



# **Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007**

**No. 54, 2007**

**An Act to amend legislation relating to safety,  
rehabilitation and compensation, and for related  
purposes**

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



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**No. 54, 2007**

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**An Act to amend legislation relating to safety,  
rehabilitation and compensation, and for related  
purposes**

*[Assented to 12 April 2007]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Safety, Rehabilitation and  
Compensation and Other Legislation Amendment Act 2007*.

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*Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* No. 54,  
2007 1

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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.	12 April 2007
2. Schedule 1, items 1 to 21	The day after this Act receives the Royal Assent.	13 April 2007
3. Schedule 1, item 22	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.	27 April 2007 (see F2007L01140)
4. Schedule 1, item 23	The day after this Act receives the Royal Assent.	13 April 2007
5. Schedule 1, item 24	At the same time as the provision(s) covered by table item 3.	27 April 2007
6. Schedule 1, item 25	The day after this Act receives the Royal Assent.	13 April 2007
7. Schedule 1, items 26 and 27	At the same time as the provision(s) covered by table item 3.	27 April 2007
8. Schedule 1, items 28 to 48	The day after this Act receives the Royal Assent.	13 April 2007
9. Schedules 2 and 3	The day after this Act receives the Royal Assent.	13 April 2007

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

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- (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—Main amendments

### Part 1—Amendments

#### *Military Rehabilitation and Compensation Act 2004*

##### **1 Subsection 267(1)**

Omit “exceed \$4,600”, substitute “exceed the amount determined in accordance with subsection (3)”.

##### **2 Subsection 267(1) (note)**

Repeal the note.

##### **3 At the end of section 267**

Add:

- (3) The maximum amount of compensation under subsection (1) is:
- (a) \$9,000; or
  - (b) if the regulations prescribe a higher amount—that amount.

Note: The amount of \$9,000 is indexed under section 404.

##### **4 Paragraph 404(1)(m)**

Repeal the paragraph, substitute:

- (m) paragraph 267(3)(a).

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

##### **5 Subsection 4(1) (definition of *disease*)**

Repeal the definition, substitute:

*disease* has the meaning given by section 5B.

##### **6 Subsection 4(1) (definition of *injury*)**

Repeal the definition, substitute:

*injury* has the meaning given by section 5A.

##### **7 Subsection 4(1)**

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<sup>4</sup> *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007*  
No. 54, 2007



Insert:

*retirement savings account* means a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997*.

## **8 Subsection 4(1)**

Insert:

*significant degree* has the meaning given by subsection 5B(3).

## **9 Subsection 4(1) (paragraph (a) of the definition of *suitable employment*)**

Omit “in the case of an employee who, on the day on which he or she was injured was a permanent employee of the Commonwealth or a licensed corporation and who did not subsequently terminate that employment”, substitute “in the case of an employee who was a permanent employee of the Commonwealth or a licensee on the day on which he or she was injured and who continues to be so employed”.

## **10 Subsection 4(1) (definition of *superannuation scheme*)**

After “superannuation scheme under which”, insert “, or retirement savings account to which,”.

## **11 After section 5**

Insert:

### **5A Definition of *injury***

(1) In this Act:

*injury* means:

- (a) a disease suffered by an employee; or
- (b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee’s employment; or
- (c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee’s employment), that is an aggravation that arose out of, or in the course of, that employment;

but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment.

- (2) For the purposes of subsection (1) and without limiting that subsection, *reasonable administrative action* is taken to include the following:
- (a) a reasonable appraisal of the employee's performance;
  - (b) a reasonable counselling action (whether formal or informal) taken in respect of the employee's employment;
  - (c) a reasonable suspension action in respect of the employee's employment;
  - (d) a reasonable disciplinary action (whether formal or informal) taken in respect of the employee's employment;
  - (e) anything reasonable done in connection with an action mentioned in paragraph (a), (b), (c) or (d);
  - (f) anything reasonable done in connection with the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in connection with his or her employment.

## **5B Definition of *disease***

- (1) In this Act:

*disease* means:

- (a) an ailment suffered by an employee; or
- (b) an aggravation of such an ailment;

that was contributed to, to a significant degree, by the employee's employment by the Commonwealth or a licensee.

- (2) In determining whether an ailment or aggravation was contributed to, to a significant degree, by an employee's employment by the Commonwealth or a licensee, the following matters may be taken into account:
- (a) the duration of the employment;
  - (b) the nature of, and particular tasks involved in, the employment;
  - (c) any predisposition of the employee to the ailment or aggravation;
  - (d) any activities of the employee not related to the employment;
-

(e) any other matters affecting the employee's health.

This subsection does not limit the matters that may be taken into account.

(3) In this Act:

*significant degree* means a degree that is substantially more than material.

## **12 Paragraph 6(1)(b)**

Repeal the paragraph, substitute:

- (b) while the employee was at the employee's place of work, including during an ordinary recess, for the purposes of that employment; or
  - (c) while the employee was temporarily absent from the employee's place of work undertaking an activity:
    - (i) associated with the employee's employment; or
    - (ii) at the direction or request of the Commonwealth or a licensee; or
  - (d) while the employee was, at the direction or request of the Commonwealth or a licensee, travelling for the purpose of that employment; or
  - (e) while the employee was at a place of education, except while on leave without pay, in accordance with:
    - (i) a condition of the employee's employment by the Commonwealth or a licensee; or
    - (ii) a request or direction of the Commonwealth or a licensee; or
    - (iii) the approval of the Commonwealth or a licensee; or
  - (ea) while the employee was travelling between the employee's place of work and a place of education for the purpose of attending that place in accordance with:
    - (i) a condition of the employee's employment by the Commonwealth or a licensee; or
    - (ii) a request or direction of the Commonwealth or a licensee; or
    - (iii) the approval of the Commonwealth or a licensee; or
  - (f) while the employee was at a place for the purpose of:
    - (i) obtaining a medical certificate for the purposes of this Act; or
-

- (ii) receiving medical treatment for an injury; or
- (iii) undergoing a rehabilitation program provided under this Act; or
- (iv) receiving a payment of compensation under this Act; or
- (v) undergoing a medical examination or rehabilitation assessment in accordance with a requirement made under this Act; or
- (vi) receiving money due to the employee under the terms of his or her employment, being money that, under the terms of that employment or any agreement or arrangement between the employee and the Commonwealth or a licensee, is available, or reasonably expected by the employee to be available, for collection at that place; or
- (g) while the employee was travelling between the employee's place of work and another place for the purpose of:
  - (i) obtaining a medical certificate for the purposes of this Act; or
  - (ii) receiving medical treatment for an injury; or
  - (iii) undergoing a rehabilitation program provided under this Act; or
  - (iv) undergoing a medical examination or rehabilitation assessment in accordance with a requirement made under this Act.

### **13 Subsection 6(2)**

Repeal the subsection, substitute:

- (1C) For the purposes of paragraph (1)(d), travel between the employee's residence and the employee's usual place of work is taken not to be at the direction or request of the Commonwealth or a licensee.
- (2) In paragraph (1)(d), the reference to the employee travelling does not include a reference to travelling to or from a place mentioned in paragraph (1)(e) or (f).

### **14 Subsections 7(1), (2) and (3)**

Omit "in a material degree", substitute "to a significant degree".

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## **15 After subsection 8(9D)**

Insert:

- (9E) The normal weekly earnings of an employee before an injury, as calculated under the preceding subsections, must, with effect from 1 July in each year, be further increased by the amount under subsection (9F) if, in the 12 months immediately preceding that 1 July:
- (a) there was no increase in those earnings under subsection (6), (7) or (9); and
  - (b) there was no reduction in those earnings under subsection (9).
- (9F) If the normal weekly earnings of an employee before an injury must be increased because of subsection (9E), the amount by which they are increased is the percentage of increase (if any) in the index prescribed by the regulations for the purposes of this subsection over the period of 12 months ending on the 31 December immediately before the relevant 1 July.
- (9G) For the purposes of subsection (9F), the regulations may specify the manner of calculating the further increase mentioned in that subsection by reference to the movement of the index that is prescribed for the purposes of that subsection.

## **16 Subsection 13(1) (definition of *relevant amount*)**

Omit “18(2),”, substitute “paragraph 18(4)(a), subsection”.

## **17 Paragraph 16(4)(a)**

Repeal the paragraph, substitute:

- (a) if the employee has paid the cost of the medical treatment—  
to, or in accordance with the directions of, the employee; or

## **18 Paragraph 16(4)(c)**

Repeal the paragraph, substitute:

- (c) in any other case—to the person to whom the cost is payable.

## **19 Subsection 18(2)**

Omit “such amount, not exceeding \$3,500, as”, substitute “the amount, not exceeding the amount determined in accordance with subsection (4), that”.

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## 20 At the end of section 18

Add:

- (4) The maximum amount of compensation under subsection (2) is:
- (a) \$9,000; or
  - (b) if the regulations prescribe a higher amount—that amount.

Note: The amount of \$9,000 is indexed under section 13.

## 21 Subsection 20(1)

Repeal the subsection, substitute:

- (1) Compensation payable to an employee who is incapacitated for work as a result of an injury is determined in accordance with this section if:
- (a) the employee is retired from his or her employment (whether the employee retired voluntarily or was compulsorily retired); and
  - (b) the employee receives a pension under a superannuation scheme as a result of the employee's retirement.

## 22 Subsection 20(3)

Repeal the subsection, substitute:

- (3) The amount of compensation is the amount worked out using this formula:

$$\text{Amount of compensation} = \left( \text{Superannuation amount} + 5\% \text{ of the employee's normal weekly earnings} \right)$$

where:

**amount of compensation** means the amount of compensation that would have been payable to the employee for a week if:

- (a) section 19, other than subsection 19(6), had applied to the employee; and
  - (b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the week were a week referred to in subsection 19(3).
- (4) In using the formula in subsection (3) to calculate an amount of compensation for an employee who retired before the day on which

item 22 of Schedule 1 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* commenced, use “SC” instead of “5% of the employee’s normal weekly earnings”. For this purpose:

*SC* means the amount of superannuation contributions that the employee would have been required to pay in that week if he or she were still contributing to the superannuation scheme.

### **23 Subsection 21(1)**

Repeal the subsection, substitute:

- (1) Compensation payable to an employee who is incapacitated for work as a result of an injury is determined in accordance with this section if:
  - (a) the employee is retired from his or her employment (whether the employee retired voluntarily or was compulsorily retired); and
  - (b) the employee receives a lump sum benefit under a superannuation scheme as a result of the employee’s retirement.

### **24 Subsection 21(3)**

Repeal the subsection, substitute:

- (3) The amount of compensation is the amount worked out using this formula:

$$\text{Amount of compensation} = \left( \text{Weekly interest on the lump sum} + \frac{5\% \text{ of the employee's normal weekly earnings}}{\phantom{\text{Weekly interest on the lump sum}}} \right)$$

where:

***amount of compensation*** means the amount of compensation that would have been payable to the employee for a week if:

- (a) section 19, other than subsection 19(6), had applied to the employee; and
- (b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the week were a week referred to in subsection 19(3).

*weekly interest on the lump sum* means the amount worked out by:

- (a) multiplying the superannuation amount in relation to the lump sum benefit received by the employee by the rate specified in an instrument made under subsection (5); and
  - (b) dividing the result of paragraph (a) by 52.
- (4) In using the formula in subsection (3) to calculate an amount of compensation for an employee who retired before the day on which item 22 of Schedule 1 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* commenced, use “SC” instead of “5% of the employee’s normal weekly earnings”. For this purpose:

*SC* means the amount of superannuation contributions that the employee would have been required to pay in that week if he or she were still contributing to the superannuation scheme.

- (5) For the purposes of the definition of *weekly interest on the lump sum* in subsection (3) of this section and subsection 21A(3), the Minister may, by legislative instrument, specify a rate that applies for the period of 12 months commencing on 1 July in any year.

## 25 Subsection 21A(1)

Repeal the subsection, substitute:

- (1) Compensation payable to an employee who is incapacitated for work as a result of an injury is determined in accordance with this section if:
- (a) the employee is retired from his or her employment (whether the employee retired voluntarily or was compulsorily retired); and
  - (b) the employee receives:
    - (i) a pension; and
    - (ii) a lump sum benefit;under a superannuation scheme as a result of the employee’s retirement.

## 26 Subsection 21A(3)

Repeal the subsection, substitute:

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- (3) The amount of compensation is the amount worked out using this formula:

$$\text{Amount of compensation} = \left( \begin{array}{l} \text{Superannuation} \\ \text{amount in relation} \\ \text{to the pension} \end{array} + \begin{array}{l} \text{Weekly} \\ \text{interest on the} \\ \text{lump sum} \end{array} + \begin{array}{l} \text{5\% of the} \\ \text{employee's normal} \\ \text{weekly earnings} \end{array} \right)$$

where:

**amount of compensation** means the amount of compensation that would have been payable to the employee for the relevant week if:

- (a) section 19, other than subsection 19(6), had applied to the employee; and
- (b) in the case of an employee who was not a member of the Defence Force immediately before retirement—the relevant week were a week referred to in subsection 19(3).

**superannuation amount in relation to the pension** means the superannuation amount in relation to the pension received by the employee in respect of the relevant week.

**weekly interest on the lump sum** means the amount worked out by:

- (a) multiplying the superannuation amount in relation to the lump sum benefit received by the employee by the rate specified in an instrument made under subsection 21(5); and
- (b) dividing the result of paragraph (a) by 52.

## 27 Subsection 21A(4)

Repeal the subsection, substitute:

- (4) In using the formula in subsection (3) to calculate an amount of compensation for an employee who retired before the day on which item 22 of Schedule 1 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* commenced, use “SC” instead of “5% of the employee’s normal weekly earnings”. For this purpose:

**SC** means the amount of superannuation contributions that the employee would have been required to pay in that week if he or she were still contributing to the superannuation scheme.

## 28 Subsection 28(4)

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Omit “the licensed authority, the licensed corporation”, substitute “the licensee”.

## **29 Subsections 37(1) and (2)**

Repeal the subsections, substitute:

- (1) A rehabilitation authority may make a determination that an employee who has suffered an injury resulting in an incapacity for work or an impairment should undertake a rehabilitation program.
- (2) If a rehabilitation authority makes a determination under subsection (1), the authority may:
  - (a) provide a rehabilitation program for the employee itself; or
  - (b) make arrangements with an approved program provider for that provider to provide a rehabilitation program for the employee.

Note: A rehabilitation program that is being provided to a person under this section might cease if the person is also provided with rehabilitation under the MRCA (see section 18 of the CTPA).

- (2A) A determination under subsection (1) is not a legislative instrument.

## **30 Subsection 48(3)**

After “was paid to”, insert “, or for the benefit of,”.

## **31 Paragraph 50(7)(a)**

After “paid to”, insert “, or for the benefit of,”.

## **31A After paragraph 69(fa)**

Insert:

- (fb) such other functions as are conferred on Comcare by the regulations;

## **32 Subsection 73A(2)**

Omit “licensed authority” (wherever occurring), substitute “licensee”.

## **33 Subsection 73A(2A)**

Repeal the subsection.

## **34 Subsections 73A(6), (7) and (8)**

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Repeal the subsections, substitute:

- (6) A licensee and any person acting on its behalf must comply with any guidelines issued and in force under subsection (2).

### **35 Paragraph 89B(a)**

Repeal the paragraph, substitute:

- (a) to ensure that, as far as practicable, there is equity of outcomes resulting from administrative practices and procedures used by Comcare and a licensee in the performance of their respective functions;

### **36 Paragraph 89S(2)(c)**

Omit “licensed authority and licensed corporation”, substitute “licensee”.

### **37 At the end of Division 6 of Part VIII**

Add:

#### **108H Delegation by licensed authority**

A licensed authority may, by writing signed by its principal officer, delegate to an officer of, or a person employed by:

- (a) that authority; or  
(b) the Commonwealth; or  
(c) any other Commonwealth authority;

all or any of the powers and functions of the licensed authority under this Act.

### **38 Section 121A**

Omit “licensed authority or a licensed corporation”, substitute “licensee”.

### **39 Section 122**

Repeal the section, substitute:

#### **122 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or

**Schedule 1** Main amendments  
**Part 1** Amendments

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- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **Part 2—Application, saving and transitional provisions**

### **40 Maximum amount of funeral benefit under section 267**

Section 267 of the *Military Rehabilitation and Compensation Act 2004*, as amended by this Schedule, applies to an amount of compensation in relation to a person who dies on or after the day after this Act receives the Royal Assent.

### **41 Application of amendment of the definition of *disease* (section 5B)**

- (1) The definition of *disease* in the *Safety, Rehabilitation and Compensation Act 1988*, as amended by this Schedule, applies in relation to:
  - (a) an ailment suffered by an employee; or
  - (b) an aggravation of such an ailment;that the employee suffers on or after the day after this Act receives the Royal Assent.
- (2) For the purposes of subitem (1), an employee *suffers* an ailment or aggravation on the day determined under subsection 7(4) of the *Safety, Rehabilitation and Compensation Act 1988*.

### **42 Application of amendment of the definition of *injury* (section 5A)**

The definition of *injury* in the *Safety, Rehabilitation and Compensation Act 1988*, as amended by this Schedule, applies in relation to a disease, injury or aggravation that an employee sustains on or after the day after this Act receives the Royal Assent.

### **43 Application of amendment of definition of *suitable employment***

The definition of *suitable employment* in the *Safety, Rehabilitation and Compensation Act 1988*, as amended by this Schedule, applies to an amount of compensation worked out in relation to a period of incapacity that begins on or after the day after this Act receives the Royal Assent.

**44 Application of amendments relating to when an injury arises out of or in the course of employment (section 6)**

Section 6 of the *Safety, Rehabilitation and Compensation Act 1988*, as amended by this Schedule, applies in relation to an injury sustained on or after the day after this Act receives the Royal Assent.

**45 Maximum amount of funeral benefit under section 18**

Section 18 of the *Safety, Rehabilitation and Compensation Act 1988*, as amended by this Schedule, applies to an amount of compensation in relation to a person who dies on or after the day after this Act receives the Royal Assent.

**46 Application of amendments of sections 20, 21 and 21A**

- (1) Subsections 20(1), 21(1) and 21A(1) of the *Safety, Rehabilitation and Compensation Act 1988*, as amended by this Schedule, apply in relation to an employee who retires on or after the day after this Act receives the Royal Assent.
- (2) The amendments of sections 20, 21 and 21A of the *Safety, Rehabilitation and Compensation Act 1988* by this Schedule that are not covered by subitem (1) apply in relation to any working out of an amount of compensation for a week starting on or after the day on which the amendments of those subsections commence.

**47 Transitional provision for specifying a rate under subsection 21(5)**

The Minister may specify, in an instrument made under subsection 21(5) of the *Safety, Rehabilitation and Compensation Act 1988*, a rate that applies for the period starting on the day on which item 24 of this Schedule commences and ending on the next 30 June.

**48 Saving provision for regulations in force under section 122**

Regulations made under section 122 of the *Safety, Rehabilitation and Compensation Act 1988* that were in force immediately before the day after this Act received the Royal Assent continue in force on and after that day as if they had been made under section 122 of that Act as amended by this Schedule.

## **Schedule 2—Technical amendments relating to legislative instruments**

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

- 1 Subsection 4(1) (paragraph (a) of the definition of *Commonwealth authority*)**  
Omit “notice in writing”, substitute “legislative instrument”.
  - 2 Subsection 4(1) (at the end of paragraph (a) of the definition of *Commonwealth authority*)**  
Add “or”.
  - 3 Subsection 4(1) (paragraph (b) of the definition of *Commonwealth authority*)**  
Omit “notice in writing”, substitute “legislative instrument”.
  - 4 Subsection 4(1) (at the end of paragraph (b) of the definition of *Commonwealth authority*)**  
Add “or”.
  - 5 Subsection 4(1) (subparagraph (c)(iii) of the definition of *Commonwealth authority*)**  
Omit “notice in writing”, substitute “legislative instrument”.
  - 6 Subsection 4(1) (subparagraph (d)(ii) of the definition of *Commonwealth authority*)**  
Omit “notice in writing”, substitute “legislative instrument”.
  - 7 Subparagraphs 5(2)(c)(i) and (ii)**  
Omit “notice in writing”, substitute “legislative instrument”.
  - 8 Subsection 5(6)**  
Omit “notice in writing”, substitute “legislative instrument (the *notice*)”.
  - 9 Subsection 5(6A)**
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Omit “notice in writing”, substitute “legislative instrument (the *notice*)”.

**10 Subsection 5(12)**

Omit “make a written declaration”, substitute “, by legislative instrument, declare”.

**11 After subsection 5(13)**

Insert:

(13A) A declaration under subsection (13) is not a legislative instrument.

**12 At the end of section 5**

Add:

(16) A declaration under subsection (15) is not a legislative instrument.

**13 Paragraph 7(1)(b)**

Omit “by notice in writing”, substitute “, by legislative instrument,”.

**14 Paragraph 7(1)(b)**

Omit “the notice”, substitute “the instrument”.

**15 Paragraph 16(6)(c) (definition of *specified rate per kilometre*)**

Omit “by notice”, substitute “, by legislative instrument,”.

**16 Subsection 26(3)**

Omit “notice in writing”, substitute “legislative instrument”.

**17 Subsection 28(3)**

Repeal the subsection, substitute:

(3) A Guide prepared under subsection (1), and a variation or revocation under subsection (2) of such a Guide, must be approved by the Minister.

**18 After subsection 28(3)**

Insert:

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(3A) A Guide prepared under subsection (1), and a variation or revocation under subsection (2) of such a Guide, is a legislative instrument made by the Minister on the day on which the Guide, or variation or revocation, is approved by the Minister.

**19 Subsections 28(7), (9) and (10)**

Repeal the subsections.

**20 Subsection 30(4)**

Omit “notice in writing”, substitute “legislative instrument”.

**21 Subsection 34D(1)**

Omit “instrument in writing”, substitute “legislative instrument”.

**22 Subsection 34D(3)**

Repeal the subsection.

**23 Subsection 34E(1)**

Omit “instrument in writing”, substitute “legislative instrument”.

**24 Subsection 34E(3)**

Repeal the subsection.

**25 Subsection 34S(1)**

Omit “(1)”.

**26 Subsection 34S(1)**

Omit “instrument in writing”, substitute “legislative instrument”.

**27 Subsection 34S(2)**

Repeal the subsection.

**28 Subsection 57(6)**

Omit “notice in writing”, substitute “legislative instrument”.

**29 Section 97P**

Omit “notice in the *Gazette*”, substitute “legislative instrument”.

**30 Section 100**

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Omit “notice in writing”, substitute “legislative instrument”.

**31 At the end of subsection 101(1)**

Add:

Note: Criteria for the grant of a licence may address issues relating not only to the licence applied for but also to other licences that have been granted or that are being sought.

**32 Subsection 101(2)**

Repeal the subsection (including the note), substitute:

(2) Directions given by the Minister to the Commission under section 89D concerning licences are legislative instruments to which section 42 of the *Legislative Instruments Act 2003* applies.

**33 Subsection 114D(3)**

Omit “written determination given to the Chief Executive Officer”, substitute “legislative instrument”.

**34 Subsection 114D(4)**

Repeal the subsection, substitute:

(4) Section 42 of the *Legislative Instruments Act 2003* does not apply to a direction given by the Minister under subsection (3).

**35 Subsection 119(7) (definition of *specified law*)**

Omit “notice in writing”, substitute “legislative instrument”.

**36 Section 121**

Repeal the section.

**37 Subsection 150(1)**

Omit “prepare and issue to the Chair of the MRCC written”, substitute “, by legislative instrument, make”.

**38 Subsection 150(2)**

Omit “issue”, substitute “make”.

**39 Subsection 150(4)**

Omit “issued and in force”, substitute “made”.

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**40 Subsection 150(5)**

Repeal the subsection.

## **Schedule 3—Amendments relating to occupational health and safety**

### ***Occupational Health and Safety Act 1991***

#### **1 After section 23**

Insert:

#### **23A Unlicensed operation of major hazard facility**

- (1) A person must not operate a major hazard facility if:
- (a) the person is required by the regulations to have a licence to operate the facility; and
  - (b) the person does not have such a licence.

Note: A person who contravenes this provision may be subject to civil action (see Schedule 2).

- (2) For the purposes of subsection (1), a **major hazard facility** means a facility that is a major hazard facility within the meaning of the regulations.

#### **2 Schedule 2 (heading)**

Repeal the heading, substitute:

### **Schedule 2—Civil and criminal proceedings**

#### **3 After paragraph 2(1)(f) of Schedule 2**

Insert:

- (fa) section 23A (unlicensed operation of major hazard facilities);

#### **4 At the end of subclause 2(1) of Schedule 2 (before the note)**

Add:

- ; (o) a provision of the regulations specified in the regulations to be a civil penalty provision.

#### **5 Paragraph 2(3)(c) of Schedule 2**

Repeal the paragraph, substitute:

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- (c) any provision that the person who contravened that subclause breached or was involved in breaching;

**6 Subclause 4(2) of Schedule 2 (after table item 7)**

Insert:

- 7A section 23A (unlicensed operation of major hazard facility) 2,200 penalty units

**7 Subclause 4(2) of Schedule 2 (at the end of the table)**

Add:

- 16 a provision of the regulations specified in the regulations to be a civil penalty provision the amount specified for that provision in the regulations

**8 Subclause 13(1) of Schedule 2 (paragraph (a) of the definition of *civil penalty proceedings*)**

After “subclause 2(1)”, insert “(other than a contravention arising because of a breach of a provision of the regulations to which strict liability applies)”.

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*[Minister’s second reading speech made in—  
House of Representatives on 30 November 2006  
Senate on 6 February 2007]*

(174/06)

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