

2012

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

WORK HEALTH AND SAFETY AMENDMENT REGULATION 2012 (No 2)

SL2012- 31

EXPLANATORY STATEMENT

Circulated with the authority of
Chris Bourke MLA
Minister for Industrial Relations

Overview

This Work Health and Safety Amendment Regulation is made under the provisions of Section 306 of the *Work Health and Safety Act 2011* that provides:

- (1) *A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the Act, and*
- (2) *A regulation may modify this part (including in relation to any other territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.*
- (3) *A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.*

Background

The purpose of the Work Health and Safety Amendment Regulation 2012 (No 2) is to make it clear that:

- Inspectors appointed under the Work Health and Safety Act 2011 can exercise any function of an Inspector under the Work safety Act 2008 in relation to an investigation under that Act;
- persons delegated by the director-general under the provisions of the *Work Safety Act 2008* (the old Act), continue to be able to use those delegations under the provisions of the *Work Health and Safety Act 2011* (the new Act) where they continue to investigate or action offences under the *Work Safety Act 2008* (the Old Act).
- Members of the ACT Work Safety Council, who were appointed under the Work Safety Act 2008, continue to be Members of the Council under the Work Health and Safety Act 2011, until the expiry of their appointment.

Part 20 of the new Act provides transitional provisions for this Act

Clause 1 Name of regulation

The clause sets out the name of the regulation.

Clause 2 Commencement

The regulation commenced retrospectively on 1 January 2012. This regulation does not have a prejudicial operation as referred to in section 76 of the *Legislation Act 2001*. It reflects an intention to enable past conduct to be investigated in accordance with the law as the law stood at the time. Retrospective commencement is essential to avoid legal argument in relation to the exercise of inspector powers and functions since the commencement of the Act. This allows open investigations to continue and new investigations to begin as intended and as expected by the community. This goes to ensuring the integrity of a scheme that is in place to protect the health, safety and wellbeing of workers and the general public.

Similarly, the retrospective commencement ensures the continuity of the Work Safety Council and any advice the Council has provided to the Minister for Industrial Relations.

Clause 3 – Legislation amended

The clause sets out what regulation is amended.

Clause 4 – Section 816A

Clause 4 modifies Part 20 – s 306 of the Act, and inserts new provisions, in that:

s305A provides that inspectors appointed under the *Work Health and Safety Act 2011* can continue to exercise any function of an Inspector under the *Work Safety Act 2008* to investigate offences that occurred prior to commencement of the 2011 legislation.

s305B provides a person to whom the director-general delegated a function of the director-general under the *Work Safety Act 2008*, can continue to exercise that delegation whilst investigating an event, accident or other incident that commenced prior to the commencement of the *Work Health and Safety Act 2011*.

These provisions are essential to ensure the integrity of the regime so inspectors can investigate offences that occurred under the previous legislation. This is important, as investigations and prosecutions into work safety breaches can take some time to complete or don't come to the knowledge of the inspectorate for a period of time.

s305C provides that a person appointed under the *Work Safety Act 2008* as a Member of the ACT Work Safety Council whose appointment was current at the time the *Work Health and Safety Act 2011* commenced, remains a Member of the Council until the expiry of the period of that appointment.