. This is to ensure there are no conflicts in the performance of the authority's functions where they affect the responsibilities of the Committee.

- Subclause (3) The Minister is required to take into account any recommendations of the Council and the Committee when making a decision to appoint a director to the authority.
- Subclause (4) Directors are appointed to the authority under the terms of appointment specified in Part 1 of the Schedule to the Act.

Chairperson and deputy chairperson

- Clause 11 Requires the Minister to select the Chairperson from the appointed members of the authority. The members of the authority (including the general manager) must elect a deputy chairperson, also from among their number.

Division 2.3 – Procedure

Meeting procedure

- Clause 12 Meeting procedures are outlined in Part 2 of the Schedule to the Act.

PART 3 – GENERAL MANAGER, STAFF AND CONSULTANTS

Division 3.1 – General Manager

Office

- Clause 13 Establishes the office of general manager of the authority. The general manager is employed under a contract of engagement, as specified in clause 15.

Function

- Clause 14 This provision enables the general manager to perform the functions of the authority on the authority's behalf. This can be subject to general direction from the authority.

Engagement under contract

- Clause 15 The general manager can be engaged under a contract with the Territory, for a period of up to 5 years. The general manager can only be engaged in accordance with a recommendation of the authority and the approval of the Minister. The current, or a former general manager, can be re-engaged for a further term.

Contract requirements

Clause 16 Specifies that the contract of engagement is to be in writing and signed by or on behalf of both the general manager and the Territory. The contract must specify the day on which the engagement is to commence and the period of engagement. The contract will specify the conditions of employment of the general manager (except his or her remuneration, which is determined by the Remuneration Tribunal – see clause 17).

The contract may be varied with the agreement of both parties in consultation with the authority, but the length of the appointment cannot be reduced or extended. If the contract is varied, the Minister must table the variation of the contract in the Legislative Assembly within six sitting days of the variation.

Remuneration

Clause 17 The remuneration, allowances and other entitlements of the general manager will be determined by the Remuneration Tribunal, or by an interim determination by the Chief Minister where no determination exists.

Early termination of employment

Clause 18
Subclauses (1)-(3) Provides for the contract of engagement to contain an early termination clause. The grounds for early termination must be specified in the contract, but cannot include incompatibility of the general manager with another person.

Early termination of the general manager's contract of employment can only be given effect where the recommendation of the authority is approved by the Minister.

Subclause (4) The Minister is required to table a notice of termination in the Legislative Assembly within three sitting days of the notice being given to the general manager.

Early termination (invalidity)

Clause 19 Provides for the early termination of the general manager's employment on the grounds of invalidity where the general manager has an existing entitlement under relevant Commonwealth Superannuation legislation.

Acting general manager

- Clause 20
Subclauses (1)-(3) Enables the Minister to appoint a person to act as general manager for a period of not more than 12 months, where the office is vacant or the general manager is unable to perform the functions of the office. The appointment of the acting general manager must be a recommendation of the authority, and approved by the Minister.
- Subclause (4) Provides that a defective acting appointment will not invalidate anything done by the acting general manager while he or she is defectively appointed to act.

Delegation

- Clause 21 The provision enables the general manager to delegate any of their powers under workcover legislation to any person, or to any person in a class specified in the instrument.

Division 3.2 – Staff and consultants

Staff

- Clause 22 Requires the general manager's staff to be appointed under the *Public Sector Management Act 1994*.

Consultants

- Clause 23 The authority may engage consultants, but this provision does not enable them to employ staff, other than under clause 22.

PART 4 – MANAGEMENT

Management Focus

- Clause 24 The authority is required to manage its functions responsibly, to achieve the objectives of the authority's business plan.

What is the authority's business plan?

- Clause 25 This provision outlines what information the authority's business plan must contain. This includes comprehensive financial reports, and an outline of the authority's undertakings, business and corporate strategies for the current and following two financial years. The authority must also include anything that the Minister has, in writing, required the authority to include in the business plan.

Development of business plans

- Clause 26 Specifies the time frames for the development of the authority's business plans. The authority is required to consult with the Minister and where practicable, reach agreement on the plan. When the consultation requirements have been met and the plan is forwarded to the Minister, it takes effect. The Minister must table a copy of the business plan in the Legislative Assembly within six sitting days of the business plan taking effect.

First business plan

- Clause 27 This provision requires the authority to develop its first business plan within the three months of the commencement of the Act. The plan is to cover the remaining period of the 1999-2000 financial year. The authority is required to consult with the Minister and where practicable, reach agreement on the plan. When the consultation requirements have been met and the plan is forwarded to the Minister, it takes effect. The Minister must table a copy of the business plan in the Legislative Assembly with three sitting days of the business plan taking effect.

This section ceases to operate on 1 September 2000 (by which time the authority is required to have produced its next business plan, under clause 26).

Modifications of business plans

- Clause 28 This clause enables the authority to modify its business plan at any time during a financial year. This is to be done in consultation with the Minister. The Minister may provide the authority with recommendations to change the draft modified plan or advise that it is acceptable. Once this happens, the business plan is taken to be modified for the remainder of the financial year. Provision is also made in the clause for the authority's consideration of any recommendation for change made by the Minister. If the business plan is modified, the Minister is required to table it in the Legislative Assembly with the authority's next quarterly report.

Application of part 8 of the Financial Management Act

- Clause 29 The authority can only invest funds or borrow moneys in accordance with Part 8 of the Financial Management Act.

PART 5 – REPORTS**Quarterly reports**

- Clause 30 The authority is required to provide quarterly reports to the Minister on the operations of the Act and the authority. The Minister is required to table the report in the Legislative Assembly within six sittings days of receiving the report.

Annual report

- Clause 31 Provides for the inclusion of details relating to a Ministerial Direction in the Annual Report that the authority is required to prepare under the *Annual Reports (Government Agencies) Act 1995*.

PART 6 – MISCELLANEOUS**Regulations**

- Clause 32 Enables the Executive to make regulations for the purposes of the Act.

SCHEDULE – DIRECTORS AND MEETING PROCEDURE**PART 1 - DIRECTORS****Terms of office**

- Clause 1 Directors of the authority will hold office on a part-time basis with the terms of appointment to be specified in the instrument of appointment. The maximum period of appointment is three years, and a director can be reappointed.

Remuneration

- Clause 2 The remuneration of the directors will be determined by the Remuneration Tribunal, or by an interim determination by the Chief Minister where no determination exists.

Resignation

- Clause 3 Provides the requirements to be met for a director to resign from his or her position.

Termination of appointment

- Clause 4
Subclause (1) Provides for the Minister to terminate the appointment of directors of the authority, where they are unable to fulfil their obligations to the authority as a result of physical or mental incapacity, or where their behaviour is considered inappropriate.
- Subclause (2)
Paragraph (a) Requires the Minister to terminate the appointment of a director of the authority if he or she becomes bankrupt.
- Paragraph (b) Requires the Minister to terminate the appointment of a director of the authority if there non-attendance at three consecutive meetings without being granted leave.
- Paragraph (c) Requires the Minister to terminate the appointment of a director of the authority where the director fails to advise of a potential or perceived conflict of interest, in accordance with clause 10 of the Schedule.
- Paragraph (d) Requires the Minister to terminate the appointment of a director of the authority where the director is likely to devalue the integrity of the authority by virtue of a conviction for an offence that is punishable with imprisonment of 1 or more years.

Acting appointments

- Clause 5
Subclause (1)-(2) Enables the Minister to appoint by instrument, an acting director to the authority. The appointment can be made where there is a vacancy in the authority, or a director is unable to perform their duties for a period of time.
- An acting appointment cannot be made for a continuous period of more than 12 months.
- Subclause (3) Provides that a defective acting appointment will not invalidate anything done by the acting general manager while he or she is defectively appointed to act
- Subclause (4) Provides a definition of “eligible person” for the purpose of appointing and acting director. To be eligible for appointment as an acting director, the person must have the relevant qualifications or experience for appointment as a part-time director, and must not be a member of the Insurers Advisory Committee (see subclauses 10(1) and (2) of the Act).

PART 2 – MEETING PROCEDURES

Convening meetings

- Clause 6 Provides that meetings of the authority are to be convened by the chairperson. If the chairperson is not available then the deputy chairperson may convene the meeting. Meetings are to deal with any matters related to the performance of the authority's functions, or as required by the Minister. There must be at least one meeting of the authority in each quarter of a financial year.

Meetings by telephone or television (or similar devices)

- Clause 7 The authority can convene a meeting by telephone or television, or any other device the results in instantaneous communication.

Quorum

- Clause 8 A quorum is constituted at a meeting by the presence of 4 members.

Meeting procedures

- Clause 9 Outlines the meeting procedures that the authority must follow. When the chairperson is at a meeting of the authority, he or she must preside over the meeting. In the absence of the chairperson the deputy chairperson must preside over the meeting. Where neither the chair or deputy chair is available, then the present members must elect someone to preside over the meeting. The presiding member at the meeting must manage the meeting as necessary and all questions raised must be voted on. Where there is a tied vote, the presiding member has the casting vote.

Disclosure of interest

- Clause 10
Subclause (1) This provision ensures that the integrity of the authority is maintained and that actual or perceived conflicts of interest do not interfere with the performance of the authority's functions. As soon as a member of the authority is aware of a conflict of interest they must disclose the nature of the interest and any relevant facts to the authority.
- Subclause (2)-(4) The disclosure of interest must be recorded in the minutes of the meeting (subclause (2)).

The member disclosing the interest must not take part in any deliberation or decision by the authority on the matter disclosed, unless the authority determines otherwise (subclause (3)).

Subclause (4) provides that the member who has disclosed the interest must also not take part in any discussion about whether he or she ought to be allowed to participate in the affairs of the authority in relation to the matter in which he or she has disclosed an interest.

Subclause (5)

The Minister must be given a written report by the presiding member on any determination made by the authority to allow a “disclosing” member to continue to participate in the authority’s affairs in relation to the matter in which he or she has disclosed an interest, including the reasons the making the determination.

Discussion of general manager’s employment

Clause 11

The general manager must not be present during any discussion the authority has about the engagement of the general manager, or deliberations to recommend early termination of the general manager’s contract. In addition, the general manager cannot take part in any decision the authority makes on those matters.

Minutes

Clause 12

Requires minutes to be kept of each meeting of the authority.

DICTIONARY

The dictionary contains definitions of terms used in the Act which have specific meanings, and forms part of the Act.