

2000

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

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT BILL 2000 (No 2)

EXPLANATORY MEMORANDUM

**Circulated by authority of
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Occupational Health and Safety Amendment Bill 2000 (No 2)

Outline

The Bill establishes the position of the Occupational Health and Safety Commissioner, and also constitutes this individual as a corporation sole. The effect of this is that the commissioner as a corporation sole is a Territory instrumentality for the *Public Sector Management Act 1994* (the Bill declares this to be so; if there is any doubt: see subclause 25H (3); see also *Public Sector Management Act 1994*, subsection 3 (1), definition of *Territory instrumentality*), and is a Territory authority for the *Financial Management Act 1996* (see *Financial Management Act 1996*, subsection 3, definition of *Territory authority*)

The Government's objective in constituting the commissioner as a corporation sole is to ensure the independence of the commissioner from departmental control in relation to resource management powers for staff and financial matters.

The functions of the authority are unchanged from those established for the Occupational Health and Safety Commissioner in the *Occupational Health and Safety (Amendment) Act 1999 (No 2)*

Revenue/Cost Implications

Appropriate funding for the commissioner will be considered during the current budget process. Existing funding for ACT WorkCover will continue to be available. There are no additional resource implications.

Name of Act

- Clause 1** A machinery provision that specifies the short title of the Act.

Commencement

- Clause 2** A machinery provision that sets the date of commencement of the Act. The provision ensures that the Act will commence immediately after the commencement of section 10 of the *Occupational Health and Safety (Amendment) Act (No 2) 1999*.

Act amended

- Clause 3** Identifies the Act being amended as the *Occupational Health and Safety Act 1989*.

Interpretation

- Clause 4** Subsection 5(1) is amended to extend the definition of the "commissioner" to the **individual** appointed as the Occupational Health and Safety Commissioner under s.25B or, in any other case, the **corporation sole** constituted by the individual under the name of Occupational Health and Safety Commissioner for the Australian Capital Territory. As a corporation sole, the commissioner is a Territory instrumentality for the purposes of the *Public Sector Management Act 1994* and a Territory authority for the purposes of the *Financial Management Act 1996*.

Substitution

- Clause 5** Repeals Part 2A of the Act and substitutes a new Part 2A. The repealed Part 2A establishes the statutory office of the Occupational Health and Safety Commissioner. The substituted Part 2A retains the intent of the provisions of the repealed Part 2A and, in addition, establishes the commissioner as a corporation sole.

Provisions in the substituted Part 2A have been drafted in accordance with the *Interpretation Act 1967* and conventions of plain English. In some cases, differences in the presentation of provisions between the repealed and substituted Parts are due to amendments of the *Interpretation Act 1967* which have taken effect since the drafting of the repealed Part. Substituted provisions which vary in substance from those of the repealed Part are noted below.

PART 2A- OCCUPATIONAL HEALTH AND SAFETY COMMISSIONER

Division 2A.1-Commissioner as individual

Commissioner

Section 25A Establishes the position of Occupational Health and Safety Commissioner.

Appointment of commissioner

Section 25B Provides for the appointment of the commissioner by the Executive, noting that this includes the power to reappoint an eligible person (see *Interpretation Act 1967*, par 28(3)(c) and the dictionary, definition of *appoint*), and to appoint a person to act in the position (see *Interpretation Act 1967*, ss28 (4)-(6)). This means that these matters do not need to be provided for in the Act.

Term of appointment

Section 25C Subsections (1) and (2) provide for the appointment of the commissioner for a term not longer than 7 years. The *Interpretation Act 1967*, subsection 28 (7), provides that the appointment must be made by instrument or other form of document which can be taken as evidence of the appointment. The instrument or document must state the term of the appointment.

Leave of absence

Section 25D This is a new provision which makes provision for the Minister to give the commissioner leave of absence from duty.

Conditions of appointment generally

Section 25E This is a new provision which provides for the commissioner to hold the position on conditions decided by the Executive where these are not provided for in this Act or any other Territory law, including the *Remuneration Tribunal Act 1995*.

Ending of commissioner's appointment

Section 25F

This section makes provision for:

- the retirement of the commissioner with the commissioner's consent on the basis of physical or mental incapacity ; and
- removal of the commissioner where the Legislative Assembly has declared this should happen on the ground of proved misbehaviour or proved mental or physical incapacity; and
- removal of the Commissioner where there have been unacceptable absences from duty without leave granted by the Minister.

The Executive is required to remove the Commissioner in the case of bankruptcy.

Suspension and removal of commissioner

Section 25G

This section establishes the ground of misbehaviour or incapacity for suspension of the commissioner by the Executive and requires the Minister to lay a statement of reasons before the Legislative Assembly within 7 sitting days. Within 15 sitting days after the day the statement is laid, the Assembly may declare that the Commissioner should be removed on the ground of **proved** misbehaviour or incapacity. If the Assembly does not do so at the end of the period, the suspension is ended.

The reference to "proved" is a new addition which ensures the Commissioner's right to natural justice. The section is one component of an overall framework of public accountability in the conduct of the relationship of the Executive and the Commissioner established in the Act.

Division 2A.2-Commissioner as corporation sole

Corporation sole of commissioner

Section 25H

This is a new section which constitutes the Occupational Health and Safety Commissioner as a corporation sole (that is, a **single-member corporation created by statute**). The commissioner as a corporation sole is a Territory authority for the purposes of the *Financial Management Act 1996* and a Territory instrumentality for the purposes of the *Public Sector Management Act 1994*. The intention of the provisions set out in this section is to ensure the commissioner can operate independently of a Chief Executive in relation to staffing and financial matters. In addition, the reporting and other requirements of the *Financial Management Act 1996* in relation to Territory authorities will ensure that a high level of public accountability is achieved in the conduct of the commissioner as a corporation sole.

Functions

Section 25I

This section establishes the functions of the commissioner.

Ministerial directions

Section 25J

This section empowers the Minister to direct the commissioner in writing in relation to the performance of the commissioner's functions and requires the commissioner to comply. Provision is made to require the Territory to repay the commissioner the reasonable costs of complying. The section requires the Minister to lay a copy of each direction before the Legislative Assembly within 5 sitting days after it is given to the commissioner. The section is one component of an overall framework of public accountability in the conduct of the relationship of the Executive and the commissioner established in the Act.

Division 2A.3-Other provisions relating to the commissioner

Commissioner's office

Section 25K

This is a new section which provides that the commissioner's office is made up of the commissioner (as a corporation sole) and staff.

Staff

Section 25L

This section requires that the staff of the commissioner's office be employed under the *Public Sector Management Act 1994*.

Delegation

Section 25M

This provision allows the commissioner to delegate any of his/her powers (other than those under section 83 regarding the review of decisions of inspectors) to a member of the staff of the commissioner's office.

Information to be included in annual report

Clause 6

This amends section 96B by substituting the section reference to provisions regarding ministerial directions.

Amendment of Statute Law Amendment Act 2000

Clause 7

This removes an amendment to the *Occupational Health and Safety Act 1989* that is no longer necessary, as it has been covered in this Act: (see proposed subsections 25J (4) and (5)).

Amendment of Interpretation Act 1967

Clause 8

Amends the dictionary to the *Interpretation Act 1967* to insert a definition of "occupational health and safety commissioner" as meaning the Occupational Health and Safety Commissioner for the Australian Capital Territory, along with a note that the commissioner is constituted as a corporation sole under the *Occupational Health and Safety Act 1989*.

Amendment of Workers' Compensation Act 1951

Clause 9

Amends section 26G of the *Workers' Compensation Act 1951* to substitute "occupational health and safety commissioner" for Occupational Health and Safety Commissioner", to rely on the definition being inserted into the *Interpretation Act 1967* by the amendment made by clause 8.