



National Occupational Health and Safety Commission (Repeal, Consequential and Transitional Provisions) Act 2005

No. 135, 2005

An Act to repeal the *National Occupational Health and Safety Commission Act 1985*, to deal with consequential and transitional matters related to that repeal and to the enactment of the *Australian Workplace Safety Standards Act 2005*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to repeal the *National Occupational Health
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consequential and transitional matters related to
that repeal and to the enactment of the *Australian
Workplace Safety Standards Act 2005*, and for
related purposes**

[Assented to 15 November 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *National Occupational Health and Safety Commission (Repeal, Consequential and Transitional Provisions) Act 2005*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	15 November 2005
2. Schedules 1 and 2	At the same time as section 3 of the <i>Australian Workplace Safety Standards Act 2005</i> commences.	1 January 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Abolition of the National Occupational Health and Safety Commission

Part 1—Repeal of the National Occupational Health and Safety Commission Act 1985

National Occupational Health and Safety Commission Act 1985

1 The whole of the Act

Repeal the Act.

Part 2—Transitional and saving arrangements

2 Definitions

In this Part:

abolition day means the day on which section 3 of the Standards Act commences.

assets means property of every kind and, without limiting the generality of the foregoing, includes:

- (a) choses in action; and
- (b) rights, interests and claims of every kind in or to property, whether arising under an instrument or otherwise, and whether legal or equitable, liquidated or unliquidated, certain or contingent, accrued or accruing.

Australian Safety and Compensation Council has the same meaning as in the Standards Act.

authorised officer means the Minister, the Secretary of the Department or any other person authorised by the Minister for the purposes of this Part.

Commission means the National Occupational Health and Safety Commission that was established under section 6 of the NOHSC Act.

Commission instrument means an instrument subsisting immediately before abolition day:

- (a) to which the Commission was a party; or
- (b) that was given to, or in favour of, the Commission; or
- (c) in which a reference is made to the Commission; or
- (d) under which money is or was, or may become or may have become, payable to the Commission; or
- (e) under which any other property is or was to be, or may become liable to be or to have been, transferred to or by the Commission.

liabilities means liabilities of every kind and, without limiting the generality of the foregoing, includes obligations of every kind, whether arising at law or in equity, whether arising under or by virtue of an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing.

NOHSC Act means the *National Occupational Health and Safety Commission Act 1985*.

Secretary means the Secretary of the Department.

Standards Act means the *Australian Workplace Safety Standards Act 2005*.

3 Transfer of assets and liabilities

On abolition day:

- (a) any assets that, immediately before that day, were vested in the Commission are, by force of this item, vested in the Commonwealth; and
- (b) the Commonwealth becomes, by force of this item, liable to pay and discharge liabilities of the Commission that existed immediately before that day.

4 Custody of Commission records or documents

- (1) Any record or document, including a Commission instrument other than a Commission instrument declaring a national standard or code of practice under section 38 of the NOHSC Act, that was in the custody of the Commission immediately before abolition day is to be transferred into the custody of the Commonwealth on or after that day.
- (2) Any Commission instrument declaring a national standard or code of practice under section 38 of the NOHSC Act that was in the custody of the Commission immediately before abolition day is to be transferred into the custody of the Australian Safety and Compensation Council on or after that day.

5 Pending proceedings

If, immediately before abolition day, proceedings to which the Commission was a party were pending in any court or tribunal, the Commonwealth is, on and after that day and despite the provisions of any other law or instrument, substituted for the Commission as a party to the proceedings and has the same rights in the proceedings as the Commission had.

6 Exemption from taxation

- (1) Any transfer of assets or liabilities, or any other dealing, under this Part, and any instrument facilitating or evidencing such a transfer or other

dealing, is not subject to stamp duty or other tax under a law of the Commonwealth or of a State or Territory if an authorised officer certifies, in writing:

- (a) that the transfer or dealing is a transfer or dealing for a purpose connected with, or arising out of, the operation of this Part; or
 - (b) that the instrument facilitating or evidencing a transfer or dealing is an instrument made or given because of, or for a purpose connected with, or arising out of, the operation of this Part.
- (2) A certificate given by an authorised officer under subitem (1) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

7 Commission instruments

- (1) A Commission instrument, other than a national standard or code of practice declared by the Commission under section 38 of the NOHSC Act, that was in force immediately before abolition day has effect on and after that day, in relation to everything occurring on or after that day, as if a reference in the instrument to the Commission were a reference to the Commonwealth.
- (2) A national standard or code of practice relating to an occupational health and safety matter:
- (a) that was declared by the Commission under section 38 of the NOHSC Act; and
 - (b) that was in force immediately before abolition day;
- has effect on and after that day as if it were a national standard or code of practice made by the Australian Safety and Compensation Council under the Standards Act.

8 Certificates relating to assets, liabilities and instruments

- (1) An authorised officer may certify, in writing, that:
- (a) an asset or liability specified in the certificate becomes or became, because of item 3 of this Schedule, an asset or liability of the Commonwealth; or
 - (b) an instrument specified in the certificate is a Commission instrument.

- (2) The certificate is, in all courts and for all purposes, prima facie evidence of the matter stated in the certificate.
- (3) If:
- (a) under item 3 of this Schedule, an estate or interest in land becomes an asset of the Commonwealth; and
 - (b) a certificate under subitem (1) to that effect is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated;
- the officer with whom the certificate is lodged may deal with and give effect to the certificate as if it were a grant, conveyance, memorandum or instrument of transfer of the estate or interest to the Commonwealth, duly executed under the laws in force in that State or Territory.
- (4) If a document purports to be a certificate under subitem (1) or (3) signed by a person purporting to be an authorised officer, judicial notice must be taken of the signature of the person and of the fact that the person is or was an authorised officer.

9 Final report and financial statements for Commission

- (1) The Secretary must, as soon as practicable after, but not later than 90 days after, abolition day, prepare and give to the Minister:
- (a) a report on the operations of the Commission during the period (the *closure period*) commencing on 1 July 2005 and ending immediately before abolition day; and
 - (b) financial statements that relate to the Commission during that period in such form as the Minister administering the *Commonwealth Authorities and Companies Act 1997* approves.
- (2) The Secretary must give a copy of the financial statements to the Auditor-General before giving them to the Minister under subitem (1).
- (3) As soon as practicable after, but not later than 90 days after, receipt of the financial statements, the Auditor-General must report to the Minister:
- (a) whether, in the Auditor-General's opinion, the statements are based on proper accounts and records; and
 - (b) whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show

fairly the financial transactions and state of affairs of the Commission; and

- (c) whether, in the Auditor-General's opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets by the Commission during the closure period were in accordance with the NOHSC Act; and
 - (d) such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.
- (4) The Secretary and the Auditor-General may, in discharging their obligations under this item, rely on accounts and records of the Commission that are in the possession of the Commonwealth or to which the Secretary is allowed access, and on any other information provided to a person who was a member of the Commission or who was a member of the staff of the Commission.
- (5) The Minister must cause copies of the reports and financial reports, together with a copy of the report by the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after the receipt by the Minister.

10 Saving provision—rights of review of certain decisions made before abolition day

- (1) For the purpose of this item, and without limiting the effect of item 5 of this Schedule, each decision of a kind referred to in subsection 63(4) of the NOHSC Act that was made by the Commission before abolition day has effect, on and after that day, as a decision of the Commonwealth.
- (2) Despite the repeal of section 63 of the NOHSC Act, that section continues in force, on and after abolition day, for the purpose of enabling persons to seek review of decisions referred to in subsection 63(4) of that Act that were made before that day as if:
- (a) that section had not been repealed; and
 - (b) each reference in that section, as so continued in force, to a decision of the Commission were a reference to a like decision made by the Commonwealth.

11 Saving provision—continuation of public consultations underway on abolition day

If:

- (a) before abolition day, the Commission published a notice under subsection 38(4) of the NOHSC Act in relation to a proposed national standard or code of practice; and
- (b) by abolition day, the Commission has not declared the proposed standard or code of practice;

then:

- (c) in relation to any subsequent declaration of that standard or code of practice by the Australian Safety and Compensation Council—the publication of the notice by the Commission is taken to have satisfied the Australian Safety and Compensation Council’s obligations under subsection 7(1) of the Standards Act; and
- (d) subsection 7(2) of the Standards Act applies in relation to any representation made in accordance with the notice published by the Commission as if the representation had been made in accordance with steps taken under subsection 7(1) of that Act.

12 Delegation of powers and functions conferred under this Part

- (1) The Minister may, by written instrument, delegate to:
 - (a) the Secretary or any other Agency Head within the meaning of the *Public Service Act 1999*; or
 - (b) an SES employee or acting SES employee;all or any of the powers and functions conferred on or acquired by the Minister under this Part.
- (2) The Secretary may, by written instrument, delegate to an SES employee or acting SES employee the powers and functions of the Secretary under this Part.

Note 1: The expressions *SES employee*, and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

Note 2: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

13 Committees and working parties

For the avoidance of doubt, all persons, whether members of the Commission or not, who, immediately before the abolition day, are members of a committee of the Commission or members of a working party of such a committee, cease to hold office with effect from that day.

14 Making of transitional etc. regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:

- (a) the enactment of the Standards Act or of this Act; or
- (b) the repeal of the NOHSC Act by this Act; or
- (c) the amendments made by this Act.

Schedule 2—Amendment of other Acts and related saving provisions

Industrial Chemicals (Notification and Assessment) Act 1989

1 Paragraph 100B(1)(j)

Omit “the Account;”, substitute “the Account.”.

2 Paragraphs 100B(1)(k) and (l)

Repeal the paragraphs.

3 Subsection 100B(2)

Repeal the subsection.

4 Paragraph 100C(1)(d)

Omit “regulations; and”, substitute “regulations.”.

5 Paragraph 100C(1)(e)

Repeal the paragraph.

Occupational Health and Safety (Commonwealth Employment) Act 1991

6 Subsections 70(2) and (3)

Repeal the subsections, substitute:

- (2) Without limiting the generality of the matters that may be included in codes of practice prepared by the Commission, the Commission must, in respect of each advisory standard or code declared after this subsection commences, as soon as practicable after that advisory standard or code is declared, incorporate in a code of practice prepared by the Commission for Ministerial approval under this section so much of that advisory standard or code:
 - (a) as is capable of relating to Commonwealth employment; and
 - (b) as has not been applied, adopted or incorporated, with or without modification, in regulations made for the purposes of section 23.

- (3) A code of practice incorporating a document (other than an advisory standard or code) that is prepared by a body may incorporate that document as in force at the time the code of practice is approved or as amended by the body from time to time.

7 Saving provision

Subsection 70(2) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, as in force immediately before the commencement of item 6 of this Schedule, is to be taken to continue in force for the purpose of incorporating, in a code of practice prepared by the Commission for Ministerial approval under section 70 of that Act as so in force, any national standard or a code of practice:

- (a) that was declared under subsection 38(1) of the *National Occupational Health and Safety Commission Act 1985*; and
- (b) that it was not practicable to so incorporate before the repeal of subsection 70(2).

8 Subsection 70(9)

Repeal the subsection, substitute:

- (9) In this section:

advisory standard or code means a national standard, or a code of practice, in relation to an occupational health and safety matter that is declared by the Australian Safety and Compensation Council under subsection 6(1) of the *Australian Workplace Safety Standards Act 2005*, other than a standard or code:

- (a) that is to be treated, by operation of subitem 7(2) of Schedule 1 to this Act, as if it had been so declared; and
- (b) that has not been amended or varied since it was first required to be so treated.

Occupational Health and Safety (Maritime Industry) Act 1993

9 Subsections 109(2) and (3)

Repeal the subsections, substitute:

- (2) Without limiting the generality of the matters that may be included in codes of practice prepared by the Authority, the Authority must, in respect of each advisory standard or code declared after this
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subsection commences, as soon as practicable after that advisory standard or code is declared, incorporate in a code of practice prepared by the Authority for Ministerial approval under this section that advisory standard or code to the extent that:

- (a) it has not been incorporated in regulations; and
 - (b) it is capable of relating to employment in the maritime industry.
- (3) A code of practice incorporating a document (other than an advisory standard or code) that is prepared by a body may incorporate that document as in force at the time the code of practice is approved or as amended by the body from time to time.

10 Saving provision

Subsection 109(2) of the *Occupational Health and Safety (Maritime Industry) Act 1993*, as in force immediately before the commencement of item 9 of this Schedule, is to be taken to continue in force for the purpose of incorporating, in a code of practice prepared by the Authority for Ministerial approval under section 109 of that Act as so in force, any national standard or a code of practice:

- (a) that was declared under subsection 38(1) of the *National Occupational Health and Safety Commission Act 1985*; and
- (b) that it was not practicable to so incorporate before the repeal of subsection 109(2).

11 Subsection 109(9)

Repeal the subsection, substitute:

- (9) In this section:

advisory standard or code means a national standard, or a code of practice, in relation to an occupational health and safety matter that is declared by the Australian Safety and Compensation Council under subsection 6(1) of the *Australian Workplace Safety Standards Act 2005*, other than a standard or code:

- (a) that is to be treated, by operation of subitem 7(2) of Schedule 1 to this Act, as if it had been so declared; and
- (b) that has not been amended or varied since it was first required to be so treated.

Safety, Rehabilitation and Compensation Act 1988

12 Paragraph 89E(1)(f)

Repeal the paragraph, substitute:

- (f) a member who, in the Minister's opinion, represents the Australian Safety and Compensation Council.
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*[Minister's second reading speech made in—
House of Representatives on 11 August 2005
Senate on 18 August 2005]*

(133/05)
