



Australian Capital Territory

Workplace Legislation Amendment Act 2022

A2022-23

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Australian Capital Territory

Workplace Legislation Amendment Act 2022

A2022-23

An Act to amend workplace legislation, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Workplace Legislation Amendment Act 2022*.

2 Commencement

- (1) Section 3 and part 2 commence on the day after this Act's notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) Section 14 and parts 4 and 5 commence 6 months after this Act's notification day.

- (3) The remaining provisions commence 1 month after this Act's notification day.

3 Legislation amended

This Act amends the following legislation:

- *Long Service Leave (Portable Schemes) Act 2009*
- *Workers Compensation Act 1951*
- *Work Health and Safety Act 2011*
- *Work Health and Safety Regulation 2011*.

Part 2 Long Service Leave (Portable Schemes) Act 2009

4 How are leave payments worked out for the contract cleaning industry? Schedule 2, section 2.11, example

substitute

Example

Pat has 10 years of service in the contract cleaning industry giving Pat an entitlement to 8.667 weeks long service leave. Pat first worked in the industry as a registered employee and accrued 5 weeks of the entitlement in that capacity. Pat then worked as a registered voluntary member and accrued 3.667 weeks of the entitlement in that capacity.

Pat decides to take 7 weeks long service leave. The payment for the leave is the total of the following amounts:

- the amount calculated under s 2.12 where ‘D’ is 2106 (ie it took 2106 days of service as a registered employee to accrue the first 5 weeks of long service leave entitlement);
- the amount calculated under s 2.13, which is the total of the amounts paid to the authority under s 56 for 842 days (2.31 years) of service as a registered voluntary member (ie it took 842 days of service as a registered voluntary member to accrue the next 2 weeks of long service leave entitlement) and the interest under s 2.13 on those amounts.

5 Payments for leave—community sector industry Schedule 3, section 3.10 (1)

omit

section 3.7

substitute

section 3.8

**6 Payments instead of leave—community sector industry
Schedule 3, section 3.11 (6)**

omit

section 3.10

substitute

section 3.12

**7 How are leave payments worked out for the community
sector industry?
Schedule 3, section 3.12, example**

substitute

Example

Alex has 5 years of service in the community sector industry giving Alex an entitlement to 4.335 weeks long service leave. Alex first worked in the industry as a registered employee and accrued 2 weeks of the entitlement in that capacity. Alex then worked as a registered voluntary member and accrued 2.335 weeks of the entitlement in that capacity.

Alex decides to take 4.335 weeks long service leave. The payment for the leave is the total of the following amounts:

- the amount calculated under s 3.13 where ‘D’ is 842 (ie it took 842 days of service as a registered employee to accrue the first 2 weeks of long service leave entitlement);
- the amount calculated under s 3.14, which is the total of the amounts paid to the authority under s 56 for 983 days (2.69 years) of service as a registered voluntary member (ie it took 983 days of service as a registered voluntary member to accrue the next 2.335 weeks of long service leave entitlement) and the interest under s 3.14 on those amounts.

8 **Payments by reciprocal authority on authority's behalf—
community sector industry**
Schedule 3, section 3.16 (1)

omit

contract cleaning

substitute

community sector

9 **Payments for leave—security industry**
Schedule 4, section 4.10 (1)

omit

section 4.7

substitute

section 4.8

10 **Schedule 4, section 4.10 (2)**

after

How are

insert

leave

11 **Schedule 4, section 4.12 heading**

substitute

4.12 **How are leave payments worked out for the security
industry?**

12 Schedule 4, section 4.12, example*substitute***Example**

Sam has 7 years of service in the security industry giving Sam an entitlement to 6.0669 weeks long service leave. Sam first worked in the industry as a registered employee and accrued 4.3335 weeks of the entitlement in that capacity. Sam then worked as a registered voluntary member and accrued 1.7334 weeks of the entitlement in that capacity.

Sam decides to take 6.0669 weeks long service leave. The payment for the leave is the total of the following amounts:

- the amount calculated under s 4.13 where ‘D’ is 1825 (ie it took 1825 days of service as a registered employee to accrue the first 4.3335 weeks of long service leave entitlement);
- the amount calculated under s 4.14, which is the total of the amounts paid to the authority under s 56 for 730 days (2 years) of service as a registered voluntary member (ie it took 730 days of service as a registered voluntary member to accrue the next 1.7334 weeks of long service leave entitlement) and the interest under s 4.14 on those amounts.

**13 Leave payments for service as registered voluntary member—security industry
Schedule 4, section 4.14 (1)***after*

How are

insert

leave

Part 3 Workers Compensation Act 1951

14 Section 46

substitute

46 Effect of payment of weekly compensation on other benefits etc

- (1) A worker is entitled to take or accrue annual leave and long service leave under a law in force in the ACT during a period in relation to which the worker is entitled to weekly compensation.

Note This provision removes the restriction under the [Fair Work Act 2009](#) (Cwlth), s 130 (1) on taking or accruing annual leave or long service leave during a period the employee is entitled to weekly compensation.

- (2) This part is not intended to affect any other entitlement of a worker to a benefit or payment (that is not leave) under any other law in force in the ACT.

15 Compliance by workers Section 113 (2)

omit

Minister

substitute

regulator

16 Unreasonableness in stopping payment Section 114

omit

Minister

substitute

regulator

17 **Regulation-making power**
Section 223 (2) (h)

omit

\$1 000

substitute

\$17 000

18 **Section 223 (3)**

omit

10

substitute

20

Part 4 Work Health and Safety Act 2011

19 Section 31 heading

substitute

31 Negligence or reckless conduct—category 1

20 Section 31 (1) (c)

substitute

(c) the person—

- (i) engages in the conduct with negligence; or
- (ii) is reckless as to the risk to an individual of death or serious injury or illness.

21 What is a *notifiable incident* Section 35, definition of *notifiable incident*, new paragraph (d)

insert

(d) a sexual assault incident.

22 New section 37A

insert

37A What is a *sexual assault incident*—pt 3

In this part:

sexual assault incident means an incident (including a suspected incident) in relation to a workplace that exposes a worker or any other person at the workplace to sexual assault.

**23 Duty to notify of notifiable incidents
New section 38 (9)**

insert

- (9) For a sexual assault incident, the person conducting the business or undertaking—
- (a) need only give the following details about the incident:
 - (i) the name and contact details of the person conducting the business or undertaking;
 - (ii) a description of the workplace where the incident happened;
 - (iii) whether or not the incident was reported to police; and
 - (b) must not give information disclosing the identity of any person involved in the incident when notifying the regulator.

**24 Duty to preserve incident sites
New section 39 (4)**

insert

- (4) Subsection (1) does not apply to a sexual assault incident.

**25 Negotiations for agreement for work group
Section 52 (1) (b)**

omit

will

substitute

are proposed to

**26 Obligation to train health and safety representatives
Section 72 (1) (c)**

substitute

(c) chosen by the health and safety representative.

27 Section 72 (5)

omit

as to the matters set out in subsections (1) (c) and (2)

substitute

about a matter mentioned in subsection (2)

**28 Powers of regulator to obtain information
New section 155 (2A)**

after the note, insert

(2A) The notice may be served in any way that a notice may be issued or given under section 209 (Issue and giving of notice).

29 Section 155 (3) (b)

substitute

(b) contain a statement to the effect that it is an offence to refuse or fail to comply with the requirement without reasonable excuse; and

30 New section 155 (8)

insert

- (8) A notice may be served on a person under this section even though—
- (a) the person is outside the ACT; or
 - (b) the notice relates to information, documents or evidence—
 - (i) outside the ACT; or
 - (ii) relating to a matter happening outside the ACT.

**31 Power to require production of documents and answers to questions
Section 171 (1)**

after

may

insert

, while the inspector is at the workplace

32 Section 171 (1) (b)

substitute

- (b) require a person who has custody of, or access to, a document mentioned in paragraph (a) to produce the document to the inspector; or

33 New section 171 (2A) to (2E)

insert

- (2A) Also, within 30 days after the day an inspector enters a workplace under this division, the inspector or another inspector may give a written notice to a person—
- (a) if the person has custody of, or access to, a stated document—
requiring the person to produce the document to the inspector within a specified period; or
 - (b) requiring the person to give written answers to specified questions within a specified period; or
 - (c) requiring the person to—
 - (i) attend before the inspector at a specified time and place and answer any questions put by the inspector; or
 - (ii) attend before the inspector at a specified time, by audiovisual link or audio link, and answer any questions put by the inspector.
- (2B) If a person is required under subsection (2A) (c) (i) to attend before the inspector in person—
- (a) the person may ask to attend before the inspector by audiovisual link or audio link instead; and
 - (b) the inspector must agree to the request if it would be reasonable in the circumstances.
- (2C) If a person is required under subsection (2A) (c) (ii) to attend before the inspector by audiovisual link or audio link—
- (a) the person may ask to attend before the inspector in person instead; and
 - (b) the inspector must agree to the request if it would be reasonable in the circumstances.

- (2D) A requirement under subsection (2A) may only relate to a document or question relevant to the purpose for which the workplace was entered.
- (2E) A notice under subsection (2A) may be served in any way that a notice may be issued or given under section 209 (Issue and giving of notice).

34 Section 171 (3)

after

subsection (1) (c)

insert

or (2A) (c)

**35 Abrogation of privilege against self-incrimination
New section 172 (3)**

insert

- (3) To remove any doubt, this section does not apply to answering a question or providing information or a document in response to a requirement made under a corresponding WHS law.

Example

If the regulator in NSW issues a notice under the [Work Health and Safety Act 2011](#) (NSW), s 155 to a person in the ACT, that Act, s 172 applies to the requirement.

**36 Warning to be given
Section 173 (1)**

after

this part

insert

, other than by a written notice under section 171 (2A)

37 Section 173 (1) (b)

substitute

- (b) warn the person that it is an offence to refuse or fail to comply with the requirement without reasonable excuse; and

38 New section 173 (1A)

insert

- (1A) A written notice under section 171 (2A) must—
 - (a) state that the notice is given under section 171 (2A); and
 - (b) state the purpose of the entry to the workplace to which the notice relates; and
 - (c) contain a statement to the effect that it is an offence to refuse or fail to comply with a requirement in the notice without reasonable excuse; and
 - (d) contain a statement about the effect of section 172 and section 269; and
 - (e) if the notice requires the person to attend before an inspector—state that the person may attend with a legal practitioner or other representative.

39 Section 173 (2)

substitute

- (2) It is not an offence for an individual to refuse to answer a question put by an inspector or provide information or a document to an inspector under this part on the ground that the question, information or document might tend to incriminate the person, unless the person was first given—
 - (a) the warning in subsection (1) (c); or
 - (b) a notice with the statement mentioned in subsection (1A) (d).

**40 Procedure if prosecution is not brought
Section 231 (1)**

substitute

- (1) This section applies if—
- (a) a person—
 - (i) reasonably considers that the occurrence of an act, matter or thing constitutes a category 1 offence or a category 2 offence; or
 - (ii) reasonably considers, from a coronial report or a proceeding at a coronial inquiry or inquest, that a category 1 offence or a category 2 offence has been committed; and
 - (b) no prosecution for the offence has been brought.
- (1A) The person may make a written request to the regulator that a prosecution be brought.
- (1B) The request may be made—
- (a) if subsection (1) (a) (i) applies—at least 6 months but not more than 18 months after the act, matter or thing happens; or
 - (b) if subsection (1) (a) (ii) applies—within 6 months after the day the report is made or the inquiry or inquest ends.

Note See s 232 in relation to the limitation period for prosecutions.

41 New section 231 (2A)

insert

- (2A) If, under subsection (2) (a) (i), the regulator advises the person that the investigation is not complete, the regulator must—
- (a) until the investigation is complete, give the person a written update about the investigation at least every 3 months; and

- (b) when the investigation is complete, give the person a written notice stating—
- (i) whether a prosecution will be brought; and
 - (ii) if a prosecution will not be brought—the reasons why.

42 Section 231 (3)

after

advises the person

insert

under subsection (2) or (2A)

**43 Confidentiality of information
Section 271 (3) (c)**

substitute

- (c) that is authorised under section 271A; or

44 New section 271A

insert

271A Additional ways that regulator may use and share information

- (1) This section applies in relation to information or a document mentioned in section 271 (1).
- (2) The regulator or a person authorised by the regulator may, in the circumstances stated in subsection (3)—
 - (a) disclose the information, or the contents of or information contained in the document, to any other person including a corresponding regulator; or

- (b) give access to the document to any other person including a corresponding regulator; or
 - (c) use the information or document.
- (3) The circumstances are that the regulator reasonably believes the disclosure, access or use—
- (a) is necessary for administering or enforcing, or monitoring compliance with, this Act; or
 - (b) is necessary for administering or enforcing another territory law prescribed by regulation; or
 - (c) is necessary for administering or enforcing another territory law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety; or
 - (d) is necessary for recognising authorisations under a corresponding WHS law; or
 - (e) is required for the exercise of a power or function under a corresponding WHS law.
- (4) This section does not limit the operation of section 271 (3) (a), (b), (d), (e) or (f) in relation to the disclosure of information, giving of access to a document or use of information or a document by the regulator or a person authorised by the regulator.

45 New sections 272A and 272B

insert

272A No insurance or other indemnity against penalties

- (1) A person must not, without reasonable excuse—
- (a) enter into a contract of insurance or other arrangement under which the person, or another person, is purportedly covered for all or part of a liability for a monetary penalty under this Act; or

- (b) provide insurance or a grant of indemnity for all or part of a liability for a monetary penalty under this Act; or
- (c) take the benefit of a contract of insurance, arrangement or grant of indemnity mentioned in paragraph (a) or (b).

Maximum penalty:

- (a) in the case of an individual—\$50 000; or
- (b) in the case of a body corporate—\$250 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

- (2) Subsection (1) places an evidential burden on the defendant to show a reasonable excuse.

Note **Evidential burden**—see the [Criminal Code](#), s 58.

- (3) A term of a contract of insurance or other arrangement is void to the extent it purports to cover a person for all or part of a liability for a monetary penalty under this Act.

272B Liability of officers for offences by body corporate under s 272A

- (1) A person commits an offence if—
 - (a) a body corporate contravenes section 272A; and
 - (b) the person is an officer of the body corporate; and
 - (c) the person is involved in the body corporate's contravention of section 272A.

Maximum penalty: \$50 000.

Note Strict liability applies to each physical element of this offence (see s 12A).

- (2) For subsection (1) (c), section 256 (2) applies as if a reference in that section to a civil penalty provision were a reference to section 272A.

46 Dictionary, new definition of *sexual assault incident*

insert

sexual assault incident, for part 3 (Incident notification)—see section 37A.

Part 5

Work Health and Safety Regulation 2011

47 Documents incorporated as in force when incorporated Section 13, new note

insert

Note A person is required to comply with an Australian Standard or Australian/New Zealand Standard that is applied by this regulation only to the extent this regulation provides.

For example, in the definition of *boiler*, par (b) (iii) (C), there is an exception that mentions AS 2593:2004. The definition does not require a person to comply with AS 2593:2004, but particular equipment must be certified in compliance with AS 2593:2004 to fall within the exception.

The reference to an Australian Standard in this case is part of a description of equipment excluded from the definition of *boiler*. As a result, the equipment is not covered by particular provisions of this regulation relating to high risk work.

48 Operation of amusement devices and passenger ropeways New section 238 (3)

after the note, insert

- (3) The reference in subsection (1) to instruction and training in the proper operation of a device or ropeway includes a reference to instruction and training in carrying out the checks and operation required under subsection (2) (a) and (b).

49 Log book and manuals for amusement device Section 242 (1) (a)

substitute

- (a) the log book for the amusement device records the details required under subsection (1A); and

50 New section 242 (1A)

after the note, insert

- (1A) The log book for an amusement device must record—
- (a) for each time the device is erected—details (including the date) of the erection; and
 - (b) for each time the device is stored—details of the storage; and
 - (c) details of the maintenance of the device; and
 - (d) for each day the device is operated—the number of hours it is operated; and
 - (e) the total number of hours the device has ever been operated; and
 - (f) details of any faults, or other matters relevant to the safety of the device, identified during its operation; and
 - (g) the following details for each person operating the device:
 - (i) the person's name;
 - (ii) whether the person has been provided with instruction and training in the proper operation of the device;
 - (iii) for each time instruction or training in the proper operation of the device is provided to the person—
 - (A) the date of the instruction or training; and
 - (B) a summary of the instruction or training; and
 - (C) the name and qualifications of the instructor or trainer; and
 - (h) details of each statutory notice issued in relation to the device, including—
 - (i) the date the notice was issued; and
 - (ii) the reasons for issuing the notice; and

- (iii) any action taken in response to the notice; and
- (iv) for a notice given under a corresponding WHS law—the location of the device when the notice was issued.

Note See also s 238 (2) (c).

51 Section 242 (2) (a)

substitute

- (a) the log book for the amusement device; and

52 Section 242 (2), note 2

omit

53 New section 242 (3) and (4)

after the notes, insert

- (3) The person with management or control of an amusement device at a workplace must make the log book for the device available to any person to whom the person relinquishes control of the device.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) In this section:

statutory notice means—

- (a) an improvement notice, prohibition notice or infringement notice; or
- (b) an improvement notice, prohibition notice or infringement notice under a corresponding WHS law.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 8 June 2022.

2 Notification

Notified under the [Legislation Act](#) on 9 December 2022.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Workplace Legislation Amendment Bill 2022, which was passed by the Legislative Assembly on 23 November 2022.

Clerk of the Legislative Assembly

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