



# **Safe Work Australia Act 2008**

**No. 84, 2009**

**An Act to establish Safe Work Australia, and for related purposes**

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



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# Safe Work Australia Act 2008

No. 84, 2009

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## **An Act to establish Safe Work Australia, and for related purposes**

[Assented to 18 September 2009]

The Parliament of Australia enacts:

### **Part 1—Preliminary**

#### **1 Short title**

This Act may be cited as the *Safe Work Australia Act 2008*.

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Section 2

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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.

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<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 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	18 September 2009
2. Sections 3 to 73	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.	1 November 2009 (see F2009L03902)

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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.

- (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 What this Act is about**

This Act creates a body called Safe Work Australia to improve occupational health and safety outcomes and workers' compensation arrangements in Australia.

Safe Work Australia mainly consists of members who represent the Commonwealth, the States, the Territories, workers and employers (see section 10).



It has various functions relating to occupational health and safety and workers' compensation (see section 6). For example, one of its functions is to prepare model OHS legislation for adoption as a law of the Commonwealth, each of the States and each of the Territories.

The Ministerial Council (a body that consists of Ministers from the Commonwealth, States and Territories) has some oversight of Safe Work Australia's activities. For example, the Council considers whether to approve the model OHS legislation that Safe Work Australia has prepared.

Safe Work Australia has a CEO who is responsible for its administration and for assisting it to perform its functions. It is also assisted by its staff, its committees and others.

#### **4 Definitions**

In this Act:

***approved model OHS codes of practice*** means the model OHS codes of practice that are approved by the Ministerial Council, as amended from time to time.

***approved model OHS legislation*** means the model OHS legislation that is approved by the Ministerial Council, as amended from time to time.

***approved OHS compliance and enforcement policy*** means the policy that:

- (a) deals with the compliance and enforcement of Australian laws that adopt the approved model OHS legislation; and
- (b) is developed by Safe Work Australia under item 5 of the table in section 6; and
- (c) is approved by the Ministerial Council;

as amended from time to time.

***Australian law*** means a law of the Commonwealth, a State or a Territory.

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**CEO** means the Chief Executive Officer of Safe Work Australia.

**Intergovernmental Agreement** means the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety between the Commonwealth, the States and the Territories, as amended from time to time.

**member** means a member of Safe Work Australia (including the Chair and the CEO) who is appointed under this Act.

**Ministerial Council** means the council of Commonwealth, State and Territory Ministers that:

- (a) is known as the Workplace Relations Ministers' Council on the day on which this definition commences; and
- (b) is constituted so that it consists of no more than one Minister representing each of the Commonwealth, the States and the Territories when dealing with matters with which this Act is concerned.

**model OHS codes of practice** means the model codes of practice relating to OHS that are prepared by Safe Work Australia under item 3 of the table in section 6, as amended from time to time.

**model OHS legislation** means the model Act and model regulations relating to OHS that are prepared by Safe Work Australia under item 2 of the table in section 6, as amended from time to time.

**OHS** means occupational health and safety.

**Territory** means the Australian Capital Territory or the Northern Territory.

**voting member** means a member other than the CEO.

## Part 2—Establishment and functions of Safe Work Australia

### 5 Establishment

Safe Work Australia is established by this section.

### 6 Functions

Safe Work Australia has the functions set out in this table:

<b>Functions of Safe Work Australia</b>		
<b>Item</b>	<b>Topic</b>	<b>The functions of Safe Work Australia are:</b>
1	National policy about OHS and workers' compensation	to develop national policy relating to OHS and workers' compensation; and
2	Model OHS legislation	to prepare a model Act and model regulations relating to OHS and, if necessary, revise them: (a) for approval by the Ministerial Council; and (b) for adoption as laws of the Commonwealth, each of the States and each of the Territories; and
3	Model OHS codes of practice	to prepare model codes of practice relating to OHS and, if necessary, revise them: (a) for approval by the Ministerial Council; and (b) for adoption as codes of practice of the Commonwealth, each of the States and each of the Territories and made under laws of those jurisdictions that adopt the approved model OHS legislation; and
4	Other OHS material	to prepare other material relating to OHS and, if necessary, revise that material; and
5	Policy dealing with compliance and enforcement of	to develop a policy, for approval by the Ministerial Council, dealing with the compliance and enforcement of the Australian laws that adopt the

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<b>Functions of Safe Work Australia</b>		
<b>Item</b>	<b>Topic</b>	<b>The functions of Safe Work Australia are:</b>
	approved model OHS legislation	approved model OHS legislation, to ensure that a nationally consistent approach is taken to compliance and enforcement; and
6	Monitoring adoption of approved model OHS legislation etc. in jurisdictions	to monitor the adoption by the Commonwealth, States and Territories of: <ul style="list-style-type: none"> <li>(a) the approved model OHS legislation as a law of those jurisdictions; and</li> <li>(b) the approved model OHS codes of practice as codes of practice of those jurisdictions; and</li> <li>(c) the approved OHS compliance and enforcement policy as a policy of those jurisdictions; and</li> </ul>
7	Collection etc. of data	to collect, analyse and publish data or other information relating to OHS and workers' compensation in order to inform the development or evaluation of policies in relation to those matters; and
8	Research etc.	to conduct and publish research relating to OHS and workers' compensation in order to inform the development or evaluation of policies in relation to those matters; and
9	National OHS Strategy 2002-2012	to revise and further develop the National OHS Strategy 2002-2012 released by the Ministerial Council on 24 May 2002, as amended from time to time; and
10	National awareness strategies	to develop and promote national strategies to raise awareness of OHS and workers' compensation; and
11	Workers' compensation arrangements	to develop proposals relating to: <ul style="list-style-type: none"> <li>(a) harmonising workers' compensation arrangements across the Commonwealth, States and Territories; and</li> <li>(b) national workers' compensation arrangements for employers with workers in more than one of those jurisdictions; and</li> </ul>
12	Advising Ministerial Council on OHS and workers'	to advise the Ministerial Council on matters relating to OHS or workers' compensation; and

**Functions of Safe Work Australia**

<b>Item</b>	<b>Topic</b>	<b>The functions of Safe Work Australia are:</b>
	compensation	
13	Liaising outside Australia on OHS and workers' compensation	to liaise with other countries or international organisations on matters relating to OHS or workers' compensation; and
14	Other conferred functions	such other functions that are conferred on it by, or under, this Act or any other Commonwealth Act.

**7 Performance of functions**

- (1) Safe Work Australia must perform its functions in accordance with its strategic plan and operational plan.
- (2) When performing its functions, Safe Work Australia may consult with:
  - (a) governments and government bodies; and
  - (b) representatives of workers and employers; and
  - (c) other interested people, bodies and organisations.

**8 Immunities and privileges**

Safe Work Australia has the privileges and immunities of the Crown in the right of the Commonwealth.

**Part 3** Membership of Safe Work Australia

**Division 1** What this Part is about

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**Part 3—Membership of Safe Work Australia**

**Division 1—What this Part is about**

**9 What this Part is about**

This Part deals with Safe Work Australia's membership.

Division 2 sets out its membership. It also deals with the appointment of voting members (that is, members other than the CEO). (For the appointment of the CEO, see Division 2 of Part 6.)

Besides the Chair, voting members are representative members—they represent the Commonwealth, States, Territories, workers and employers. There is a special nomination process for the appointment of these members (see sections 13 to 16).

Division 3 provides for the terms and conditions on which voting members are appointed.

## **Division 2—Membership and appointment**

### **10 Membership of Safe Work Australia**

#### *Membership*

- (1) Safe Work Australia consists of the following members:
  - (a) the Chair;
  - (b) 1 member who represents the Commonwealth;
  - (c) 8 members, each of whom represents a different State or Territory;
  - (d) 2 members who represent the interests of workers in Australia;
  - (e) 2 members who represent the interests of employers in Australia;
  - (f) the CEO.

#### *When membership falls below threshold*

- (2) Safe Work Australia may not perform its functions if more than one-third of the voting members' offices are vacant.

### **11 Appointment of the Chair**

#### *Appointment by Minister*

- (1) The Minister must, by written instrument, appoint a person to be the Chair.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

#### *Consultation of Ministerial Council*

- (2) The Minister can only make the appointment if the Ministerial Council has been consulted about the appointment of the person.

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**12 Appointment of acting Chair**

*Appointment by Minister*

- (1) The Minister may, by written instrument, appoint a person to act as the Chair:
- (a) during a vacancy in the office of the Chair (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chair:
    - (i) is absent from duty or Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

*Consultation of Ministerial Council*

- (2) However, the Minister can only do so if the Ministerial Council has been consulted about the appointment of that person.

*No invalidity*

- (3) Anything done by or in relation to a person purporting to act under an appointment under subsection (1) is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

**13 Appointment of the Commonwealth representative**

The Minister must, by written instrument, appoint a person to be the voting member who represents the Commonwealth.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.



## **14 Appointment of each State and Territory representative**

### *Appointment of State or Territory representative*

- (1) The Minister must, by written instrument, appoint a person to be the voting member who represents a particular State or Territory.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

### *Nomination of State or Territory representative*

- (2) The Minister can only make the appointment if the person has been nominated for the appointment by the State or Territory.

## **15 Appointment of workers' representatives**

### *Appointment of workers' representatives*

- (1) The Minister must, by written instrument, appoint a person to be a voting member who represents workers in Australia.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

### *Nomination of workers' representatives*

- (2) The Minister can only make the appointment if:
  - (a) the person has been nominated for the appointment by an authorised body; and
  - (b) the Minister agrees to the person being appointed.
- (3) If an authorised body nominates a person but the Minister does not agree to the person being appointed, an authorised body (which may be the same or a different body) may nominate another person for the appointment.

### *Authorised body*

- (4) The Minister may authorise a body for the purpose of this section if the Minister considers that the body represents the interests of workers in Australia.

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- (5) If the Minister does so, the body is an *authorised body*.

**16 Appointment of employers' representatives**

*Appointment of employers' representatives*

- (1) The Minister must, by written instrument, appoint a person to be a voting member who represents employers in Australia.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

*Nomination of employers' representatives*

- (2) The Minister can only make the appointment if:
- (a) the person has been nominated for the appointment by an authorised body; and
  - (b) the Minister agrees to the person being appointed.
- (3) If an authorised body nominates a person but the Minister does not agree to the person being appointed, an authorised body (which may be the same or a different body) may nominate another person for the appointment.

*Authorised body*

- (4) The Minister may authorise a body for the purpose of this section if the Minister considers that the body represents the interests of employers in Australia.
- (5) If the Minister does so, the body is an *authorised body*.

## **Division 3—Terms and conditions of voting members**

### **Subdivision A—Terms and conditions that apply to all voting members**

#### **17 Basis and period of appointment of all voting members**

*Part-time basis*

- (1) A voting member holds office on a part-time basis.

*Period of appointment*

- (2) A voting member holds office for the period specified in his or her instrument of appointment. The period must not exceed 3 years.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

#### **18 Disclosure of interests to the Minister**

A voting member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

#### **19 Resignation of voting members**

- (1) A voting member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

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**20 Termination of appointment of voting members**

*Misbehaviour or incapacity*

- (1) The Minister may terminate the appointment of a voting member:
- (a) for misbehaviour; or
  - (b) if the member is unable to perform the duties of his or her office because of physical or mental incapacity.

*Bankruptcy etc.*

- (2) The Minister may terminate the appointment of a voting member if:
- (a) the member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the member is absent, except on leave of absence, from 3 consecutive meetings of Safe Work Australia; or
  - (c) the member fails, without reasonable excuse, to comply with section 18 or 40 (disclosure of interests).

*Nominating body's request*

- (3) The Minister must terminate the appointment of a voting member who represents a State, a Territory, workers or employers if the body that nominated the member requests the Minister, in writing, to terminate that appointment.

Note: See sections 14 to 16 for the nomination process.

## **Subdivision B—Terms and conditions that apply only to the Chair**

### **21 Remuneration of the Chair**

- (1) The Chair is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Chair is to be paid the remuneration that is prescribed by the regulations.
- (2) The Chair is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **22 Leave of absence of the Chair**

The Minister may grant leave of absence to the Chair on the terms and conditions as to remuneration or otherwise that the Minister determines.

### **23 Other terms and conditions of the Chair**

The Chair holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

## **Subdivision C—Terms and conditions etc. that apply only to other voting members**

### **24 Leave of absence of other voting members**

The Chair may grant leave of absence to any other voting member.

### **25 Application of the Remuneration Tribunal Act**

The office of a voting member (other than the Chair) is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.

**Part 4** Planning by Safe Work Australia

**Division 1** What this Part is about

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**Part 4—Planning by Safe Work Australia**

**Division 1—What this Part is about**

**26 What this Part is about**

This Part is about Safe Work Australia’s strategic plan and operational plan. These plans impact on how it, and its CEO, perform their respective functions (see subsections 7(2) and 45(2)).

Safe Work Australia prepares drafts of the plans for the Ministerial Council to consider. Once the Ministerial Council approves the plans, they become final.

Division 2 deals with the strategic plan. That plan covers a period of 3 years. It sets out the outcomes that Safe Work Australia is to achieve in those 3 years and the strategies the body is to use to do so.

Division 3 deals with the operational plan. That plan covers a period of 1 year. It sets out the activities that Safe Work Australia is to undertake in that year.

Division 4 allows the Ministerial Council to direct Safe Work Australia to amend either of the final plans.

## **Division 2—Strategic plan of Safe Work Australia**

### **27 Safe Work Australia to prepare a draft strategic plan**

#### *Preparation of plan*

- (1) Safe Work Australia must prepare a draft strategic plan at least once every 3 years and give it to the Ministerial Council.

#### *Period covered by plan*

- (2) The draft plan must cover the next 3 years.

#### *Matters dealt with in plan*

- (3) The draft plan must deal with the following matters only:
  - (a) the outcomes to be achieved by Safe Work Australia;
  - (b) the strategies that are to be followed by Safe Work Australia to achieve those outcomes.
- (4) The draft plan must not deal with the allocation of resources for the performance of Safe Work Australia's functions.

### **28 Approval of draft strategic plan**

#### *Ministerial Council to approve or refuse plan*

- (1) If the draft strategic plan is given to the Ministerial Council, the Council must:
  - (a) approve the draft plan; or
  - (b) refuse to approve the draft plan.

Note: The Ministerial Council gives approvals or refusals by resolution of the Council: see section 69.

#### *Ministerial Council's directions to alter plan*

- (2) If the Ministerial Council refuses to approve the draft plan, the Council must direct Safe Work Australia to:

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- (a) make specified alterations to the draft plan; and
- (b) give the altered draft plan to the Council within the period specified in the direction.

Note: The Ministerial Council gives directions by resolution of the Council: see section 69.

- (3) A direction under subsection (2):
  - (a) may only specify an alteration to the draft plan about the following matters:
    - (i) the outcomes to be achieved by Safe Work Australia;
    - (ii) the strategies Safe Work Australia is to follow to achieve those outcomes; and
  - (b) must not specify an alteration dealing with the allocation of resources for the performance of Safe Work Australia's functions.

*Safe Work Australia to comply with Council's directions*

- (4) Safe Work Australia must comply with a direction under subsection (2).

*When Council must approve plan*

- (5) The Ministerial Council must approve the altered draft plan if:
  - (a) the altered draft plan is given to the Council; and
  - (b) the alterations are in accordance with the direction.

Otherwise, the Ministerial Council may refuse to approve the altered draft plan.

Note: The Ministerial Council gives approvals or refusals by resolution of the Council: see section 69.

*When plan becomes the final plan*

- (6) When the Ministerial Council approves the draft plan or altered draft plan, it becomes Safe Work Australia's strategic plan for the 3 year period it covers.



*Final plan to be published*

- (7) Safe Work Australia is to publish its strategic plan in such manner as it considers appropriate.

*Directions etc. not legislative instruments*

- (8) If a direction, an approval or a refusal of the Ministerial Council under this section is made in writing, the direction, approval or refusal is not a legislative instrument.

## **Division 3—Operational plan of Safe Work Australia**

### **29 Safe Work Australia to prepare a draft operational plan**

#### *Preparation of plan*

- (1) Before the start of each financial year, Safe Work Australia must prepare a draft operational plan for the financial year and give it to the Ministerial Council.

#### *Matters dealt with in plan*

- (2) The draft plan must deal with the following matters only:
  - (a) the activities that are to be undertaken by Safe Work Australia in performing its functions during the year;
  - (b) Safe Work Australia's total amount of expenditure for the year.
- (3) The draft plan must not:
  - (a) deal with the allocation of resources for the performance of Safe Work Australia's functions; or
  - (b) be inconsistent with Safe Work Australia's strategic plan that relates to the year.

### **30 Approval of draft operational plan**

#### *Ministerial Council to approve or refuse plan*

- (1) If the draft operational plan is given to the Ministerial Council, the Council must:
  - (a) approve the draft plan; or
  - (b) refuse to approve the draft plan.

Note: The Ministerial Council gives approvals or refusals by resolution of the Council: see section 69.

*Ministerial Council's directions to alter plan*

- (2) If the Council refuses to approve the draft plan, the Council must direct Safe Work Australia to:
- (a) make specified alterations to the draft plan; and
  - (b) give the altered draft plan to the Council within the period specified in the direction.

Note: The Ministerial Council gives directions by resolution of the Council: see section 69.

- (3) A direction under subsection (2):
- (a) may only specify an alteration to the draft plan about the following matters:
    - (i) the activities that are to be undertaken by Safe Work Australia in performing its functions during the year;
    - (ii) Safe Work Australia's total amount of expenditure for the year; and
  - (b) must not specify an alteration dealing with the allocation of resources for the performance of Safe Work Australia's functions; and
  - (c) must not be inconsistent with Safe Work Australia's strategic plan that relates to the year.

*Safe Work Australia to comply with Council's directions*

- (4) Safe Work Australia must comply with a direction under subsection (2).

*When Council must approve plan*

- (5) The Ministerial Council must approve the altered draft plan if:
- (a) the altered draft plan is given to the Ministerial Council; and
  - (b) the alterations are in accordance with the direction.

Otherwise, the Ministerial Council may refuse to approve the altered draft plan.

Note: The Ministerial Council gives approvals or refusals by resolution of the Council: see section 69.

**Part 4** Planning by Safe Work Australia

**Division 3** Operational plan of Safe Work Australia

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*When plan becomes the final plan*

- (6) When the Ministerial Council approves the draft plan or altered draft plan, it becomes Safe Work Australia's operational plan for the financial year it covers.

*Final plan to be published*

- (7) Safe Work Australia is to publish its operational plan in such manner as it considers appropriate.

*Directions etc. not legislative instruments*

- (8) If a direction, an approval or a refusal of the Ministerial Council under this section is made in writing, the direction, approval or refusal is not a legislative instrument.

## **Division 4—Ministerial Council's directions to alter strategic or operational plans**

### **31 Ministerial Council's directions to alter strategic plan**

#### *Ministerial Council's directions*

- (1) The Ministerial Council may direct Safe Work Australia to:
  - (a) make specified alterations to its strategic plan; and
  - (b) give the altered plan to the Council within the period specified in the direction.

Note: The Ministerial Council gives a direction by resolution of the Council: see section 69.

#### *Direction to amend strategic plan*

- (2) A direction under subsection (1):
  - (a) may only specify an alteration to the plan about the following matters:
    - (i) the outcomes to be achieved by Safe Work Australia;
    - (ii) the strategies Safe Work Australia is to follow to achieve those outcomes; and
  - (b) must not specify an alteration dealing with the allocation of resources for the performance of Safe Work Australia's functions.

#### *Safe Work Australia to comply with Council's direction*

- (3) Safe Work Australia must comply with a direction under subsection (1).

#### *When Council must approve alterations to plan*

- (4) The Ministerial Council must approve the alterations to the plan if:
  - (a) the plan as altered is given to the Ministerial Council; and
  - (b) the alterations are in accordance with the direction.

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Otherwise, the Ministerial Council may refuse to approve the alterations.

Note: The Ministerial Council gives approvals or refusals by resolution of the Council: see section 69.

*When alterations to strategic plan take effect*

- (5) When the Ministerial Council approves the alterations to the plan, the plan as altered is Safe Work Australia's strategic plan for the 3 year period it covers.

*Altered plan to be published*

- (6) Safe Work Australia is to publish its altered strategic plan in such manner as it considers appropriate.

*Directions etc. not legislative instruments*

- (7) If a direction, an approval or a refusal of the Ministerial Council under this section is made in writing, the direction, approval or refusal is not a legislative instrument.

**32 Ministerial Council's directions to alter operational plan**

*Ministerial Council's directions*

- (1) The Ministerial Council may direct Safe Work Australia to:
- (a) make specified alterations to its operational plan for a financial year; and
  - (b) give the altered plan to the Council within the period specified in the direction.

Note: The Ministerial Council gives a direction by resolution of the Council: see section 69.

- (2) A direction under subsection (1):
- (a) may only specify an alteration to the plan about the following matters:
    - (i) the activities that are to be undertaken by Safe Work Australia in performing its functions during the year;

- (ii) Safe Work Australia's total amount of expenditure for the year; and
- (b) must not specify an alteration dealing with the allocation of resources for the performance of Safe Work Australia's functions; and
- (c) must not be inconsistent with Safe Work Australia's strategic plan that relates to the year.

*Safe Work Australia to comply with Council's direction*

- (3) Safe Work Australia must comply with a direction under subsection (1).

*When Council must approve alterations to plan*

- (4) The Ministerial Council must approve the alterations to the plan if:
  - (a) the plan as altered is given to the Ministerial Council; and
  - (b) the alterations are in accordance with the direction.

Otherwise, the Ministerial Council may refuse to approve the alterations.

Note: The Ministerial Council gives approvals or refusals by resolution of the Council: see section 69.

*When alterations to operational plan take effect*

- (5) When the Ministerial Council approves the alterations to the plan, the plan as altered is Safe Work Australia's operational plan for the financial year it covers.

*Altered plan to be published*

- (6) Safe Work Australia is to publish its altered operational plan in such manner as it considers appropriate.

*Directions etc. not legislative instruments*

- (7) If a direction, an approval or a refusal of the Ministerial Council under this section is made in writing, the direction, approval or refusal is not a legislative instrument.

**Part 5** Decision-making by Safe Work Australia

**Division 1** What this Part is about

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**Part 5—Decision-making by Safe Work Australia**

**Division 1—What this Part is about**

**33 What this Part is about**

This Part is about how Safe Work Australia makes decisions.

Division 2 deals with how it makes decisions at meetings and provides the general rules on how the meetings are to be run. Special rules apply for decisions relating to the model OHS legislation or model OHS codes of practice.

Division 3 deals with how it can make decisions without meeting.



## **Division 2—Meetings of Safe Work Australia**

### **34 Holding of meetings**

- (1) Safe Work Australia must hold such meetings as are necessary for the performance of its functions.
- (2) The Chair:
  - (a) may convene a meeting at any time; and
  - (b) must convene at least 3 meetings each financial year.

### **35 Presiding at meetings**

- (1) The Chair presides at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting but the voting member representing the Commonwealth is present, that member is to preside.
- (3) If the Chair and that member are not present at a meeting, the other voting members present must appoint one of themselves to preside.

### **36 Substitution of voting members at meetings**

- (1) A voting member (other than the Chair) who is unable to attend a meeting may, in writing, request the Chair to agree to another specified person being the member's substitute at the meeting.
- (2) If the Chair agrees, in writing, to the specified person being the member's substitute at the meeting, then, for the purpose of that meeting, the person is taken to be that member.

Note: This means, for example, that the substitute will need to disclose any interests in a matter being considered, or about to be considered, at the meeting: see section 40.

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**37 Quorum at meetings**

- (1) At a meeting of Safe Work Australia, a majority of the voting members constitute a quorum.
- (2) However, if:
  - (a) section 40 (disclosure of interests) prevents a voting member from participating in Safe Work Australia's deliberations or decisions in relation to a particular matter; and
  - (b) when the member leaves the meeting concerned there is no longer a quorum present;the remaining voting members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting in relation to that matter.
- (3) Despite subsections (1) and (2), a quorum is not constituted for the purpose of any deliberation or decision relating to the model OHS legislation or model OHS codes of practice if a majority of all of the voting members who represent the Commonwealth, States and Territories are not present for the deliberation or decision.

Note: The voting members who represent the Commonwealth, States and Territories are those members referred to in paragraphs 10(1)(b) and (c).

**38 Decisions at meetings etc.**

- (1) At a meeting, a question is decided by a two-thirds majority of the votes of the voting members present and voting.
- (2) However, if the question relates to the model OHS legislation or model OHS codes of practice, the question is decided by:
  - (a) a two-thirds majority of the votes of the voting members present and voting; and
  - (b) a majority of the votes of all of the voting members who represent the Commonwealth, States and Territories.

Note: The voting members who represent the Commonwealth, States and Territories are those members referred to in paragraphs 10(1)(b) and (c).

### **39 Conduct of meetings**

Safe Work Australia may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

### **40 Disclosure of interests to Safe Work Australia**

#### *Member to disclose interests*

- (1) A member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by Safe Work Australia must disclose the nature of the interest to a meeting of Safe Work Australia.

Note: This section applies to a person who is a substitute for a voting member (see subsection 36(2)) and also to the CEO.

#### *When disclosure is to be made*

- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.

#### *Disclosure to be recorded*

- (3) The disclosure must be recorded in the minutes of the meeting.

#### *When member cannot be present or vote at meeting*

- (4) The member:
  - (a) must not be present during any deliberation by Safe Work Australia on the matter; and
  - (b) must not take part in any decision of Safe Work Australia on the matter.
- (5) Subsection (4) does not apply if:
  - (a) the matter relates to the model OHS legislation or model OHS codes of practice; or
  - (b) Safe Work Australia decides the member may be present or take part.

**Part 5** Decision-making by Safe Work Australia

**Division 2** Meetings of Safe Work Australia

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*Decisions about member's presence etc.*

- (6) For the purposes of making a decision under paragraph (5)(b), the member:
  - (a) must not be present during any deliberation of Safe Work Australia for the purpose of making the decision; and
  - (b) must not take part in making the decision.
- (7) A decision must be recorded in the minutes of the meeting.

**41 Minutes**

Safe Work Australia must keep minutes of its meetings.

## **Division 3—Decisions without meetings**

### **42 Decisions without meetings**

#### *General decisions*

- (1) Safe Work Australia is taken to have made a decision at a meeting if:
  - (a) without meeting, a two-thirds majority of the voting members entitled to vote on the proposed decision indicate agreement with the decision; and
  - (b) that agreement is indicated in accordance with the method determined by Safe Work Australia under subsection (3); and
  - (c) all the voting members were informed of the proposed decision, or reasonable efforts were made to inform all the voting members of the proposed decision.

#### *Decisions about model OHS legislation or codes of practice*

- (2) However, if the decision relates to the model OHS legislation or model OHS codes of practice, Safe Work Australia is only taken to have made the decision at a meeting if:
  - (a) without meeting:
    - (i) a two-thirds majority of the voting members entitled to vote on the proposed decision; and
    - (ii) a majority of the votes of all the voting members who represent the Commonwealth, States and Territories; indicate agreement with the decision; and
  - (b) that agreement is indicated in accordance with the method determined by Safe Work Australia under subsection (3); and
  - (c) all the voting members were informed of the proposed decision, or reasonable efforts were made to inform all the voting members of the proposed decision.

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*When decisions can be made without meeting*

- (3) Subsection (1) or (2) applies only if:
- (a) Safe Work Australia has determined that it may make decisions of that kind without meeting; and
  - (b) Safe Work Australia has determined the method by which voting members are to indicate agreement with proposed decisions.

*When voting members are not entitled to vote*

- (4) For the purposes of paragraph (1)(a) and subparagraph (2)(a)(i), a voting member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of Safe Work Australia.

*Record of decisions*

- (5) Safe Work Australia must keep a record of decisions made in accordance with this section.

## **Part 6—The CEO, staff and committees of Safe Work Australia, and others assisting**

### **Division 1—What this Part is about**

#### **43 What this Part is about**

This Part is about Safe Work Australia's CEO, its staff, its committees and others who assist it to perform its functions.

##### *CEO*

Division 2 is about the CEO. The CEO's functions are to manage Safe Work Australia's administration and assist it in the performance of its functions. The CEO must perform his or her functions in accordance with the strategic and operational plans. He or she must also comply with any direction given by the Minister (see section 46) or Safe Work Australia (see section 48).

##### *Staff, committees and others*

Division 3 is about Safe Work Australia's staff, its committees and other people who assist it to perform its functions.

Its staff are members of the Australian Public Service (see section 59).

Its committees are constituted by the Chair, and may consist of members of Safe Work Australia or others (see section 60).

Other people who assist it can be consultants, or those people that the Commonwealth, the States or the Territories make available to Safe Work Australia for that purpose.

## **Division 2—The CEO of Safe Work Australia**

### **Subdivision A—Functions of the CEO**

#### **44 The CEO**

There is to be a Chief Executive Officer of Safe Work Australia.

#### **45 Functions of the CEO**

- (1) The CEO's functions are:
  - (a) to manage the administration of Safe Work Australia; and
  - (b) to assist Safe Work Australia in the performance of its functions.
- (2) The CEO must perform his or her functions in accordance with Safe Work Australia's strategic plan and operational plan.
- (3) Subsection (2) does not apply to the extent that:
  - (a) performance in accordance with the plans would be inconsistent with a direction of the Minister under section 46;  
or
  - (b) performance in accordance with the plans would be inconsistent with the CEO's performance of functions or exercise of powers under the *Financial Management and Accountability Act 1997* in relation to Safe Work Australia;  
or
  - (c) the plans relate to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to Safe Work Australia.

#### **46 Directions from the Minister**

*Minister may give directions to the CEO*

- (1) The Minister may, by legislative instrument, give written directions to the CEO:



- (a) about the performance of the CEO's functions (see section 45); or
- (b) requiring the provision of a report or advice on a matter relating to Safe Work Australia's functions.

Note 1: Section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the direction—see section 44 of that Act.

Note 2: Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not apply to the direction—see section 54 of that Act.

*Directions about the CEO's functions are to be general*

- (2) A direction under paragraph (1)(a) must be of a general nature only.

*The CEO must comply with the Minister's directions*

- (3) The CEO must comply with a direction under subsection (1).

*When the CEO is not required to comply with directions*

- (4) Subsection (3) does not apply to the extent that the direction relates to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to Safe Work Australia.

#### **47 CEO to keep the Minister informed**

The CEO must keep the Minister informed of Safe Work Australia's progress in the performance of its functions.

#### **48 Directions from Safe Work Australia**

*Safe Work Australia may give directions to the CEO*

- (1) Safe Work Australia may give written directions to the CEO:
  - (a) about the performance of the CEO's function under paragraph 45(1)(b) (assisting Safe Work Australia); or
  - (b) requiring the provision of a report or advice on a matter relating to Safe Work Australia's functions.

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*The CEO must comply with Safe Work Australia's directions*

- (2) The CEO must comply with a direction under subsection (1).

*When the CEO is not required to comply with directions*

- (3) Subsection (2) does not apply to the extent that:
- (a) the direction is inconsistent with Safe Work Australia's strategic plan or operational plan; or
  - (b) the direction deals with the allocation of resources for the performance of Safe Work Australia's functions; or
  - (c) compliance with the direction would be inconsistent with a direction of the Minister under section 46; or
  - (d) compliance with the direction would be inconsistent with the CEO's performance of functions or exercise of powers under the *Financial Management and Accountability Act 1997* in relation to Safe Work Australia; or
  - (e) the direction relates to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to Safe Work Australia.

*Direction is not a legislative instrument*

- (4) A direction under subsection (1) is not a legislative instrument.

### **49 CEO to keep Safe Work Australia informed**

The CEO must keep Safe Work Australia informed of progress on its operational plan.

## **Subdivision B—Appointment of the CEO**

### **50 Appointment of CEO**

*Appointment by Minister*

- (1) The Minister must, by written instrument, appoint the CEO.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

*Full-time basis*

- (2) The CEO holds office on a full-time basis.

*Period of appointment*

- (3) The CEO holds office for the period specified in his or her instrument of appointment. The period must not exceed 5 years.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

## **51 Appointment of acting CEO**

*Appointment by Minister*

- (1) The Minister may, by written instrument, appoint a person to act as the CEO:
- (a) during a vacancy in the office of the CEO (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the CEO:
    - (i) is absent from duty or Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

*No invalidity*

- (2) Anything done by or in relation to a person purporting to act as the CEO under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

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**Subdivision C—Terms and conditions of the CEO**

**52 Remuneration of the CEO**

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**53 Leave of absence of the CEO**

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

**54 Other employment of the CEO**

The CEO must not engage in paid employment outside the duties of his or her office without the Minister's approval.

**55 Disclosure of interests to the Minister**

The CEO must give written notice to the Minister of all interests, pecuniary or otherwise, that the CEO has or acquires and that conflict or could conflict with the proper performance of the CEO's functions.

**56 Resignation of the CEO**

- (1) The CEO may resign his or her appointment by giving the Minister a written resignation.

- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

## **57 Termination of appointment of the CEO**

### *Misbehaviour or incapacity*

- (1) The Minister may terminate the appointment of the CEO:
- (a) for misbehaviour; or
  - (b) if the CEO is unable to perform the duties of his or her office because of physical or mental incapacity.

### *Bankruptcy etc.*

- (2) The Minister may terminate the appointment of the CEO if:
- (a) the CEO:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the CEO engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see section 54); or
  - (d) the CEO fails, without reasonable excuse, to comply with section 40 or 55 (disclosure of interests).

### *Unsatisfactory performance*

- (3) The Minister may terminate the appointment of the CEO if the Minister is of the opinion that the performance of the CEO has been unsatisfactory.

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**58 Other terms and conditions of the CEO**

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

## **Division 3—Staff and committees of Safe Work Australia, and others assisting it**

### **Subdivision A—Staff of Safe Work Australia**

#### **59 Staff of Safe Work Australia**

- (1) The staff of Safe Work Australia must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the CEO and the staff of Safe Work Australia together constitute a Statutory Agency; and
  - (b) the CEO is the Head of that Statutory Agency.

### **Subdivision B—Committees of Safe Work Australia**

#### **60 Committees of Safe Work Australia**

- (1) Safe Work Australia may constitute committees for the purpose of assisting it in the performance of its functions.
- (2) A committee may be constituted:
  - (a) wholly by members; or
  - (b) wholly by persons who are not members; or
  - (c) partly by members and partly by other persons.
- (3) The procedures under which a committee is to operate are to be as determined by Safe Work Australia.
- (4) A committee must give Safe Work Australia such reports, documents and information in relation to the committee's functions as Safe Work Australia requests.

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**Subdivision C—Others assisting Safe Work Australia**

**61 Persons assisting Safe Work Australia**

Safe Work Australia may also be assisted:

- (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of a State or Territory; or
- (c) by officers and employees of authorities of the Commonwealth, State or Territory;

whose services are made available to Safe Work Australia in connection with the performance of any of its functions.

**62 Consultants**

The CEO may, on behalf of the Commonwealth, engage consultants to assist in the performance of Safe Work Australia's functions.



## **Part 7—The Safe Work Australia Special Account**

### **63 What this Part is about**

This Part is about the funding of Safe Work Australia.

It establishes an account for the money that is allocated by the Commonwealth, the States and the Territories for the purposes of Safe Work Australia.

It also provides how that money may be spent.

### **64 The Safe Work Australia Special Account**

- (1) The Safe Work Australia Special Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

### **65 Credits to the Account**

There must be credited to the Account amounts equal to the following:

- (a) amounts that are paid by a State or Territory to the Commonwealth in accordance with the Intergovernmental Agreement;
- (b) amounts that the Commonwealth agrees to allocate in accordance with the Intergovernmental Agreement;
- (c) any other amounts that are paid by a State or Territory to the Commonwealth for the purpose of the performance of Safe Work Australia's functions;
- (d) any other amounts that the Commonwealth agrees to allocate for the purpose of the performance of Safe Work Australia's functions;

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- (e) amounts of any gifts given or bequests made for the purposes of the Account.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a Special Account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.

**66 Purposes of the Account**

- (1) This section sets out the purposes of the Account.
- (2) Amounts standing to the credit of the Account may be debited for the following purposes:
  - (a) in payment or discharge of the costs, expenses and other obligations incurred by the Commonwealth in the performance of Safe Work Australia's functions;
  - (b) in payment of any remuneration and allowances payable to any person under this Act;
  - (c) meeting the expenses of administering the Account.

## **Part 8—Miscellaneous**

### **67 Delegation by Safe Work Australia**

Safe Work Australia may, in writing, delegate all or any of its functions or powers under this Act to the following:

- (a) a member;
- (b) an SES employee or acting SES employee of the staff of Safe Work Australia.

### **68 Delegation by the CEO of Safe Work Australia**

The CEO may, in writing, delegate all or any of his or her functions or powers under this Act to an SES employee or acting SES employee of the staff of Safe Work Australia.

### **69 How Ministerial Council gives directions etc.**

The Ministerial Council is to give a direction, an approval or a refusal for the purposes of a provision of this Act by resolution of the Council passed in accordance with the procedures determined by the Council.

### **70 Annual Report**

*Annual report to be given to Minister*

- (1) The CEO must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister, Safe Work Australia and the Ministerial Council a report on Safe Work Australia's operations during that year.

*Contents of annual report*

- (2) The CEO must include in the report the following:

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- (a) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*;
- (b) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.

### **71 Intergovernmental Agreement to be available on the Internet**

The Minister must ensure that a copy of the Intergovernmental Agreement is available on the Department's website.

### **72 Review of Safe Work Australia's role and functions**

*Minister must conduct review*

- (1) The Minister must cause a review of Safe Work Australia's ongoing role and functions to be conducted.

*When review is to start and be completed*

- (2) The review must:
  - (a) start 6 years after the commencement of this section; and
  - (b) be completed within 6 months.

*Report about review*

- (3) The Minister must cause a written report about the review to be prepared.

*Parliament to be given report*

- (4) The Minister must cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the Minister receives the report.

### **73 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 13 May 2009  
Senate on 13 August 2009]*

(75/09)

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*Safe Work Australia Act 2008 No. 84, 2009 47*