

OCCUPATIONAL HEALTH, SAFETY AND WELFARE ACT 1984.

(No. 101 of 1984).

ARRANGEMENT.

Section.

1. Short title.
2. Commencement.
3. Interpretation.
4. Act to bind Crown.
5. Objects.
6. The Commission.
7. Acting members.
8. Terms and conditions of appointed members.
9. Commissioner for Occupational Health and Safety.
10. Vacation of office.
11. Leave of absence.
12. Casual vacancies.
13. Meetings of the Commission.
14. Functions of the Commission.
15. Advisory committees.
16. Annual report.
17. Staff to assist the Commission.
18. The Commissioner and the Department.
19. Governor may transfer administration of certain laws to Minister.
20. Liability of members.
21. Regulations.
22. Review of Act.

OCCUPATIONAL HEALTH, SAFETY AND WELFARE.

No. 101 of 1984.

AN ACT to promote and improve standards for occupational health, safety and welfare, to establish the Occupational Health, Safety and Welfare Commission, to facilitate the co-ordination of the administration of the laws relating to occupational health, safety and welfare and for incidental and other purposes.

[Assented to 19 December 1984.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Occupational Health, Safety and Welfare Act 1984*. Short title.

Commence-
ment.

2. The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation.

Interpreta-
tion.

3. In this Act unless the contrary intention appears—

“appointed member” means a member of the Commission referred to in section 6 (2) (d);

“Commission” means the Occupational Health, Safety and Welfare Commission established under this Act;

“Commissioner” means the person holding office as Commissioner for Occupational Health and Safety under section 9;

“Department” means the Department of the Public Service of the State principally assisting the Minister in the administration of this Act;

“prescribed law” means a law prescribed for the purposes of section 14 (1) (b);

“transferred law” means a law or a provision of a law transferred to the administration of the Minister pursuant to an order under section 19.

Act to bind
Crown.

4. This Act binds the Crown.

Objects.

5. The objects of this Act are—

(a) to promote and secure the health, safety and welfare of persons at work;

(b) to protect persons at work against risks to health or safety;

(d) 9 persons appointed by the Governor of whom—

- (i) 3 shall be persons nominated for appointment on the recommendation by the body known as The Confederation of Western Australian Industry (Incorporated);
- (ii) 3 shall be persons nominated for appointment on the recommendation of the body known as The Trades and Labor Council of Western Australia; and
- (iii) 3 shall be persons having knowledge of or experience in occupational health and safety who shall be nominated for appointment after consultation between the Minister and the bodies referred to in subparagraphs (i) and (ii).

(3) Where any of the bodies referred to in subsection (2) (d) (i) or (ii) fails to make a nomination within 60 days after being requested in writing by the Minister to do so the Governor may appoint any person considered suitable and any person so appointed shall be deemed to have been nominated pursuant to subsection (2) (d) (i) or (ii), as the case may be.

(4) A nomination for the purposes of subsection (2) (b) or (c) may be made from time to time, may be made by reference to the holder of a specified office and may be expressed to operate for a period or in such circumstances as are specified in the instrument of nomination.

Acting
members.

7. (1) Where—

- (a) an appointed member is absent or temporarily incapable of fulfilling the duties of a member; or

- (b) the office of an appointed member is vacant and has not been filled in accordance with this Act,

the Minister may appoint an eligible person to act in the place of that appointed member during that absence or incapability, or until the vacancy is filled, as the case requires, and a person so appointed has, while the appointment subsists, all the duties, powers and entitlements of, and the protection given to, the member in whose place the person is appointed to act.

(2) The appointment of a person as an acting member may be terminated by the Minister at any time.

8. (1) An appointed member shall hold office for such term not exceeding 3 years as is specified in the instrument of his appointment and is eligible for re-appointment.

Terms and conditions of appointed members.

(2) An appointed member other than a person who is an officer of the Public Service of the State is entitled to such remuneration and allowances as are determined by the Minister on the recommendation of the Public Service Board.

9. (1) The Governor shall appoint a person to be Commissioner for Occupational Health and Safety.

Commissioner for Occupational Health and Safety.

(2) The Commissioner shall be appointed for such term not exceeding 5 years as is specified in the instrument of his appointment and on the expiration of his term is eligible for re-appointment.

(3) Subject to the Salaries and Allowances Act 1975, the Commissioner is entitled to such conditions of service as are determined by the Minister from time to time on the recommendation of the Public Service Board.

(4) If a person appointed to be Commissioner was immediately before that appointment an officer of the Public Service of the State he shall notwithstanding that appointment retain his existing and accruing rights on his appointment as Commissioner.

(5) If a person appointed to be Commissioner was immediately before that appointment an officer within the meaning of the Public Service Act 1978, he is entitled upon resigning his office as Commissioner or upon ceasing to be Commissioner to be appointed to an office in the Public Service of the State not lower in status than the office he so occupied immediately before his appointment as Commissioner.

(6) The Commissioner shall not engage in paid employment outside his duties and functions under this Act without first obtaining the approval in writing of the Minister.

(7) The provisions of section 29 of the Public Service Act 1978 other than subsections (5) to (7) do not apply to the office of Commissioner.

Vacation of office.

10. The office of Commissioner or of an appointed member becomes vacant if—

- (a) his term of office expires;
- (b) he becomes permanently incapable of performing his duties;
- (c) he resigns his office by written notice addressed to the Minister;
- (d) he is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (e) he is removed from office by the Governor on the grounds of neglect of duty, his behaviour or incompetence;

(6) At a meeting of the Commission—

(a) only appointed members are entitled to vote; and

(b) where any question requiring a vote arises the question shall be decided by a majority of the votes of the appointed members if, and only if, not less than 6 of the appointed members also constitute such majority.

(7) Subject to the presence of a quorum the Commission may act notwithstanding any vacancy in its membership.

(8) A member of the Commission who has a pecuniary interest whether direct or indirect in any matter to be considered by the Commission shall declare the nature of that interest at every meeting at which the matter is considered.

(9) Subject to this Act, the Commission may determine its own procedures.

(10) It is the duty of the Commission to work for the attainment of the objects of this Act by achieving a consensus, as far as this is practicable, among its members.

Functions of
the
Commission.

14. (1) The functions of the Commission are—

(a) to inquire into and report to the Minister upon any matters referred to it by the Minister;

(b) to make recommendations to the Minister with respect to—

(i) this Act;

(ii) any law or provision of a law, relating to occupational health, safety and welfare that is administered by the Minister and any law

or provision of a law relating to occupational health, safety and welfare that is prescribed for the purposes of this paragraph; and

- (iii) subsidiary legislation, guidelines and codes of practice proposed to be made under or for the purposes of any prescribed law;
- (c) to examine, review and make recommendations to the Minister in relation to existing and proposed registration or licensing schemes relating to occupational health, safety and welfare;
- (d) to provide advice to and co-operate with Government departments, public authorities, trade unions, employer organizations and other interested persons in relation to occupational health and safety;
- (e) to formulate or recommend standards, specifications or other forms of guidance for the purpose of assisting employers, self employed persons and employees to maintain appropriate standards of occupational health, safety and welfare;
- (f) to promote education and training in occupational health and safety as widely as possible;
- (g) in co-operation with educational authorities or bodies to devise and approve courses in relation to occupational health, safety and welfare;
- (h) having regard to the criteria laid down by the National Commission for Occupational Health, Safety and Welfare, to advise persons on training in occupational health, safety and welfare and to formulate and accredit training courses in occupational health, safety and welfare;

- (i) to recommend to the Minister the establishment of public inquiries into any matter relating to occupational health and safety;
- (j) to collect, publish and disseminate information on occupational health, safety and welfare;
- (k) to formulate reporting procedures and monitoring arrangements for identification of workplace hazards, and incidents in which injury or death is likely to occur in an occupational situation; and
- (l) to commission and sponsor research into occupational health, safety and welfare.

(2) The Commission shall issue for public review and comment any regulations, codes of practice or guidelines with respect to which it proposed under subsection (1) (b) to make any recommendations to the Minister.

(3) The Commission shall ensure, as far as is practicable, that any information it provides is in such language and form as are appropriate for the persons to whom the information is directed.

(4) The Minister shall within 60 days after receiving from the Commission a recommendation under subsection (1) make reply in writing to the Commission in relation to that recommendation.

**Advisory
committees.**

15. (1) The Commission may at any time and when so requested by the Minister shall appoint advisory committees to assist it in the performance of its functions and duties.

(2) Subject to this section, an advisory committee shall consist of such number of persons as are appointed by the Commission.

(3) Subject to the direction of the Commission an advisory committee may determine its own procedures.

(4) The members of advisory committees are entitled to be paid such remuneration and travelling and other allowances as may be determined by the Minister on the recommendation of the Public Service Board.

(5) In appointing persons to be members of advisory committees under this section the Commission—

- (a) shall, as far as is practicable, appoint persons who represent employers, employees and persons having knowledge of or experience in occupational health and safety; and
- (b) shall have regard to the desirability of having a reasonable number of men and women, including persons of differing ethnic backgrounds and other groups with special needs.

16. (1) The Commission shall on or before 31 October in each year prepare and submit to the Minister a report of its operations and the operation of this Act and any prescribed law during the year ending on the preceding 30 June.

Annual report.

(2) The Minister shall cause a report submitted under this section to be laid before each House of Parliament within 12 sitting days of such House of its receipt by him.

17. There shall be appointed under and subject to the Public Service Act 1978 such officers and employees as are necessary to assist the Commission in the performance of its functions and duties.

Staff to assist the Commission.

18. (1) The Commissioner is subject to the control and direction of the Minister, and is responsible to the Minister for the administration of this Act and any other law relating to occupational health, safety and welfare administered by the Minister.

The Commissioner and the Department.

(2) There shall be appointed under and subject to the Public Service Act 1978 such officers as are necessary for the administration of this Act and any law relating to occupational health, safety and welfare administered by the Minister.

(3) The Commissioner shall be the permanent head of the Department and, subject to the Public Service Act 1978, has control of the officers of the Department.

Governor
may transfer
administra-
tion of
certain laws
to Minister.

19. (1) For the purposes of facilitating the co-ordination of the administration of laws relating to occupational health, safety and welfare, where the Governor is of the opinion that—

- (a) any law or a provision of a law relates to occupational health, safety and welfare and that law or that provision is administered by a Minister other than the Minister charged with the administration of this Act the Governor may by order transfer the administration of that law or that provision to the Minister;
- (b) any law or provision of a law not relating to occupational health, safety and welfare that is administered by the Minister refers to an officer of the Department the Governor may order that the reference shall be read and construed as a reference to an officer specified in the order,

and any such order shall have effect accordingly.

(2) An order made under subsection (1) may be amended or revoked by the Governor.

(3) An order made under subsection (1) or subsection (2) shall be published in the *Government Gazette* and shall be laid before each House of Parliament within 14 sitting days of such House.

(4) An order under this section may provide for the transfer of any function imposed by the transferred law from the officer or authorized

(3) A provision of a regulation made under subsection (2) may take effect on and from a day that is earlier than the day on which the regulation is published in the *Government Gazette*.

(4) To the extent to which a provision of a regulation made under this section takes effect on and from a day that is earlier than the day on which it is published in the *Government Gazette*, the provision does not operate—

- (a) to affect, in a manner prejudicial to any person (other than the State or a public authority), the rights of that person existing before that day of publication; or
- (b) to impose a liability on any person (other than the State or a public authority) in respect of anything done or omitted to be done before that day of publication.

Review of Act.

22. (1) The Minister shall carry out a review of the operations of this Act on every fifth anniversary of the commencement of this Act and in the course of such review the Minister shall consider and have regard to—

- (a) the attainment of the objects of this Act;
- (b) the administration of the Acts and laws relating to occupational health, safety and welfare administered by the Minister;
- (c) the effectiveness of the operations of the Commission, any advisory committees and the Department;
- (d) the need for the continuation of the Commission and any committees established under this Act;
- (e) such other matters as appear to him to be relevant.

(2) The Minister shall prepare a report based on his review of this Act and shall, as soon as is practicable after its preparation, cause the report to be laid before each House of Parliament.