

Serial 184
Work Health Administration Bill 2011
Ms Lawrie

A Bill for an Act to provide for the Work Health Authority and
Work Health Court

NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH ADMINISTRATION ACT 2011

Act No. [] of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2011

An Act to provide for the Work Health Authority and Work Health Court

[Assented to [] 2011]
[Second reading [] 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Work Health Administration Act 2011*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Definitions

In this Act:

Authority means the Work Health Authority under section 4.

Chief Magistrate means the Chief Magistrate under the *Magistrates Act*.

Court means the Work Health Court under section 12.

court rules means rules made under section 31.

Part 2 Work Health Authority

4 Work Health Authority

- (1) The Work Health Authority under section 7 of the *Workplace Health and Safety Act* as in force immediately before the commencement of this section is continued.
- (2) The Authority:
 - (a) is a body corporate with perpetual succession; and
 - (b) may own and deal with property; and
 - (c) may sue and be sued.
- (3) The Authority is constituted by:
 - (a) the person appointed under subsection (4); or
 - (b) if there is no person as mentioned in paragraph (a), and no person appointed under section 44(2) of the *Interpretation Act* to act in that position – by the Chief Executive Officer.
- (4) The Minister may appoint a person to constitute the Authority.

5 Functions of the Authority

- (1) The Authority has the following functions:
 - (a) to be the regulator under the *Work Health and Safety (National Uniform Legislation) Act*,
 - (b) the functions conferred on it under the *Workers Rehabilitation and Compensation Act*,
 - (c) any other function conferred on it under any Act.
- (2) The Authority has the powers necessary to perform its functions.

6 Minister may give directions to Authority

- (1) In exercising powers or performing functions, the Authority is subject to the written directions of the Minister.
- (2) A copy of a direction given under subsection (1) in a financial year must be included in the Authority's report for the year prepared under section 7.

7 Annual report

- (1) At the end of each financial year, the Authority must prepare a report about the Authority's activities during that year.
- (2) Without limiting subsection (1), the report must contain details about:
 - (a) the Authority's activities as the regulator under the *Work Health and Safety (National Uniform Legislation) Act* during that year; and
 - (b) the Authority's activities under the *Workers Rehabilitation and Compensation Act* during that year; and
 - (c) any other matter directed by the Minister to be included.
- (3) The Authority must, by 31 October following the end of that year, give the report to the Minister.
- (4) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving the report.

8 Common seal

- (1) The Authority must have a common seal.
- (2) The seal must not be used except with the authority of the Authority.
- (3) A document purporting to bear the common seal of the Authority is taken to have been duly executed by the Authority, in the absence of evidence to the contrary.

9 Authority excluded matter under Corporations Act 2001

The Authority is declared to be an excluded matter for the purposes of section 5F of the Corporations Act 2001 in relation to the whole of the Corporations legislation.

10 Staff and facilities

The Chief Executive Officer must provide the Authority with staff and facilities to enable it to properly perform its functions.

11 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
 - (a) the person appointed to constitute the Authority;
 - (b) a member of the staff of the Authority.
- (2) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the Authority in the exercise of a power or performance of a function under this Act.
- (3) Subsections (1) and (2) do not affect any liability the Territory or the Authority would, apart from those subsections, have for the act or omission.
- (4) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

Part 3 Work Health Court

Division 1 Establishment and jurisdiction

12 Work Health Court

- (1) The Work Health Court under Part 6 of the *Workers Rehabilitation and Compensation Act* as in force immediately before the commencement of this section is continued.
- (2) The Court is a court of record.
- (3) The Court has a seal that must be affixed to all process issued out of the Court.

13 Constitution of Court

The Court may be constituted by:

- (a) a magistrate sitting alone; or
- (b) the registrar exercising a power under section 22(2); or
- (c) a judicial registrar exercising powers under section 23(2).

14 Jurisdiction of Court

The Court has the following jurisdiction:

- (a) under the *Workers Rehabilitation and Compensation Act*, to hear and determine:
 - (i) claims for compensation under Part 5 of that Act; and
 - (ii) all other matters required or permitted by that Act to be referred to the Court for determination;
- (b) under the *Work Health and Safety (National Uniform Legislation) Act*, to hear and determine:
 - (i) all applications made to the Court under that Act; and
 - (ii) all other matters required or permitted by that Act to be dealt with by the Court;
- (c) to determine all matters and questions incidental to, or arising out of, matters before the Court;
- (d) any other jurisdiction conferred on it under any Act.

15 General powers of Court

- (1) For a proceeding before the Court, the Court has all of the powers that the Local Court has under the *Local Court Act* in relation to a proceeding before that court.
- (2) This section applies in relation to a matter only to the extent that the matter is not specifically provided for in this or any other Act or the court rules.
- (3) The powers under subsection (1) are in addition to powers conferred on the Court under this or any other Act.

16 Court may decline to deal with matter if frivolous etc.

The Court may decline to deal with, or to continue dealing with, any proceeding if satisfied the proceeding is frivolous, vexatious or was not made in good faith.

17 Examination of witnesses

- (1) For a proceeding before the Court, the Court may do either or both of the following:
 - (a) order the examination on oath of a person, orally or in writing, before the Court, an officer of the Court or any other person, at any place in Australia;
 - (b) order a commission or letters of request to be issued to take evidence.
- (2) The Court may give any directions it considers appropriate to enable effect to be given to an order under subsection (1).
- (3) Evidence taken under an order under subsection (1) may be admitted in a proceeding before the Court on such terms as the Court considers appropriate.

18 Enforcement of orders for payment of money

- (1) This section applies if the Court makes an order awarding an amount of money to a person (the *recipient*) and the amount is not paid as required by the order.
- (2) On application by or on behalf of the recipient, the registrar must issue a certificate certifying that the order has not been complied with and the amount that is outstanding.
- (3) The certificate may be filed in the Local Court.
- (4) On the filing of the certificate in the Local Court, the Clerk of the Local Court must enter judgment for the recipient as if the order were a judgment of the Local Court for payment to the recipient of:
 - (a) the amount certified as being outstanding; and
 - (b) the amount of any fees paid:
 - (i) under this Act to obtain the certificate; or
 - (ii) under the *Local Court Act* for the filing of the certificate and entering of judgment.

19 Contempt of Court

A person commits a contempt of the Court if, intentionally and without reasonable excuse, the person does any of the following:

- (a) having been served with a summons to attend as a witness, does not do so;

- (b) when required by the Court to do any of the following, does not do so:
 - (i) to take an oath;
 - (ii) to give evidence that the person is competent and compellable to give;
 - (iii) to produce a document or other thing to the Court;
- (c) when appearing before the Court as a witness, prevaricates;
- (d) interrupts, obstructs or hinders a proceeding of the Court;
- (e) in the face of the Court, fails to comply with a lawful direction of the Court.

20 Dealing with contempt of Court

- (1) If a person commits a contempt of the Court:
 - (a) if it is committed in the face of the Court when the Court is constituted by a magistrate – the Court may orally order the person to be arrested and brought before the Court to be dealt with for the contempt; or
 - (b) in any case – the Court may issue a warrant to have the person arrested and brought before the Court to be dealt with for the contempt.
- (2) If a person is brought before the Court to be dealt with for a contempt, the Court:
 - (a) must inform the person of the contempt the person is alleged to have committed; and
 - (b) may deal with the matter in the manner the Court considers appropriate.
- (3) If the Court finds the person has committed a contempt of the Court, it may do either or both of the following:
 - (a) order the person to be imprisoned for not more than one month;
 - (b) fine the person not more than \$2 000.
- (4) If the Court fines the person, it may order that if the person does not pay the fine within the time specified in the order, the person is to be imprisoned for not more than one month.

- (5) If a person who has been punished for contempt apologises to the Court for the contempt, the Court may amend or cancel the order imposing the punishment and, if it does, may order the refund of some or all of a fine that has been paid.

Division 2 Managing magistrate, registrars and other officers of the Court

21 Managing magistrate

- (1) The Chief Magistrate must appoint a magistrate to be the managing magistrate for the Court.
- (2) The managing magistrate has the functions conferred under the court rules or any other Act.

22 Registrar

- (1) The Chief Magistrate must appoint a person to be the registrar of the Court.
- (2) The registrar:
- (a) may exercise such powers of the Court as are determined by the Chief Magistrate; and
 - (b) has any other functions conferred under the court rules or any other Act.
- (3) In performing a function under subsection (2), the registrar is subject to the directions of the Chief Magistrate.

23 Judicial registrars

- (1) The Chief Magistrate may appoint one or more persons to be judicial registrars of the Court.
- (2) A judicial registrar:
- (a) may exercise such powers of the Court as are determined by the Chief Magistrate; and
 - (b) has any other functions conferred under the court rules or any other Act.
- (3) In performing a function under subsection (2), a judicial registrar is subject to the directions of the Chief Magistrate.

24 Assistant registrars

- (1) Each registrar of the Local Court is an assistant registrar of the Court (unless the person is the registrar or a judicial registrar).
- (2) An assistant registrar:
 - (a) may exercise such powers of the registrar as are determined by the registrar; and
 - (b) has any other functions conferred under the court rules or any other Act.
- (3) In performing a function under subsection (2), an assistant registrar is subject to the directions of the registrar and Chief Magistrate.

25 Other officers of the Court

- (1) The Minister may appoint other officers of the Court as the Minister considers appropriate.
- (2) An officer appointed under subsection (1) has the functions conferred under the court rules or any other Act.
- (3) In performing a function under subsection (2), the officer is subject to the directions of the Chief Magistrate.

26 Staff and facilities

The Chief Executive Officer must provide the Court with staff and facilities to enable it to properly perform its functions.

Division 3 Procedure and administrative matters

27 Procedure

- (1) Subject to any Act and the court rules, the Court may regulate its own procedure.
- (2) The Court may extend or abridge a time prescribed under an Act as the Court considers appropriate.

28 Representation before Court

- (1) A party to a proceeding before the Court may:
 - (a) appear personally; or
 - (b) be represented by:
 - (i) a legal practitioner; or

(ii) a person whom the Court is satisfied is acting on behalf, and at the request, of the party.

(2) A person representing a party to a proceeding before the Court has the same protection and immunity as a legal practitioner representing a party in a proceeding before a Local Court.

29 Witnesses

Subject to any other Act, a witness summoned to attend or appearing before the Court has the same obligations and protection, and is subject to the same liabilities, as a witness in a proceeding before the Local Court.

30 Register of proceedings

(1) The registrar must maintain a register of all proceedings commenced in the Court.

(2) The register must be maintained in the form and manner determined by the Chief Magistrate.

31 Court rules

(1) The Chief Magistrate may make rules as follows:

(a) prescribing the functions and powers of officers of the Court;

(b) for the awarding and taxation of costs (including disbursements and witnesses' expenses);

(c) prescribing scales of costs;

(d) forms to be used in proceedings before the Court;

(e) for the practice and procedure of the Court, including the practice and procedures of the registry.

(2) An amount provided for a matter in a scale of costs under subsection (1)(c) must not exceed the amount prescribed for the same or a similar matter in a scale of costs under the *Supreme Court Act*.

(3) The Chief Magistrate may give practice directions for the practice and procedure of the Court, including the practice and procedures of the registry.

Part 4 General matters

32 Regulations

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may prescribe fees payable under this Act.

Part 5 Transitional provisions for Work Health Administration Act 2011

33 Relationship with other Acts

- (1) This Part does not limit the operation of Part III of the *Interpretation Act*.
- (2) This Part has effect subject to:
 - (a) the *Work Health and Safety (National Uniform Legislation) Act* (including any regulations made under that Act); and
 - (b) any regulations made under section 32 of the *Work Health and Safety (National Uniform Legislation) Implementation Act*.

34 Work Health Authority – continuation of acts, matters and things

- (1) If an act, matter or thing relating to the Authority as constituted under section 7 of the old WHS Act is in existence, force or operation immediately before commencement, on commencement it becomes an act, matter or thing in existence, force or operation in relation to the Authority as constituted under section 4 of this Act.
- (2) In this section:

commencement means the commencement of this section.

old WHS Act means the *Workplace Health and Safety Act* as in force from time to time before commencement.

35 Work Health Court – continuation of appointments, proceedings etc.

- (1) A person holding office as the registrar, a judicial registrar, an assistant registrar or any other officer of the Court under the old Part 6 immediately before commencement, continues to hold that office as if he or she had been appointed under Part 3, Division 2 of this Act.

- (2) All proceedings before the Court immediately before commencement, continue and are not affected by the enactment of this Act or repeal of the old Part 6.
- (3) Court rules made under the old Part 6 and in force immediately before commencement, continue as rules under section 31 of this Act.
- (4) If an act, matter or thing relating to the Court as constituted under the old Part 6 is in existence, force or operation immediately before commencement, on commencement it becomes an act, matter or thing in existence, force or operation in relation to the Court as constituted under section 12 of this Act.
- (5) In this section:

commencement means the commencement of this section.

old Part 6 means Part 6 of the *Workers Rehabilitation and Compensation Act* as in force from time to time before commencement.