



# **OHS and SRC Legislation Amendment Act 2006**

**No. 98, 2006**

***An Act to amend the *Occupational Health and Safety (Commonwealth Employment) Act 1991* and the *Safety, Rehabilitation and Compensation Act 1988*, and for other purposes***

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



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***An Act to amend the *Occupational Health and Safety (Commonwealth Employment) Act 1991* and the *Safety, Rehabilitation and Compensation Act 1988*, and for other purposes***

*[Assented to 14 September 2006]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *OHS and SRC Legislation Amendment Act 2006*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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.	14 September 2006
2. Schedule 1, items 1 to 50	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	14 March 2007
3. Schedule 1, item 51	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of item 16 of Schedule 2 to the <i>Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	14 March 2007 (paragraph (a) applies)
4. Schedule 1, item 52	At the same time as the provision(s) covered by table item 2.  However, the provision(s) do not commence at all if item 7 of Schedule 4 to the <i>Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005</i> commences before, or at the same time as, the provision(s) covered by table item 2.	Does not commence

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 1, item 53	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of item 7 of Schedule 4 to the <i>Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	14 March 2007 (paragraph (a) applies)
6. Schedule 1, item 54	At the same time as the provision(s) covered by table item 2.  However, this provision does not commence at all if item 18 of Schedule 5 to the <i>Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005</i> commences before, or at the same time as, the provision(s) covered by table item 2.	Does not commence
7. Schedule 1, items 55 to 57	At the same time as the provision(s) covered by table item 2.	14 March 2007
8. Schedule 2, Part 1	Either: (a) if this Act receives the Royal Assent on 1 July in a year—the day on which this Act receives the Royal Assent; or (b) otherwise—on the 1 July that next follows the day on which this Act receives the Royal Assent.	1 July 2007 (paragraph (b) applies)
9. Schedule 2, Part 2	The day on which this Act receives the Royal Assent.	14 September 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.

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### **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—Extending the coverage of the Occupational Health and Safety (Commonwealth Employment) Act 1991**

## **Part 1—Main amendments**

### *Occupational Health and Safety (Commonwealth Employment) Act 1991*

#### **1 Title**

Omit “**and Commonwealth authorities**”, substitute “,  
**Commonwealth authorities and certain licensed corporations**”.

#### **2 Section 1**

Omit “(*Commonwealth Employment*)”.

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act’s previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

#### **3 Paragraph 3(a)**

Omit “and of Commonwealth authorities”, substitute “, of  
Commonwealth authorities and of non-Commonwealth licensees”.

#### **3A Section 4**

Repeal the section, substitute:

#### **4 Act excludes some State and Territory laws**

##### *Exclusion of State and Territory laws*

- (1) Subject to subsection (2), this Act is intended to apply to the exclusion of any law of a State or Territory (other than a law prescribed under subsection (3)) to the extent that the law of the State or Territory relates to occupational health or safety and would otherwise apply in relation to employers, employees or the employment of employees.

**Schedule 1** Extending the coverage of the Occupational Health and Safety  
(Commonwealth Employment) Act 1991

**Part 1** Main amendments

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Note: For the meaning of *employer* and *employee*, see section 5.

*State or Territory laws not excluded from applying to situations not covered by this Act*

- (2) If, because of section 14 or 15, provisions of this Act do not apply in relation to a particular situation, subsection (1) is not intended to affect the application of State or Territory laws to that situation.

*Allowing certain State or Territory laws to apply*

- (3) If a State or Territory law deals with a matter relating to occupational health or safety that is not dealt with by or under this Act, the regulations may prescribe the law as not being intended to be excluded by this Act.

*Interpretation*

- (4) In this section, a reference to laws of a State or Territory includes a reference to such laws as they have effect as applied provisions within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*.

- (5) In this section:

*law* includes a provision of a law (including, for example, a formula or a component of a formula).

**4 Subsection 5(1) (definition of *chief executive officer*)**

Repeal the definition, substitute:

*chief executive officer* means:

- (a) for a Commonwealth authority—the person (by whatever name called) who is responsible for the administration of the authority; or
- (b) for a non-Commonwealth licensee—the person (by whatever name called) who is primarily and directly responsible to the directors of the licensee for the general and overall management of the licensee.

**5 Subsection 5(1) (at the end of the definition of *Commonwealth authority*)**

Add:

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; or (d) a body corporate:

- (i) that is not covered by paragraph (a), (b) or (c); and
- (ii) for which a licence under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* is in force (whether or not the licence is suspended); and
- (iii) that was not an eligible corporation for the purposes of that Part when the licence was granted.

## **6 Subsection 5(1)**

Insert:

*Commonwealth authority contractor* has the meaning given by section 9A.

## **7 Subsection 5(1)**

Insert:

*Commonwealth authority employee* has the meaning given by section 9.

## **8 Subsection 5(1)**

Insert:

*Commonwealth contractor* has the meaning given by section 9A.

## **9 Subsection 5(1)**

Insert:

*Commonwealth employee* has the meaning given by section 9.

## **10 Subsection 5(1) (definition of *contractor*)**

Repeal the definition, substitute:

*contractor* has the meaning given by section 9A.

Note: In section 14, the meaning of *contractor* is affected by subsection 14(3).

## **11 Subsection 5(1) (definition of *employer*)**

Repeal the definition, substitute:

*employer* means:

- (a) the Commonwealth; or
- (b) a Commonwealth authority; or
- (c) a non-Commonwealth licensee.

**12 Subsection 5(1) (paragraph (a) of the definition of  
*employing authority*)**

Omit “employed by the Commonwealth or who is a contractor of a kind referred to in paragraph (a) of the definition of *contractor* in this subsection”, substitute “a Commonwealth employee or a Commonwealth contractor”.

**13 Subsection 5(1) (paragraph (a) of the definition of  
*Government business enterprise*)**

After “paragraph (a)”, insert “or (d)”.

**14 Subsection 5(1)**

Insert:

*non-Commonwealth licensee* means a body corporate:

- (a) for which a licence under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* is in force (whether or not the licence is suspended); and
- (b) that was an eligible corporation for the purposes of that Part when the licence was granted; and
- (c) that is not a Commonwealth authority for the purposes of this Act.

**15 Subsection 5(1)**

Insert:

*non-Commonwealth licensee contractor* has the meaning given by section 9A.

**16 Subsection 5(1)**

Insert:

*non-Commonwealth licensee employee* has the meaning given by section 9.

**17 Subsection 5(1)**

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Insert:

*non-Commonwealth licensee premises*, in relation to a particular non-Commonwealth licensee, means premises owned or occupied by the non-Commonwealth licensee.

## **18 Subsection 5(1) (definition of *workplace*)**

Repeal the definition, substitute:

*workplace* means:

- (a) any Commonwealth premises in which Commonwealth employees or Commonwealth contractors work; or
- (b) any Commonwealth premises in which Commonwealth authority employees or Commonwealth authority contractors work; or
- (c) any non-Commonwealth licensee premises of a non-Commonwealth licensee in which non-Commonwealth licensee employees, or non-Commonwealth licensee contractors, of the licensee work.

However, *workplace* does not include any part of premises that is primarily used as a private dwelling.

## **19 Subsection 5(2)**

After “employer” (first occurring), insert “, other than a Commonwealth authority covered by paragraph (c) or (d) of the definition of *Commonwealth authority* in subsection 5(1) or a non-Commonwealth licensee,”.

## **20 Subsection 9(1)**

Repeal the subsection, substitute:

*Employee*

- (1) An *employee* is:
  - (a) a Commonwealth employee (see subsection (1A)); or
  - (b) a Commonwealth authority employee (see subsection (2A));  
or
  - (c) a non-Commonwealth licensee employee (see subsection (3A)).

*Commonwealth employee*

- (1A) A ***Commonwealth employee*** is a person who is employed by the Commonwealth, whether the person is so employed under a law of the Commonwealth or of a Territory or under a contract of service or apprenticeship.

Note: The heading to section 9 is replaced by the heading "**Meaning of *employee* etc.**".

**21 Subsection 9(2)**

Omit "subsection (1)", substitute "subsection (1A)".

**22 After subsection 9(2)**

Insert:

*Commonwealth authority employee*

- (2A) A ***Commonwealth authority employee*** of a particular Commonwealth authority is a person who is employed by the authority, whether the person is so employed under a law of the Commonwealth or of a Territory or under a contract of service or apprenticeship.

**23 Subsection 9(3)**

Omit "A person who:", substitute "Without limiting the generality of subsection (2A), a person who:".

**24 After subsection 9(3)**

Insert:

*Non-Commonwealth licensee employee*

- (3A) Subject to subsection (3B), a ***non-Commonwealth licensee employee*** of a particular non-Commonwealth licensee is a person who is employed by the licensee, whether the person is so employed under a law of the Commonwealth or of a State or Territory, or under a contract of service or apprenticeship.
- (3B) If, under the *Safety, Rehabilitation and Compensation Act 1988*, the licence of a non-Commonwealth licensee covers only some of the people referred to in subsection (1), only such of those people as are covered by the licence are ***non-Commonwealth licensee employees*** of the licensee for the purposes of this Act.
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Note 1: The following heading to subsection (4) is inserted “*External territory public servants not covered*”.

Note 2: The following heading to subsection (5) is inserted “*Minister’s power to declare people to be employed by Commonwealth or Commonwealth authority*”.

## **25 After section 9**

Insert:

### **9A Meaning of *contractor* etc.**

#### *Contractor*

- (1) A ***contractor*** is:
- (a) a Commonwealth contractor (see subsection (2)); or
  - (b) a Commonwealth authority contractor (see subsection (3)); or
  - (c) a non-Commonwealth licensee contractor (see subsection (4)).

Note: In section 14, the meaning of ***contractor*** is affected by subsection 14(3).

#### *Commonwealth contractor*

- (2) A ***Commonwealth contractor*** is a natural person (other than a Commonwealth employee or a Commonwealth authority employee) who performs work on Commonwealth premises in connection with a contract between:
- (a) the Commonwealth; and
  - (b) that person or another person (whether a natural person or not);
- which is in connection with an undertaking being carried on by the Commonwealth.

#### *Commonwealth authority contractor*

- (3) A ***Commonwealth authority contractor*** of a particular Commonwealth authority is a natural person (other than a Commonwealth employee or a Commonwealth authority employee) who performs work on Commonwealth premises in connection with a contract between:
- (a) the authority; and

- (b) that person or another person (whether a natural person or not);

which is in connection with an undertaking being carried on by the authority.

*Non-Commonwealth licensee contractor*

- (4) A ***non-Commonwealth licensee contractor*** of a particular non-Commonwealth licensee is a natural person (other than an employee of the licensee) who performs work on non-Commonwealth licensee premises of the licensee in connection with a contract between:

- (a) the licensee; and
- (b) that person or another person (whether a natural person or not);

which is in connection with an undertaking being carried on by the licensee.

**26 Paragraph 10(1)(a)**

Omit “those persons employed by the Commonwealth, and those contractors,”, substitute “those Commonwealth employees, and those Commonwealth contractors,”.

**27 Paragraphs 11(4)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) a Commonwealth employee; or
- (b) a Commonwealth authority employee (including an employee of a Government business enterprise); or

**28 Paragraph 12(1)(c)**

Omit “Commonwealth employment”, substitute “the employment of employees”.

**29 Subsection 14(1) (note)**

Omit “subsection 5(1)”, substitute “section 9A and subsection (3) of this section”.

**30 Subsection 14(2)**

Omit “a Commonwealth employee”, substitute “an employee of the employer for which the contractor is performing work”.

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### **31 At the end of section 14**

Add:

- (3) For the purpose of this section, *contractor* has the meaning given by section 9A, except that:
- (a) it also includes persons who would be contractors under section 9A if references in subsections 9A(2), (3) and (4) to natural persons were extended to also include bodies corporate, other than any body corporate that is a Commonwealth authority or a non-Commonwealth licensee; and
  - (b) it does not include any person who is an employee (as defined in section 9).

### **32 Section 15**

Omit “not Commonwealth premises”, substitute “neither Commonwealth premises nor non-Commonwealth licensee premises”.

### **33 Subsection 41(3)**

Omit “or a Commonwealth authority”, substitute “, a Commonwealth authority or a non-Commonwealth licensee”.

### **34 Subsection 41(4)**

After “Commonwealth authority”, insert “or of the non-Commonwealth licensee”.

### **35 Paragraph 43(1)(a)**

After “Commonwealth authority”, insert “or of a non-Commonwealth licensee”.

### **36 Section 52**

After “Government business enterprise”, insert “or a non-Commonwealth licensee”.

### **37 Paragraph 53(3)(b)**

Omit “if it thinks it appropriate,”, substitute “if the employer is the Commonwealth or a Commonwealth authority and the Commission thinks it appropriate to do so—”.

### **38 Paragraph 70(2)(a)**

Omit “Commonwealth employment”, substitute “the employment of employees”.

### **39 Paragraph 2(3)(f) of Schedule 2**

Omit “Commonwealth Entity or Commonwealth authority”, substitute “Entity, Commonwealth authority or non-Commonwealth licensee”.

### **40 Special provision about licence fees**

(1) In this item:

*Comcare* has the same meaning as in the SRC Act.

*Commission* has the same meaning as in the SRC Act.

*extension commencement* means the commencement of item 11 of this Schedule.

*OHS Act* means the *Occupational Health and Safety Act 1991*.

*SRC Act* means the *Safety, Rehabilitation and Compensation Act 1988*.

(2) This item applies if:

- (a) the extension commencement occurs on a day in a financial year (the *relevant financial year*), other than on the 1 July that is the start of that financial year; and
- (b) a body corporate (the *licensee*), in relation to which a licence under Part VIII of the SRC Act is in force on the extension commencement, becomes an employer for the purposes of the OHS Act on the extension commencement because of an amendment or amendments made by this Schedule.

Note: If the extension commencement is on the 1 July that is the start of a financial year, the licence fee imposed by section 104A of the SRC Act will cover recoupment of costs incurred in carrying out functions under both the SRC Act and OHS Act in relation to the licensee and that year. It is only if the extension commencement is on a later day in a financial year that the OHS costs will not (but for this item) be able to be recouped.

(3) On the extension commencement, the licensee becomes liable to pay a licence fee in respect of the continued holding of the licence.

(4) The amount of the licence fee is the amount notified in writing to the licensee by the Commission, being the amount estimated by the Commission to represent that part of the cost incurred by the Commission and by Comcare in carrying out their respective functions under the OHS Act during the relevant financial year that is reasonably referable to the licensee.

- (5) The licence fee is payable to Comcare within such period after it is notified to the licensee as Comcare determines.
- (6) The SRC Act applies in relation to the licence fee as if it were a licence fee under section 104A of that Act.
- (7) The licence fee is in addition to the licence fee for which the licensee is liable under section 104A of the SRC Act in relation to the relevant financial year.

## **Part 2—Consequential amendments of other Acts**

### ***Safety, Rehabilitation and Compensation Act 1988***

**41 Subparagraph 69(e)(ii)**

Omit “(Commonwealth Employment)”.

**42 Section 69 (note)**

Omit “(Commonwealth Employment)”.

**43 Subsection 73A(3)**

Omit “(Commonwealth Employment)”.

**44 Paragraph 91(3)(a)**

Omit “(Commonwealth Employment)”.

**45 Section 96**

Omit “(Commonwealth Employment)”.

**46 Paragraph 97D(2)(d)**

Omit “(Commonwealth Employment)”.

**47 Paragraph 104A(2)(b)**

Omit “(Commonwealth Employment)”.

**48 Subsection 150(2)**

Omit “(Commonwealth Employment)”.

**49 Subsection 157(3)**

Omit “(Commonwealth Employment)”.

**50 Paragraph 158(2)(b)**

Omit “(Commonwealth Employment)”.

### ***Social Security Act 1991***

**51 Paragraph 120(a)**

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Omit “(*Commonwealth Employment*)”.

**52 Paragraph 501B(8)(a)**

Omit “(*Commonwealth Employment*)”.

**53 Paragraph 501D(4)(a)**

Omit “(*Commonwealth Employment*)”.

**54 Paragraph 541E(3)(a)**

Omit “(*Commonwealth Employment*)”.

**55 Paragraph 544B(8)(a)**

Omit “(*Commonwealth Employment*)”.

**56 Paragraph 631C(a)**

Omit “(*Commonwealth Employment*)”.

**57 Paragraph 745L(a)**

Omit “(*Commonwealth Employment*)”.

## **Schedule 2—Regulatory contributions and licence fees under the Safety, Rehabilitation and Compensation Act 1988**

### **Part 1—Amendments**

#### *Safety, Rehabilitation and Compensation Act 1988*

##### **1 Subsection 4(1) (at the end of the definition of *Commonwealth authority*)**

Add:

Note: For the purposes of the provisions relating to regulatory contributions under Division 4A of Part VII, *Commonwealth authority* has an extended meaning—see section 96.

##### **2 Before section 97**

Insert:

##### **96 Extended meaning of *Commonwealth authority* for purposes of regulatory contributions**

For the purposes of section 97D, and the other provisions of this Division as they apply in relation to regulatory contributions under that section, a body that would not otherwise be a Commonwealth authority for the purposes of this Act is taken to be such an authority if it is a Commonwealth authority for the purposes of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

##### **3 Application of amendments**

The amendments made by this Part apply in relation to regulatory contributions for the financial year starting on the day on which this Part commences and later financial years.

## **Part 2—Validation provisions**

### **4 Definitions**

In this Part:

*Comcare* has the same meaning as it has in the SRC Act.

*Commission* has the same meaning as it has in the SRC Act.

*OHS Act* means the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

*SRC Act* means the *Safety, Rehabilitation and Compensation Act 1988*.

Note: Unless otherwise indicated, references in this Part to the SRC Act are references to that Act as amended by the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001*.

### **5 Validation of regulatory contributions purportedly determined for certain bodies**

- (1) This item applies if:
  - (a) during a period, being all or part of the financial year starting on 1 July 2002, a body was a Commonwealth authority for the purposes of the OHS Act but was not a Commonwealth authority for the purposes of the SRC Act; and
  - (b) Comcare has purported to make a determination under section 97D of the SRC Act of an amount of regulatory contribution to be paid by the body in respect of that financial year; and
  - (c) the body has paid that amount to Comcare.
- (2) The determination referred to in paragraph (1)(b), and any other steps taken by Comcare or the body in relation to the determination, are taken to be, and always to have been, as valid as they would have been if the body had been a Commonwealth authority for the purposes of the SRC Act during the period referred to in paragraph (1)(a).

### **6 Validation of licence fees purportedly notified to certain bodies**

- (1) This item applies if:
  - (a) during a period, being all or part of the financial year starting on 1 July 2002, a body held a licence under Part VIIIIB of the

**Schedule 2** Regulatory contributions and licence fees under the Safety, Rehabilitation and Compensation Act 1988

**Part 2** Validation provisions

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SRC Act as continued in force (despite its repeal) by item 50 of Schedule 2 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001*; and

- (b) the Commission has purported to make a notification under section 104A of the SRC Act of an amount of licence fee to be paid by the body in respect of that financial year; and
  - (c) the body has paid that amount to Comcare.
- (2) The notification referred to in paragraph (1)(b), and any other steps taken by the Commission, Comcare or the body in relation to the notification, are taken to be, and always to have been, as valid as they would have been if the body had held a licence under Part VIII of the SRC Act during the period referred to in paragraph (1)(a).
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*[Minister's second reading speech made in—  
House of Representatives on 7 December 2005  
Senate on 9 May 2006]*

(195/05)

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