

**2009**

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

**WORK SAFETY LEGISLATION AMENDMENT BILL 2009**

**EXPLANATORY STATEMENT**

Circulated with the authority of  
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## OVERVIEW

The *Work Safety Amendment Bill 2009* (the Bill) will amend particular provisions of the *Work Safety Act 2008* (the Act) and other Territory legislation prior to the commencement of the Act. The Bill sets out routine provisions needed as a consequence of the Act, facilitates the transition of legislation and government regulatory arrangements and further refines existing provisions to more accurately reflect the Government's intentions.

The passage of the Act in August 2008 marked the beginning of a new era for the management of work safety in the Territory. The Act reflects contemporary best practice in managing risks to the health, safety and wellbeing of workers and other people in relation to work. As a framework setting out general duties applicable to a range of new duty holders, the Act provides a modern regime that is both concise and comprehensive and will allow regulators to address emerging risks to wellbeing such as occupational violence, bullying, stress and fatigue.

The Act provides clear and flexible mechanisms for workplace consultation arrangements. It also allows for the efficient and effective enforcement of duties under the Act and forthcoming regulations, providing for a range of enforcement and compliance options to suit different and changing circumstances.

The development of the *Work Safety Act 2008* and the Bill has taken account of ongoing consultation with stakeholders as well as the general public. In particular, ongoing input has been made by the Occupational Health and Safety Council, a tripartite body consisting of representatives from employee groups, employer groups and individuals.

### **Consequential Amendments**

The Bill repeals the *Occupational Health and Safety Act 1989* and associated instruments and Schedule 3 of the *Public Sector Management Act 1994*. It also gives effect to the Act consistently across other legislative regimes in the Territory, principally by amending other legislation so that it refers to the Act.

### **Transitional Arrangements**

Ongoing consultative, regulatory and compliance activities which are underway and will need to continue after the commencement of the Act will remain valid because of the provisions of the Bill. This includes the re-appointment of Ministerial Appointees to the Work Safety Council and Work Safety Commissioner.

The Bill transitions workplace arrangements (representatives, committees, work groups and Authorised Representatives) in existence the day before the Act commences, to the new workplace arrangements.

The existing Codes of practice have been transitioned with the ACT codes to be reviewed within 1 year of commencement.

## **Sharing of Gathered Information**

Key changes have been made to existing secrecy provisions to enable the sharing of protected information within the Office of Regulatory Services and between the Territory and other jurisdictions where that exchange is in the interests of work or public safety. This includes information gathered in connection with the Act and allows information to be shared within different inspectorates of the Office of Regulatory Services, with other relevant government agencies in the Territory and interstate agencies.

In practice, this will mean that work safety regulators will not be hamstrung by bureaucratic red-tape and impractical restrictions which do not meaningfully protect rights to privacy but do hinder the ability to protect work and public safety. It is essential that safety regulators are able to communicate information which may assist in the protection of all workers and members of the public from risks to their safety. However, these changes are carefully framed to ensure that proper safeguards exist to prevent inappropriate use of information.

## **Worker Consultation Offences**

While the Act sets up the framework for the new workplace arrangements, much of the detail is contained in the proposed Work Safety Regulation 2009. However there are several offences that are not appropriate for the regulations and rightly sit in the Act given the penalty level. The first offence reframes the offence under section 61 of the *Occupational Health and Safety Act 1989* and is designed to prevent an employer from obstructing, hindering, intimidating or resisting a work and safety representative in the exercise of their functions under the Act. This amendment is designed to ensure that safety representatives are encouraged and protected when performing their duties, which are critical to achieving effective consultation and ongoing improvement of real safety outcomes.

The second offence applies to an employer who directly or indirectly discloses personal health information about a worker to a work safety representative, where it identifies a worker, or allows the worker to be identified, and without the written consent of that worker. This provision is carried over from section 61(2) of the *Occupational Health and Safety Act 1989* and clarifies the proper boundaries of access to information by work safety representatives and protects the right of individual workers to choose how and when their personal health information is disclosed.

## **Other Issues**

A number of minor amendments clarify the meaning or application of particular terms and phrases, to ensure consistency throughout the work safety regime and to put beyond doubt the precise nature and scope of duties to ensure work safety set out in the Act.

The Bill also provides for the incorporation of related documents, allowing the regulations to keep pace with changes to best practice (such as Australian Standards) in an efficient and timely manner.

## **Notes on Clauses**

### **Clause 1 - Name of Act**

This clause provides that the name of the proposed legislation is the *Work Safety Legislation Amendment Act 2009*.

### **Clause 2 - Commencement**

This clause states that this Act will commence the day after it is notified or on the commencement of the *Work Safety Act 2008* section 6, whichever day is later.

### **Clause 3 – Legislation amended – schs 1 and 2**

This clause provides that this legislation amends the legislation mentioned in Schedules 1 and 2 to this legislation.

### **Clause 4 – Legislation repealed**

This clause establishes that the *Occupational Health and Safety Act 1989*, as well as all regulations made under that Act will be repealed. This includes the:

- Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000;
- Occupational Health and Safety (General) Regulation 2007; and
- Occupational Health and Safety (Manual Handling) Regulation 1997.

This section also establishes that those specific instruments made under the *Occupational Health and Safety Act 1989* will be repealed. The section specifically includes all instruments, with the exception of appointments mentioned in sections 505 to 507 of the *Work Safety Act 2008* and any code of practice mentioned in section 508 of the *Work Safety Act 2008*. Those instruments which are not repealed by this section will be taken to have been made under the *Work Safety Act 2008* and to be continue in force. This Bill inserts sections 505 to 508 into the *Work Safety Act 2008*.

## SCHEDULE 1

This Schedule contains provisions which amend the *Work Safety Act 2008* (the Act) to make minor clarifications and policy amendments. This schedule also inserts a set of transitional provisions into the Act, to ensure a seamless transition of existing administrative and business arrangements to the new legislation on the repeal of the *Occupational Health and Safety Act 1989*.

### Specific Provisions

#### Schedule 1 – Changes to the Work Safety Act 2008

##### Clause 1.1 – Section 19

This clause amends section 19 of the Act to allow a decision maker to consider whether a person has complied with the content of a document incorporated into the Act or regulation for the purposes of this duty. This change became necessary as a consequence of the development of the Work Safety Regulations which allow for the incorporation of documents into the Work Safety subordinate legislation.

##### Clause 1.2 – Section 21 (3)

This clause amends section 21 (3) of the Act to clarify the scope of specific elements of the duty to ensure work safety by managing risk which applies to a person conducting a business or undertaking. Instead of referring to the “work safety of the person and other people” the provisions make it clear that it is the “work safety of workers and other people”.

Subparagraph (b) has been amended to refer specifically to workers in the same way, but also to replace the existing reference to risks to health with the concept of risks to work safety. This is consistent with the overall objectives of the legislation and the remainder of this section.

Subparagraphs (c), (e), (f), (h) and (i) have been altered to clarify that the work safety of people at the business or undertaking definitely includes, and is focused upon, workers who are engaged by the person conducting the business or undertaking.

##### Clause 1.3 – Section 37

This clause amends section 37 of the Act so that subparagraph (b) is limited in scope to only those occurrences specifically listed, rather than the listed occurrences being only some instances of a relevant occurrence for the purposes of the section. This provides clarity and certainty for persons required to comply with the Act without unduly limiting the meaning of a dangerous occurrence. Section 37 (b) (iii) has also been amended by the addition of the word ‘uncontrolled’, limiting the events which are a relevant occurrence to the escape of gas only where there is a risk of endangerment.

#### **Clause 1.4 – Section 46, new note**

A new note has been added here to assist persons required to comply with the Act, and persons protected by the Act, to understand the scope of their duty.

#### **Clause 1.5 – Section 47(1)**

This clause amends section 47(1) of the Act to clarify that there is always an obligation on employers to consult with workers they have engaged. Replacing the word ‘if’ with the words ‘as far as’ then ensures that there is always a duty to consult, but the scope of that duty is limited to the extent that it is reasonably practicable.

#### **Clause 1.6 – Section 52 (2) (c)**

This clause amends section 52 (2) (c) of the Act to refer to ‘Work Safety’ representatives and committees rather than ‘Health and Safety’ representatives and committees bringing these titles into line with the Act’s definitions and terminology.

#### **Clause 1.7 – Section 54 (3)**

This clause amends section 54(3) of the Act to refer to ‘Work Safety’ representatives and committees rather than ‘Health and Safety’ representatives and committees bringing these names into line with the Act’s definitions and terminology.

#### **Clause 1.8 – New Section 54 (4)**

This clause inserts new section 54 (4) into the Act and provides that employers and workers may seek assistance to decide on a method of worker consultation.

#### **Clause 1.9 – New Section 55A**

This clause inserts new section 55A into the Act. It represents a further exception to the general scheme where it is up to employers and their workers to determine whether consultation is undertaken through a work safety committee or by other means. This change will mean that, as in the existing section 55 the relevant chief executive, as per the ACT’s Administrative Arrangements, may direct the election of a work safety committee where the work done by workers is hazardous and the establishment of such a committee will improve work safety. This provision allows the relevant chief executive to give a direction with the power to do so in relation to all employers across a specific industry.

An employer commits an offence under Section 55A if the employer fails to comply with the notified direction. An offence against this section is a strict liability offence.

The maximum penalty for failing to comply with the direction is 100 penalty units.

### **Clause 1.10 – Section 56 (2) (d)**

This clause amends section 56 (2) (d) of the Act to refer to ‘Work Safety’ representatives and committees rather than ‘Health and Safety’ representatives and committees bringing these titles into line with the Act’s definitions and terminology.

### **Clause 1.11 – Section 56 (3)**

This clause amends section 56 (3) of the Act to ‘Work Safety’ representatives and committees rather than ‘Health and Safety’ representatives and committees bringing these titles into line with the Act’s definitions and terminology.

### **Clause 1.12 – Section 58 (1) (a)**

This clause amends section 58 (1) (a) of the Act to clarify the function of work safety representatives under the Act. The function was included in the Work Safety Regulations but sits more appropriately in the Act. In particular, the amendment clarifies that, a work safety representative’s function to represent the worker consultation unit in relation to work safety, includes consulting with the relevant employer about the development, implementation and review of ways to safeguard work safety at each relevant workplace. This is an essential part of the work safety representative’s role and has been explicitly stated to put the issue beyond doubt.

### **Clause 1.13 – New Section 58A and 58B**

While the Act sets up the framework for the new workplace arrangements, much of the detail is contained in the new Work Safety Regulations. However there are two offences that are not appropriate for the regulations and rightly sit in the Act given the penalty level.

#### **New section 58A**

This clause inserts new section 58A into the Act and reframes the offence under section 61 of the *Occupational Health and Safety Act 1989*. It is designed to ensure that elected work safety representatives are protected in the exercise of their functions. This provision applies where an employer knows that a person is a work safety representative and obstructs, hinders, intimidates or resists the representative in the exercise of their prescribed functions.

Section 58A has a maximum penalty of 50 penalty units.

Strict liability applies to the circumstances that the work safety representative was exercising the representative’s functions as a work safety representative as prescribed by the Act. This removes any argument about what the employer *thought* were the duties of a work safety representative. Under section 58A, the employer is presumed to know the role and duties of a safety representative and that the representative must not be hindered in that role.

### **New Section 58B**

This clause inserts new section 58B into the Act. This provision is carried over from section 61 (2) of the *Occupational Health and Safety Act 1989* and will ensure that an appropriate limit is placed on the right of work safety representatives to access personal health information about workers in a worker consultation unit. Access to such information may be requested, or be incidental to, the exercise of a work safety representative's functions in consulting with an employer over work safety issues.

In this case, the offence provision makes it clear that the employer cannot disclose personal health information directly or indirectly as part of this process, where that information identifies the relevant worker or allows them to be identified and that worker has not consented. This represents an appropriate balance between the need for representatives to access information relevant to work safety and the right of workers to assert the privacy of information which relates to their own personal health.

Section 58B has a maximum penalty of 50 penalty units, imprisonment for 6 months or both.

### **Clause 1.14 – New Section 60A**

This clause inserts new section 60A into the Act. This clause protects committee members for acts done honestly and without recklessness in connection with their functions.

### **Clause 1.15 – Section 142 (2)**

This clause makes a minor amendment to section 142 (2) of the Act and corrects the wording of this provision so that it is clear that the whole of the section relates to prohibition notices.

### **Clause 1.16 – New Section 147 (4)**

This clause amends subsection 147 (4) of the Act to ensure that there is a clear provision explicitly requiring the relevant chief executive as per the ACT's Administrative Arrangements to take action in response to an application for reinspection in circumstances where a prohibition notice has been issued. The new provision also requires reasons to be given to the person making the application if it is denied, to ensure that procedural fairness occurs in each instance.

### **Clause 1.17 – Section 192**

This clause replaces existing section 192 of the Act that deals with ending the appointment of a member of the Work Safety Council (other than the Work Safety Commissioner). The provision as proposed requires the Minister to end an appointment in certain circumstances, all of which indicate that the appointed person is no longer a suitable or appropriate representative of the Territory community in the capacity in which they were first appointed. The section also allows for the Minister to exercise her or his discretion to end an appointment where the person appointed can not, for one of a number of stated reasons, be relied upon to fully and diligently fulfil

their functions as a member of the Work Safety Council. The amended provision now requires (rather than allows) the Minister to end the appointment of a member where the Minister is satisfied that they no longer represent the interests of employers or employees (respectively). This may be necessary, for example, due to a change to an appointee's occupation or employment arrangements.

#### **Clause 1.18 – Section 209 (1)**

This clause amends section 209 (1) of the Act by removing the word 'occupational' from the provision. This does not alter the meaning of the provision, and is a correction designed to ensure that consistent terminology is used throughout the legislation.

#### **Clause 1.19 – Section 211**

This clause amends section 211 of the Act by reproducing the secrecy provision in the current Act but enables the sharing of information between inspectors who exercise functions under different Acts, for example the *Workers Compensation Act 1951* and the *Dangerous Substances Act 2004*, without being administratively onerous.

The purpose of the provision is to restrict the use of certain protected information. The definition of protected information remains unchanged. The clause applies to:

- a person exercising, or purporting to exercise any function under the *Work Safety Act 2008*; and
- the person obtains protected information about the affairs of another person.

The clause provides that it is an offence if a person makes a record of protected information, or, directly or indirectly discloses or communicates to a person protected information about someone else.

The maximum penalty is 50 penalty units, imprisonment for 6 months or both.

However no offence is committed under this clause where the record is made, or the information is disclosed or communicated:

- under this or another territory law; or
- in relation to the exercise of a function of the person to whom this section applies under this or another territory Act; or
- to a relevant authority, by the person to whom this section applies, if the person reasonably believes that recording or divulging the information is in the interests of work safety; or
- to a person administering or enforcing a corresponding law; or
- a law enforcement authority; or
- a court under a summons or subpoena.

Disclosures cannot be made to the general public except in the case of disclosures made under the Act.

It is not an offence under this clause to make a record of protected information, or, directly or indirectly discloses or communicates, to a person, protected information about someone else with the consent of that other person.

#### **Clause 1.20 – Section 230 (2)**

This clause amends section 230 (2) of the Act to ensure that regulations can be made on any subject matter affecting or likely to affect work safety.

#### **Clause 1.21 – Section 230 (3) (b)**

This amendment allows for regulations to be made under the Act which carry up to a maximum of 30 penalty units rather than 20 penalty units and provides consistency with the *Dangerous Substances Act 2004*.

#### **Clause 1.22 – New Section 230 (3) (c)**

This clause inserts new section 230 (3) (c) into the Act and provides for the incorporation of certain documents into the text of regulations made under the Act. This is an effective, efficient way to ensure that key work safety documents (such as Australian Standards) are able to be referred to and that any changes to those documents are automatically given effect to by the regulation.

#### **Clause 1.23 – New Part 20 - Transitional**

This clause inserts new part 20 into the Act and provides necessary transitional provisions.

#### **Clause 500 – Definitions – pt 20**

This clause provides two further definitions necessary for the accurate interpretation of this section:

- ***commencement day*** means the day the *Works Safety Act 2008* section 6 commences; and
- ***repealed Act*** means the *Occupational Health and Safety Act 1989* in force immediately before the commencement day.

#### **Clause 501 – Transitional – health and safety representatives**

These new provisions allow for workplace arrangements set up by employers under the *Occupational Health and Safety Act 1989*, to be continued as if they have been given effect to under corresponding provisions of the Act. This includes health and safety representatives (now called work safety representatives). The purpose of these transitional provisions is to allow employers who continue to have obligations under the Act to either continue to consult their workers under the workplace arrangements they have in place until a review is required or a worker requests otherwise, in the interests of work safety.

### **Clause 502 – Transitional – health and safety committee**

These new provisions allow for workplace arrangements set up by employers under the *Occupational Health and Safety Act 1989*, to be continued as if they have been given effect to under corresponding provisions of the Act. This includes health and safety committees (now called work safety committees). The purpose of these transitional provisions is to allow employers who continue to have obligations under the Act to either continue to consult their workers under the workplace arrangements they have in place until a review is required or a worker requests otherwise, in the interests of work safety.

### **Clause 503 – Transitional – work groups designated by employer**

These new provisions allow for workplace arrangements set up by employers under the *Occupational Health and Safety Act 1989*, to be continued as if they have been given effect to under corresponding provisions of the Act. This includes designated work groups (this concept corresponds to the new concept of worker consultation units). The purpose of these transitional provisions is to allow employers who continue to have obligations under the Act to either continue to consult their workers under the workplace arrangements they have in place until a review is required or a worker requests otherwise, where this is in the interests of work safety.

### **Clause 504 – Transitional – authorised representatives**

These new provisions allow registered organisations that have authorised representatives currently appointed under section 75 of the *Occupational Health and Safety Act 1989* to transition these representatives to the Act on a limited basis. Under this section, a person appointed by a registered organisation as an authorised representative under section 75 will automatically be taken to have been appointed under section 62 of the Act. These transitional appointments will continue in force until the end of the original period of appointment, the end of the authorisation under section 62(3) of the Act or one year after the commencement of the Act (whichever of these dates is earlier).

### **Clause 505 – Transitional – Occupational Health and Safety Council**

This provision allows for the transition of appointments made to the Occupational Health and Safety Council to the Work Safety Council. All appointments under section 14 of the *Occupational Health and Safety Act 1989* that are in force immediately prior to the commencement of the Act are to be automatically taken to be appointments as members of the Work Safety Council under section 186 of the Act. The transitioned appointments will mean that a person to whom this applies will continue to be a member of the Council in the same capacity (for example, continue to be an acting employee representative). Each appointment that transitioned under this provision will continue in force until the term of the appointment (as set out in the appointment instrument for that member) ends unless the appointment is ended earlier in accordance with the provisions of the Act.

### **Clause 506 – Transitional – Occupational Health and Safety Commissioner**

This provision transitions the existing ACT Occupational Health and Safety Commissioner to the equivalent position of Work Safety Commissioner under the Act. The person appointed as the ACT Occupational Health and Safety Commissioner under section 26 of the *Occupational Health and Safety Act 1989* immediately before the commencement of the Act is automatically taken to be appointed as the Work Safety Commissioner under section 200 of the Act. An appointment transitioned under this provision will continue in force until the term of the appointment (as set out in the appointment instrument for that member) ends unless the appointment is ended earlier in accordance with the provisions of the Act.

### **Clause 507 – Transitional - inspectors**

This provision transfers the appointment of Office of Regulatory Services (WorkCover) inspectors to the new Act. All people appointed as inspectors under section 201 of the *Occupational Health and Safety Act 1989* immediately prior to the commencement of the Act are, by this provision, automatically taken to be appointed as an inspector under section 180 of the Act.

### **Clause 508 (1) – Transitional – codes of practice**

This provision ensures that particular codes of practice approved under section 206 of the *Occupational Health and Safety Act 1989* continue to have effect under the Act after it commences. Those Codes listed, where they are in force immediately prior to the commencement of the Act, are by this clause given effect as if they were made under section 18 of the Act.

### **Clause 508 (2) – Transitional – codes of practice**

This provision ensures that particular codes of practice approved under section 206 of the *Occupational Health and Safety Act 1989* continue to have effect under the Act after it commences for one year only. Those Codes listed, where they are in force immediately prior to the commencement of the Act, are by this clause given effect as if they were made under section 18 of the Act but only for a period of one year from the date of commencement of the amended Act. This limitation is introduced in respect of the listed codes of practice because it is anticipated that changes may be made in respect of that code or subject matter, following the commencement of the Act.

### **Clause 509 – Transitional regulations**

This provision is necessary to allow the making of regulations which prescribe certain matters as transitional, where it is necessary or convenient to prescribe those matters because of the enactment of this amending Act. As set out in the second sub clause, there is also a separate power to provide a general power to modify the part of the Act dealing with transitional matters where, in the chief executive's opinion, a matter or thing is not, or is not adequately or appropriately, dealt with in the transitional arrangements as they stand on commencement. The third sub-clause clarifies that the

effect of a regulation made within either of the two general powers provided in section 509 is to be given effect despite any other provision of the amending legislation.

#### **Clause 510 – Expiry – pt 20**

The transitional part of the Act will, under this provision, expire five years after the day that the Act commences. The second clause clarifies that section 88 of the *Legislation Act 2001* applies in respect of this Part.

#### **Clause 1.24 – Dictionary, note 2**

This clause omits the abbreviation AAT is omitted from the dictionary.

#### **Clause 1.25 – Dictionary, definitions of health and safety committee and health and safety representative**

This clause omits the definitions of health and safety committee and of health and safety representative from the Act. These terms were transitioned from the *Occupational Health and Safety Act 1989* and do not need to be defined in the Act as they have been replaced, including by this amending legislation, with the new equivalent concepts of work safety committee and work safety representative.

#### **Clause 1.26 – Dictionary, new definition of incorporated document**

As noted above, the inclusion of provisions which allow for incorporated documents as part of the Act regime will allow for expedient updating of the law to cater for new standards and work safety issues. As part of this change, this clause inserts a definition for the term ‘incorporated document’, giving the term the same meaning as that provided under the Work Safety Regulation.

#### **Clause 1.27 – Dictionary, new definition of work safety committee and work safety representative**

This clause introduces new definitions for the terms work safety committee and work safety representative. These terms are used extensively throughout the workplace arrangements provisions which deal with the duty of employers to consult with their workers and related matters. They replace the terms health and safety committee and health and health safety representative, as previously referred to in the *Occupational Health and Safety Act 1989*. In giving meaning to these terms, the definitions provided do not seek to give special meaning to the terms committee or representative aside from their ordinary English meaning, or the term work safety which is already defined in the Act. The definition simply clarifies that each term, where it appears throughout the Act, refers to a committee or representative elected for the relevant worker consultation unit under division 4.1 of the amended Act.

#### **Clause 1.28 Further amendments, mentions of health**

This clause replaces the word health where it is used in section 25 (3) (a) and in section 26 (3) (a) of the Act with the term work safety. Given the definition of work

safety, this clarifies that the work safety duties set out in each provision are directed to work safety, as that term is defined, rather than the meaning of health, according to its ordinary meaning.

**Clause 1.29 Further amendments, mentions of health and safety committee**

This clause replaces the term health and safety committee with the term work safety committee in a series of listed provisions which fall within that part of the Act dealing with workplace arrangements. This clarifies that the role and functions of committees elected under these arrangements encompass the full spectrum of issues and persons covered by the term work safety, as defined in the amended Act.

**Clause 1.30 Further amendments, mentions of health and safety representative**

This clause replaces the term health and safety representative by the term work safety representative in a series of listed provisions which fall within that part of the Act dealing with workplace arrangements.

## SCHEDULE 2

This Schedule contains provisions which amend particular provisions of other Territory legislation which refer to the *Occupational Health and Safety Act 1989* or particular terms or concepts which flowed from that legislation. This Bill will repeal *Occupational Health and Safety Act 1989*, these references are altered by the provisions of this Schedule to refer to the *Work Safety Act 2008* (the Act) and reflect consequent changes in concepts and terminology.

### Specific Provisions

#### Schedule 2 – Consequential amendments

##### Part 2.1 Children and Young People Act 2008

###### Clause 2.1 – Part 21.3 heading, note

This provision substitutes the existing Part 21.3 of the *Children and Young People Act 2008*, which refers to the *Occupational Health and Safety Act 1989*, with a note referring the reader, instead, to the Act. The provision is otherwise identical.

###### Clause 2.2 – Part 21.4 heading, notes

This provision substitutes the existing Part 21.4 of the *Children and Young People Act 2008*, which refers to the *Occupational Health and Safety Act 1989*, with a note referring the reader, instead, to the Act. The provision is otherwise identical.

##### Part 2.2 Corrections Management Act 2007

###### Clause 2.3 – Section 219 heading

This provision substitutes the existing heading which refers to occupational health and safety with a new heading which, instead, refers to work safety. The provision is otherwise identical.

###### Clause 2.4 – Section 219 (1)

This provision substitutes the existing reference to the *Occupational Health and Safety Act 1989* with a note referring to the Act, which will apply after the commencement of that Act to the relevant type of work referred to. The provision also amends section 219 (1) so that it applies in relation to work done by workers, rather than employees. The term worker, as used here, has the same meaning as in the Act, thereby expanding the scope of the section from work by employees to work by employees and other persons captured by the definition of worker. The provision is otherwise identical.

### **Clause 2.5 – Section 219 (3)**

This provision substitutes the existing reference to the *Occupational Health and Safety Act 1989* with a reference to the Act, which will apply after the commencement day.

### **Part 2.3 Crimes Act 1900**

#### **Clause 2.6 – Section 49E (7)**

This provision substitutes the existing reference to the *Occupational Health and Safety Act 1989* with a reference to the Act, which will apply after the commencement day.

#### **Clause 2.7 – Dictionary, definition of commissioner for OH&S**

The definition of Commissioner for OH&S is omitted from the *Crimes Act 1900* by this provision, as the definition is no longer required.

### **Part 2.4 Crimes (Sentence Administration) Act 2005**

#### **Clause 2.8 – Section 320 heading**

This provision substitutes the existing heading which refers to occupational health and safety with a new heading which, instead, refers to work safety. The provision is otherwise identical.

#### **Clause 2.9 – Section 320 (1)**

This provision substitutes the existing reference to the *Occupational Health and Safety Act 1989* with a note referring to the Act, which will apply after the commencement of the Act to the relevant type of work referred to. The provision also amends section 320 (1) so that it applies in relation to work by workers, rather than the doing of work by employees. The term worker, as used here, has the same meaning as in the Act, thereby expanding the scope of the section from work by employees to work by employees and other persons captured by the definition of worker. The provision is otherwise identical.

#### **Clause 2.10 – Section 320 (3)**

This provision substitutes the existing reference to the *Occupational Health and Safety Act 1989* with a reference to the Act, which will apply after the commencement day.

### **Part 2.5 Dangerous Substances Act 2004**

#### **Clause 2.11 – Section 8 (1), note 2**

This provision omits a reference to the *Occupational Health and Safety Act 1989* which will be repealed on the commencement of the Act.

**Clause 2.12 – Section 8 (1), note 2**

This provision inserts a new reference to the Act, which will apply after the commencement day.

**Part 2.6 Dangerous Substances (Explosives) Regulation 2004**

**Clause 2.13 – Schedule 2, section 2.1 (3)**

By this provision the term health and safety representative is replaced by the term work safety representative. This provision also consequently substitutes the existing reference to the *Occupational Health and Safety Act 1989* with a note referring to the Act, which will apply after commencement of the.

**Part 2.7 Dangerous Substances (General) Regulation 2004**

**Clause 2.14 Section 203, definition of *health and safety representative***

This provision omits the definition of health and safety representative from the Dangerous Substances (General) Regulation 2004.

**Clause 2.15 Section 203, new definition of *work safety representative***

This clause inserts a new definition for the term work safety representative, in section 203 of the Dangerous Substances (General) Regulation 2004.

**Clause 2.16 Dictionary, definition of *health and safety representative***

This provision omits the definition of health and safety representative from the dictionary of Dangerous Substances (General) Regulation 2004.

**Clause 2.17 Dictionary, new definition of *work safety representative***

This provision inserts a new definition for the term work safety representative, which will be required after the commencement of the Act, and given other changes made to the Dangerous Substances (General) Regulation 2004 to reflect the introduction of work safety representatives. The definition inserted, for the purposes of chapter 2 (certain dangerous substances), is that set out in section 203 of the Dangerous Substances (General) Regulation 2004 (as amended by Clause 2.15 of this amending Act.

**Clause 2.18 Further Amendments, mention of *health and safety representative***

This clause further amends the various sections of the Dangerous Substances (General) Regulation 2004 by omitting the term ‘health and safety representative’ and substituting ‘work safety representative’.

### **Clause 2.19 Further Amendments, mention of health and safety representatives**

This clause further amends section 245 (3), notes of the Dangerous Substances (General) Regulation 2004 by omitting the term ‘health and safety representatives’ and substituting ‘work safety representatives’.

### **Part 2.8 Legislation Act 2001**

#### **Clause 2.20 Section 131 (1), example 3**

This clause substitutes the existing heading which refers to OH&S (occupational health and safety) with a new heading which, instead, refers to work safety. This change in terminology reflects the transition to the new *Work Safety Act 2008*.

#### **Clause 2.21 Dictionary, part 1, definition of OH&S Commissioner**

This clause omits the definition of OH&S Commissioner.

#### **Clause 2.22 Dictionary, part 1, new definition of work safety commissioner**

This provision inserts a new definition for the phrase work safety commissioner, which will be the new statutory commission created by the *Work Safety Act 2008* to replace the current ACT Occupational Health and Safety Commissioner. The new definition simply refers the reader to the *Work Safety Act 2008*, as the legislation which creates and gives meaning to the phrase.

### **Part 2.9 Public Sector Management Act 1994**

#### **Clause 2.23 Section 249**

This clause amends the *Public Sector Management Act 1994* by removing section 249. Section 249 currently provides that the provisions of the *Occupational Health and Safety Act 1989* (and regulations made under that Act) apply in a modified form in relation to public employees. These modifications are largely set out in Schedule 3 to the *Public Sector Management Act 1994*.

The *Work Safety Act 2008*, when commenced, will apply equally in respect of public and private sector workers, without any legislative provisions modifying the application of its terms for public sector employees in the Territory. This will ensure even coverage for all workers, who will be able to agree with their employer to negotiate and establish flexible consultation arrangements under the terms of the *Work Safety Act 2008* to suit individual circumstances.

#### **Clause 2.24 Schedule 3**

As noted above in relation to Clause 2.23, this provision amends the *Public Sector Management Act 1994* by removing Schedule 3. This Schedule sets out the modifications which apply to worker consultation in respect of public sector

employees in the Territory under the *Occupational Health and Safety Act 1989*. Given the removal of Section 249 of the *Public Sector Management Act 1994* by this amending Act, Schedule 3 would no longer have any effect.

**Part 2.10 Radiation Protection Act 2006**

**Clause 2.25 Section 115 (4) (f)**

The role and name of the ACT Occupational Health and Safety Commissioner have changed. This clause changes the reference from the ‘occupational health and safety commissioner’ to the chief executive of the administrative unit responsible for the administration of the *Work Safety Act 2008*. This ensures that the reporting of information under the *Radiation Protection Act 2006* is to the person with the appropriate role and function.

**Clause 2.26 Dictionary, note 2**

The term OH&S Commissioner is omitted by this clause.

**Part 2.11 Scaffolding and Lifts Regulation 1950**

**Clause 2.27 Section 84**

This clause omits the existing reference in section 84 to the Occupational Health and Safety Regulation 1991 which will be repealed by this amending Bill. This has been replaced with a reference to the Dangerous Substances (Explosives) Regulation 2004 which will cover the same subject matter for the purposes of section 84.

**Part 2.12 Utilities Act 2000**

**Clause 2.28 Section 20 (2) (i)**

This clause omits a reference to the *Occupational Health and Safety Act 1989* which will be repealed on the commencement of the *Work Safety Act 2008*.

**Clause 2.29 New section 20 (2) (m)**

This clause inserts a new reference to the *Work Safety Act 2008*, which will apply after the commencement day.

**Part 2.13 Victims of Crime Regulation 2000**

**Clause 2.30 Section 48, note**

This clause omits this note as it will no longer be necessary when the *Occupational Health and Safety Act 1989* is repealed on the commencement of the *Work Safety Act 2008*.

## **Part 2.14 Workers Compensation Act 1951**

### **Clause 2.31 Section 206**

Upon commencement of the *Work Safety Act 2008* the ACT Occupational Health and Safety Council will become the Work Safety Council. The Council will exercise the same functions and will be an equivalent advisory body.

In this context, this clause replaces all references to the OH&S Council in section 206 of the *Workers Compensation Act 1951* with a reference to the work safety council. Under the *Work Safety Act 2008*, the transition to the work safety council will not affect the exercise of workers compensation related advisory functions as these functions are identical to those of the OH&S Council. As a consequence of these substitutions, the notes throughout the provision have also been amended to refer to the new equivalent sections of the *Work Safety Act 2008* which confer functions and powers on the work safety council.

Finally, the provision alters the final sub-clause so that the existing definition of OH&S Council is removed and replaced by a definition of work safety council. This definition clarifies that the work safety council referred to in section 206 of the *Workers Compensation Act 1951* is the same as the council by the same name established under Part 9 of the *Work Safety Act 2008*.

## **Part 2.15 Workers Compensation Regulation 2002**

### **Clause 2.32 Section 86 (1) (i)**

This clause clarifies the meaning of section 86 (1) (i) of the Workers Compensation Regulation 2002 by substituting the words occupational health and safety for the abbreviation OH&S.

### **Clause 2.33 Section 86 (6), definition of OH&S policy**

The *Work Safety Act 2008* places requirements on duty holders to ensure work safety. While OH&S policies were once mandatory in meeting OHS obligations this is no longer the case. Against this background, this clause removes the existing definition of OH&S policy from Section 86 of the Workers Compensation Regulation 2002. This change removes the legislative connection between the requirements of the Workers Compensation Regulation 2002 with respect to such a policy and the provisions of the *Work Safety Act 2008*.

### **Clause 2.34 Section 87 (2) (iii)**

This clause substitutes the existing clause, which refers to a duty to have an occupational health and safety policy, with a clause which instead requires the person, in general terms, to comply with their duties as an employer under Part 3 of the *Work Safety Act 2008* after it commences. This reflects the removal of any specific requirement to have a work safety or occupational health and safety policy as a

consequence of the introduction of the *Work Safety Act 2008* but does not preclude the use of OHS policies in order to comply with safety duties.

**Clause 2.35 Dictionary, definition of OH&S Council**

The term OH&S Council is omitted by this clause.

**Clause 2.36 Dictionary, new definition of work safety council**

This clause inserts a new reference to the Work Safety Council, which renames the current ACT Occupational Health and Safety Council under the *Work Safety Act 2008*.

**Clause 2.37 Further amendments, mentions of OH&S Council**

This clause replaces references to the OH&S Council with references to the new equivalent advisory body, the Work Safety Council, in a series of listed provisions of the Workers Compensation Regulation 2002. The Work Safety Council is the new statutory advisory body created by the *Work Safety Act 2008* to take the place of the current ACT Occupational Health and Safety Council.