

2000
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

**Occupational Health and Safety Amendment
Bill 2000 (No 2)**

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Occupational Health and Safety Amendment (No 2) No , 2000

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**Occupational Health and Safety Amendment
Bill 2000 (No 2)**

A BILL

FOR

**An Act to amend the *Occupational Health and Safety Act
1989* and for other purposes**

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

1 Name of Act

This Act is the *Occupational Health and Safety Amendment Act*
5 *2000 (No 2)*.

2 Commencement

This Act commences immediately after the commencement of section 10 of the *Occupational Health and Safety (Amendment) Act (No. 2) 1999*.

- 5 *Note* The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

3 Act amended

This Act amends the *Occupational Health and Safety Act 1989*.

10 **4 Interpretation**

Section 5 is amended by omitting from subsection (1) the definition of *commissioner* and substituting the following definition:

“*commissioner* means—

- 15 (a) in Division 2A.1—the Occupational Health and Safety Commissioner appointed under section 25B (the *individual*); or
- (b) in any other case—the corporation sole constituted by the individual under the name of the Occupational Health and Safety Commissioner for the Australian Capital Territory.”

20 **5 Substitution**

Part 2A is repealed and the following Part substituted:

**“PART 2A—OCCUPATIONAL HEALTH AND SAFETY
COMMISSIONER**

“Division 2A.1—Commissioner as individual

25 **“25A Commissioner**

There is to be an Occupational Health and Safety Commissioner.

“25B Appointment of commissioner

The commissioner is to be appointed by the Executive.

- 30 *Note 1* A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Interpretation Act 1967*, par 28 (3) (c) and dict, def of *appoint*).

"Note 2 A power to appoint a person to a position includes power to appoint a person to act in the position (see Interpretation Act 1967, ss 28 (4)–(6))."

"25C Term of appointment

5 **"(1)** The commissioner is to be appointed for a term of not longer than 7 years.

"(2) The instrument appointing, or evidencing the appointment of, the commissioner must state the term for which the commissioner is appointed.

"25D Leave of absence

10 The Minister may give the commissioner leave of absence from duty.

"25E Conditions of appointment generally

The commissioner holds the position on the conditions not provided by this Act or another Territory law that are decided by the Executive.

"25F Ending of commissioner's appointment

15 **"(1)** The Executive may retire the commissioner on the ground of physical or mental incapacity with the commissioner's consent.

"(2) The Executive may end the commissioner's appointment—

20 (a) if the Legislative Assembly has by resolution declared that the commissioner should be removed from the position on the ground of proved misbehaviour or proved physical or mental incapacity; or

(b) if the commissioner is absent from duty, except on leave given by the Minister, for 14 consecutive days or for 28 days in any 12 months.

25 **"(3)** The Executive must end the commissioner's appointment if the commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors, or makes an assignment of remuneration for the benefit of creditors.

30 **"(4)** The commissioner's appointment may only be ended by the Executive under this section.

"Note The commissioner's appointment also ends if the commissioner resigns (See Interpretation Act 1967, ss 28 (8) and (9))."

"25G Suspension and removal of commissioner

"(1) The Executive may suspend the commissioner from the position on the ground of misbehaviour or physical or mental incapacity.

5 "(2) If the Executive suspends the commissioner from office, the Minister must lay a statement of the reasons for the suspension before the Legislative Assembly within 7 sitting days after the suspension.

10 "(3) Within 15 sitting days after the day the statement has been laid before it, the Legislative Assembly may, by resolution, declare that the commissioner should be removed from the position on the ground of proved misbehaviour or proved physical or mental incapacity.

"(4) If, at the end of 15 sitting days after the day the statement has been laid before it, the Legislative Assembly has not passed such a resolution, the suspension ends.

"(5) The commissioner may only be suspended under this section.

15 **"Division 2A.2—Commissioner as corporation sole**

"25H Corporation sole of commissioner

"(1) The Occupational Health and Safety Commissioner is a corporation sole under the name of the Occupational Health and Safety Commissioner for the Australian Capital Territory (the *corporation*).

20 "(2) The corporation—

- (a) is a body corporate with perpetual succession; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

25 "(3) To remove any doubt, the commissioner is declared to be a Territory instrumentality for the *Public Sector Management Act 1994*.

"Note The commissioner is a Territory authority for the *Financial Management Act 1996* (see *Financial Management Act 1996*, s 3, def of *Territory authority*).

"(4) The corporation represents the Territory.

30 "(5) Without limiting subsection (4), the corporation has all the Territory's privileges and immunities.

"(6) The corporation has all the powers of an individual and may, for example—

- (a) enter into contracts; and

(b) acquire, hold, dispose of, and deal with, property.

“(7) The corporation also has the powers given to the commissioner under this Act or any other Territory law.

“25I Functions

5 The commissioner has the following functions:

- (a) to promote an understanding and acceptance of, and compliance with, this Act and the associated laws;
- (b) to undertake research, and develop educational and other programs, for the purpose of promoting occupational health, safety and welfare;
- 10 (c) to review the laws of the Territory to find out whether any Territory law is inconsistent with this Act, and to report to the Minister on the results of the review;
- (d) when asked by the Minister, to examine any proposed law to find out whether the proposed law, if enacted, would be inconsistent with this Act, and to report to the Minister on the results of the examination;
- 15 (e) to advise the Minister on any matter relevant to the operation of this Act;
- 20 (f) the other functions given to the commissioner under this Act or any other Territory law.

“25J Ministerial directions

“(1) The Minister may give written directions to the commissioner about the performance of the commissioner’s functions, either generally or in relation to a particular issue.

“(2) The commissioner must comply with a direction.

“(3) The Minister must lay a copy of each direction before the Legislative Assembly within 5 sitting days after it is given to the commissioner.

30 “(4) The Territory must pay to the commissioner the reasonable costs of complying with a direction.

“(5) The amount payable is an amount agreed between the commissioner and the Minister or, failing agreement, decided by the Chief Minister.

"Division 2A.3—Other provisions relating to the commissioner

"25K Commissioner's office

The commissioner's office consists of the commissioner and the office's staff.

5 **"25L Staff**

The staff of the commissioner's office must be employed under the *Public Sector Management Act 1994*.

10 *"Note* Under subsection 25H (3) (Corporation sole of commissioner), the commissioner is declared to be a Territory instrumentality for the *Public Sector Management Act 1994*. Accordingly, the commissioner has all the powers of a chief executive in relation to the staff of the office (see *Public Sector Management Act 1994*, s 24).

"25M Delegation

15 The commissioner may, in writing, delegate to a member of the staff of the commissioner's office any of the commissioner's powers, other than the commissioner's powers under section 83."

6 Information to be included in annual report

Section 96B is amended—

- (a) by omitting from paragraph (a) "25G" and substituting "25J"; and
- (b) by omitting from paragraph (b) "25H" and substituting "25J".

20 **7 Amendment of Statute Law Amendment Act 2000**

Amendment 3.16 in Schedule 3 of the *Statute Law Amendment Act 2000* is omitted.

8 Amendment of Interpretation Act 1967

25 The dictionary to the *Interpretation Act 1967* is amended by inserting the following definition:

"occupational health and safety commissioner means the Occupational Health and Safety Commissioner for the Australian Capital Territory.

30 *"Note* The occupational health and safety commissioner is constituted as a corporation sole under the *Occupational Health and Safety Act 1989*."

9 Amendment of Workers' Compensation Act 1951

Section 26G of the *Workers' Compensation Act 1951* is amended by
omitting "Occupational Health and Safety Commissioner" from the
definition of "commissioner" and substituting "occupational health and
5 safety commissioner".

Endnote

Act amended

- 1 Republished as in force on 31 December 1998. See also Acts 1999 Nos 24, 66 and 82.