

2004 - 2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT)
AMENDMENT BILL 2005**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment and
Workplace Relations, the Honourable Kevin Andrews MP)

OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) AMENDMENT BILL 2005

OUTLINE

The Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2005 amends the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act) to provide improved health and safety protection for Commonwealth employees at work by:

- Revising the provisions relating to the employer's duty of care to provide a greater focus on occupational health and safety outcomes, including removing unnecessary prescription in the Act:
 - there is no change to the employer's primary duty to take all reasonably practicable steps to protect the health and safety at work of the employer's employees;
 - prescriptive provisions requiring an employer to develop an occupational health and safety policy and agreement are being replaced with a requirement for the employer to develop health and safety management arrangements in consultation with the employer's employees.
- Recognising the primacy of direct employer and employee relationships, by facilitating genuine consultations between employers and employees through a more direct relationship, in part by removing mandatory third party intervention. This will ensure that employers and employees are free to develop suitable health and safety arrangements which take into account the circumstances of their own enterprise and therefore accommodate their needs at the enterprise level.
- To support the objective of greater consultation, the current institutional mechanisms through which employees have input into health and safety arrangements – designated work groups, health and safety representatives and health and safety committees – are retained. No change is being made to the functions and powers of health and safety representatives.
- Revising annual reporting requirements of Commonwealth agencies under the Act to provide a greater focus on outcomes rather than process.
- Enabling Comcare to exercise some powers currently conferred on the Safety Rehabilitation and Compensation Commission (the Commission), such as providing occupational health and safety advice to Departments and Commonwealth authorities and referring employers, employees and contractors to experts. This is a technical amendment which recognises the fact that Comcare is better positioned to undertake these functions.
- Giving health and safety representatives the power to request an investigation into an alleged contravention of the Act where a provisional improvement notice has been issued.
- Making technical amendments to various provisions of the Act to correct deficiencies or otherwise improve the operation of these provisions, for example:
 - Update Schedule 1 of the Act to remove a number of Government business enterprises currently listed that no longer exist or no longer meet the definition of Government business enterprise in the Act;

- repealing obsolete references to the *Occupational Health and Safety Amendment Act 2001* contained in the *Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001*.

FINANCIAL IMPACT STATEMENT

The proposals contained in the Bill are budget neutral.

NOTES ON CLAUSES

Clause 1 – Short title

1. The Bill, when passed, will be known as the *Occupational Health and Safety (Commonwealth Employment) Amendment Act 2005*.

Clause 2 – Commencement

2. Clause 2 specifies when the various provisions of the Act are proposed to commence. Sections 1 to 3 and anything in the Act not elsewhere covered by the table in this clause will commence on the day on which the Act receives the Royal Assent. The amendments in Schedule 1 will commence on a day or days fixed by Proclamation. The amendments in Schedule 2 of the Bill will commence on the 28th day after the day on which it receives the Royal Assent. Subclause 2(2) is a technical provision which provides that any additional information included in Column 3 of the table will not form part of the Act.

Clause 3 – Schedule(s)

3. This clause provides that an Act that is specified in a Schedule is amended or repealed as set out in that Schedule. Other items (eg transitional provisions) have effect according to their terms.

**SCHEDULE 1 – AMENDMENT OF THE OCCUPATIONAL HEALTH AND SAFETY
(COMMONWEALTH EMPLOYMENT) ACT 1991**

PART 1- AMENDMENTS

Item 1 – Subsection 5(1)

- 1.1 This item inserts a new term, *association*, into subsection 5(1). An *association* is defined as an association of employees, a principal purpose of which is the protection and promotion of the employees’ interests in matters concerning their employment. The term *association* is used as part of the definition of the new term *employee representative* in subsection 5(1). (See notes on item 2, below).

Item 2 – Subsection 5(1) (definition of *employee representative*)

- 1.2 This item inserts the definition of a new term, *employee representative*, into subsection 5(1). An *employee representative* is defined as a registered organisation of employees, or an association, of which the employee is a member. The Act currently provides a number of roles for “involved unions” including, for example, roles in the development of occupational health and safety policies pursuant to the current paragraph 16(2)(d) and involvement in respect of the election of health and safety representatives and the establishment and operation of health and safety committees. The term, *employee representative*, will replace current references in the Act to an involved union. (See note on item 4, below.)

Item 3 – Subsection 5(1) (definition of *health and safety management arrangements*)

- 1.3 This item inserts a new term *health and safety management arrangements* which means the *health and safety management arrangements* referred to in paragraph 16(2)(d). (See notes on item 9, below.)

Item 4 – Subsection 5(1) (definition of *involved union*)

- 1.4 This item repeals the definition of *involved union* and is consequential upon other amendments which replace references to an *involved union* with references to an *employee representative*. (See notes on item 2, above.)

Item 5 – Subsection 5(1) (definition of *registered organisation*)

- 1.5 This item inserts the definition of a new term, *registered organisation*, into subsection 5(1). A *registered organisation* is defined as an organisation within the meaning of the *Workplace Relations Act 1996* or a body that is declared by regulations under the Act to be a registered organisation. This term is used in the definition of the new term *employee representative* in subsection 5(1). (See notes on item 2, above.)

Item 6 – Subsection 5(1) (definition of *registered union*)

- 1.6 This item repeals the definition of *registered union* and is consequential upon the insertion of a new term *registered association* in section 5 and the repeal of the current term *involved union*. (See notes on items 2 and 4, above.)

Item 7 – At the end of paragraph 12(1)(b)

- 1.7 This item contains consequential amendments related to the new health and safety management arrangements. (See notes on items 9, below.) The function of the Safety, Rehabilitation and Compensation Commission (the Commission) to advise employers and employees under paragraph 12(1)(b) will be expanded to indicate that ‘occupational health and safety matters’ include matters to be covered by employers’ health and safety management arrangements.

Item 8 – At the end of subsection 12(1)

- 1.8 This item amends subsection 12(1) to add a new paragraph (h). The effect of the amendment is to give the Commission power to issue directions on the conduct of elections for health and safety representatives under proposed section 25A.

Item 9 – Paragraph 16(2)(d)

- 1.9 Section 16 of the Act provides that an employer has a general duty to protect the health and safety at work of their employees and sets out some minimum requirements that must be complied with.
- 1.10 This item repeals paragraph 16(2)(d), which requires an employer to develop an occupational health and safety policy with involved unions or other persons the employer considers appropriate. In its place a new paragraph will be substituted, that imposes an obligation on the employer to develop health and safety management arrangements in consultation with their employees. The new paragraph provides an exhaustive list of areas that safety management arrangements must cover.

Item 10 – After subsection 16(2)

- 1.11 This item provides that the written document setting out health and safety management arrangements is not a legislative instrument for the purposes of the *Legislative Instrument Act 2003*.

Item 11 - Subsection 16(3)

- 1.12 This item repeals subsection 16(3) and substitutes it with a new subsection. The development of an occupational health and safety agreement is replaced by a requirement on the employer to develop health and safety management arrangements in consultation with the employer’s employees (refer to item 9). Proposed subsection 16(3) provides some guidance (in the form of a non-exhaustive list) about certain additional matters which might be covered by safety management arrangements (above the minimum requirements set out in proposed paragraph 16(2)(d)). These matters include a written occupational health and safety policy in respect of the employer and employees, arrangements relating to risk management, the making of agreements relating to consultation on occupational health and safety matters, occupational health and safety training and such other matters as agreed between the employer and their employees.

Item 12 – After section 16

- 1.13 This item inserts new sections 16A and 16B. These sections provide that an employer must have regard to advice of the Safety, Rehabilitation and Compensation Commission (the Commission) when developing or varying health and safety management arrangements that are required under the proposed paragraph 16(2)(d). Section 16B also provides employees with protection of confidentiality by providing that a representative association may apply to the Chief Executive Officer (CEO) of Comcare for a certificate where an employee has requested the association's involvement in consultations with the employer but does not wish to be identified.
- 1.14 Proposed subsection 16A(1) provides that an employer must have regard to any advice of the Commission which may have been given to that particular employer, or employers generally, in developing or varying health and safety management arrangements.
- 1.15 Proposed subsection 16A(2) allows for employee representation in consultations on the development or variation of health and safety management arrangements. If an employee requests to be represented in consultations, they may be represented by another employee of the employer or an employee representative.
- 1.16 Subsection 16A(4) clarifies that if an employee is represented in consultations then this does not prevent the employee, an employee mentioned in paragraph (2)(a) or any other employee of the employer from being involved in consultations.
- 1.17 Proposed subsection 16B(1) provides for the CEO of Comcare to issue a certificate on application by a representative association if satisfied that an employee has chosen to be represented by a representative association in consultations with their employer.
- 1.18 Proposed subsection 16B(2) provides that the application of a representative association to the CEO of Comcare to represent employee(s) in consultation with the employer in the course of developing or varying safety management arrangements must be in the prescribed form.
- 1.19 Proposed subsection 16B(3) protects the identity of represented employees by providing that the identities of the employee(s) making a request for representation by a representative association must remain confidential.
- 1.20 Proposed subsection 16B(4) provides that an employee representative to whom a certificate has been issued must not reveal the identity of the employee whom the employee represents.
- 1.21 Proposed subsection 16B(5) provides that the certificate has a finite period of effectiveness. The period will end at the earlier of two times, when the CEO of Comcare considers that each of the employees identified in the certificate has requested that they no longer wish the representative association to represent them, or in any event at the end of the 12 month period commencing when the certificate was issued.
- 1.22 Proposed subsection 16B(6) provides that if the certificate ceases to have effect under any of the circumstances outlined then the CEO of Comcare must notify the

representative association, and the employer of the employees who were being represented, in writing.

- 1.23 Proposed subsection 16B(7) provides that the notification in writing that the certificate has ceased to be in effect, is not a legislative instrument.
- 1.24 Proposed subsection 16B(8) provides that the certificate is evidence of all the matters contained in it.
- 1.25 Proposed subsection 16B(9) provides that the CEO of Comcare may delegate his or her power to issue a certificate for an employee representative to be involved in consultations, to the deputy CEO of Comcare. Such delegation, if made, must be made in writing.

Item 13 – Subsection 20(1)

- 1.26 This item repeals the existing subsection 20(1) including the penalty for contravention of the section and substitutes it with a new subsection.
- 1.27 The amendments are proposed to ensure that where a person is erecting or installing any plant in a workplace for the use of employees at work they must take all reasonably practicable steps to ensure that the process of erection or installation, as well as the plant itself, is safe for employees who use the plant and does not constitute a risk to the health of employees at the workplace.
- 1.28 Proposed paragraph 20(1)(b) will extend the protection of subsection 20(1) to all employees at the workplace, not just those who use the plant.
- 1.29 This item also inserts a note that breaches of this subsection may incur civil action or criminal prosecution as provided in Schedule 2. The penalties for breach of this provision are to be contained in Schedule 2.

Item 14 – Paragraph 21(2)(a)

- 1.30 Item 13 contains a consequential amendment related to the proposals in item 11. It amends paragraph 21(2)(a) to reflect that matters may now be agreed between employers and employees or their representatives.

Item 15 – Subsection 24(1) to (3)

- 1.31 This item repeals subsections 24(1), (2) and (3) and substitutes new provisions to establish a more streamlined process when an employee requests his or her employer to establish a designated workgroup (DWG) or vary a DWG already established.
- 1.32 Proposed subsection 24(1) provides that an employee of an employer may request the employer to establish a DWG in respect of its employees or vary a DWG that is already established.
- 1.33 Proposed subsection 24(1A) provides that, where requested by an employee, an employee representative may request an employer to establish a DWG in respect of its employees

or vary a DWG that is already established.

- 1.34 Proposed subsection 24(2) provides that an employer is required to enter into consultations with its employees on establishing or varying a DWG within 14 days of receiving the request.
- 1.35 Proposed subsection 24(3) will enable an employer to initiate a process to vary a DWG by entering into consultations with the health and safety representative and, if an employee so requests, an employee representative in relation to the employee.

Item 16 – After section 24

- 1.36 This item inserts two new sections into the Act, sections 24A and 24B.
- 1.37 Proposed section 24A provides that consultations on designated work groups (DWGs) are consultations to develop health and safety management arrangements as required under paragraph 16(2)(d). However, such consultations are not to be taken as sufficient to fulfil, on their own, the requirement to develop health and safety management arrangements.
- 1.38 Proposed section 24B will require that the employer maintain an up-to-date list containing details of all DWGs comprised of employees performing work for the employer, the categories of employees included in those DWGs and ensure that the list is available for inspection by the employees and investigators. Categories of employee must be described in the list.

Item 17 – Subsections 25(4) to (10)

- 1.39 Section 25 currently provides for the selection and election of health and safety representatives (HSRs). This item repeals subsections 25(4) to (10) and substitutes a new subsection 25(4). The effect of this amendment is to remove the existing subsections relating to the election of HSRs. (See notes on item 18, below) Subsection 25(4) provides that where an employee is unanimously selected to be a health and safety representative, he or she must inform the employer of the employees of the designated work group of which he or she has been selected to be the HSR. A note is also added that the heading to section 25 is to be replaced by the heading ‘Selection of health and safety representatives’.

Item 18 – After section 25

- 1.40 This item inserts new sections 25A, 25B and 25C concerning the elections of health and safety representatives (HSR) from designated work groups (DWG).
- 1.41 Proposed section 25A sets out the processes to be followed by the employer if there is a vacancy in the office of HSR of a DWG.
- Proposed subsection (1) will provide that where the office of HSR in a DWG is vacant, and a replacement has not been chosen by employees unanimously (within a reasonable time after the vacancy occurs), the employer must invite

nominations for the office of HSR from all of the employees who are included in the DWG.

- Proposed subsection (2) will provide that if the office of HSR is vacant and the employer has not invited nominations within a further reasonable time, that is not less than 6 months after the vacancy occurred, the Safety, Rehabilitation and Compensation Commission (the Commission) may direct an employer to invite nominations.
- Proposed subsection (3) provides that the direction of the Commissioner under subsection 25A(2) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.
- Subsection (4) will provide that if more than one employee nominates as HSR for a DWG at the close of the nomination period, the employer must conduct, or arrange for the conduct of, an election at the employer's expense.
- Proposed subsection (5) will provide that an election conducted or arranged to be conducted by an employer, must be conducted in accordance with regulations if this is requested by a majority of employees normally in the DWG or by 100 employees normally in the DWG, whichever is lesser of the two.
- Proposed subsection (6) will allow a person to be taken to be elected as HSR if he or she is the only nominee at the close of the nomination period.
- Proposed subsection (7) will provide that an employee who has been disqualified under section 32 may not be a candidate in the election for an HSR.
- Proposed subsection (8) will provide that all employees in the DWG may vote in the election for an HSR.
- Proposed subsection (9) provides that any employer conducting or arranging for the conduct of an election must comply with any directive issued by the Commission. (See notes on item 7, above.)

1.42 Proposed section 25B will replace subsection 25(10) with a simpler requirement that employers must prepare and keep up to date a list of all HSRs and ensure that the list is available for inspection at all reasonable times by their employees and by investigators.

1.43 Proposed section 25C will require an employer to notify employees in a DWG of a vacancy in the office of HSR, or the selection of an HSR, within a reasonable time.

Item 19 – Section 26

1.44 This item repeals section 26 and substitutes three new subsections 26(1) to (3) to reflect that the health and safety management arrangements governing a workplace will specify the term of office of the health and safety representative (HSR) of a designated work group. It also provides for the selection of an HSR in the event of a casual vacancy under a new section 26A.

- 1.45 Proposed section 26 provides that HSRs hold office for the period specified in the organisation's health and safety management arrangements. An HSR who has been elected is eligible for further terms of office. If a period is not specified in the safety management arrangements, the term of office will be 2 years subject to sections 26A (when a casual vacancy arises) and 31 (when an HSR resigns).
- 1.46 Proposed section 26A provides for the term of office in the event of a casual vacancy occurring when an HSR ceases to hold office as an HSR before the term for an HSR has expired. If a casual vacancy occurs more than 6 months before the expiry of the retiring HSR's term, the person selected to fill the vacancy will hold office for the remainder of the term. If the casual vacancy occurs less than six months before the expiry of the retiring HSR's term, the person selected to fill the vacancy will hold office for the remainder of that term and for the next term of office.

Item 20 – Subsection 29(8)

- 1.47 This item is proposed to allow Comcare, than the Commission, to receive requests from responsible persons and others, for investigations into matters which are the subject of a provisional improvement notice issued under this section. This amendment reflects the gradual changing of the administrative functions of Comcare and the Commission since the commencement of the Act in 1991.

Item 21 – After paragraph 31(1)(b)

- 1.48 This item contains a technical amendment to add a new paragraph 31(1)(ba), which clarifies that a person ceases to be a health and safety representative if the designated work group is varied under subsection 24(6) and such a variation results in the membership of the group being different from what it was before the variation.

Item 22 – Subsections 31(2) to (4)

- 1.49 This item repeals subsections 31(2) to (4), concerning the resignation of a health and safety representative (HSR), with a simpler provision that an HSR may resign by notice in writing delivered to the employer of the employees included in the designated workgroup and must notify the employees included in the designated workgroup of the resignation.

Item 23 – Subsection 32(1)

- 1.50 Section 32 deals with the disqualification of health and safety representatives. This item is consequential to other amendments in the Bill concerning representation of employees in provisions relating to the employer's duty of care and workplace arrangements.
- 1.51 This item amends subsection 32(1) to provide that applications for the disqualification of a health and safety representative for a designated work group (DWG) can be made by an employee representative at the request of an employee in the DWG.

Item 24 – After subsection 33(2)

- 1.52 This item adds three new subsections to section 33 to clarify the procedures for the election of deputy health and safety representatives. Proposed subsection (2A) will provide that if an election for a deputy health and safety representative is to be held, the employer must invite nominations from all of the employees in the designated work group (DWG). The procedures for election are based on those for the election of health and safety representatives (HSRs) under section 25 and the procedures for election of HSRs proposed under subsections 25A(3) to (7). Subsections 25A(1) and (2) do not, however, apply because the election of a deputy is optional and not required for each DWG. (See notes on item 17, above.)
- 1.53 This item also clarifies that the provisions relating to resignation etc. and disqualification of a health and safety representative, in sections 31 and 32 of the Act, apply to a deputy health and safety representative in the same way as they apply to a HSR.

Item 25 – Section 34

- 1.54 This item inserts a new section 34 in relation to health and safety committees. The intention is to create a less prescriptive mechanism for the establishment and operation of health and safety committees.
- 1.55 Proposed subsection (1) provides that an employer that normally has not less than 50 employees overall in its workforce will be required to establish a health and safety committee.
- 1.56 Proposed subsection (2) provides that, in addition to the requirement in proposed subsection (1), an employer must establish a health and safety committee in respect of employees performing work for the employer in a particular workplace if:
- a) the number of the employees in the workplace is normally not less than 50; and
 - b) either:
 - (i) a health and safety representative of a designated work group of employees performing work for the employer in the workplace gives a written request to the employer seeking the establishment of a committee;
 - or
 - (ii) a majority of the employees in the workplace give a written request to the employer seeking establishment of a committee.
- 1.57 Proposed subsection (3) states that the constitution and administrative operation of a committee established under subsections (1) and (2) is to be in accordance with the safety management arrangements applying to the employer's employees. However, proposed subsection (4) provides that notwithstanding any provision made for the membership of health and safety committees in safety management arrangements, the number of members of a health and safety committee who are employer representatives must not be greater than the number of employee representatives.
- 1.58 Proposed subsection (5) emphasises that subcommittees of a health and safety committee, and other committees concerned with occupational health and safety, may be established by an employer in consultation with the employees or any other persons. This

amendment clarifies that the fact that a committee has already been established under section 34 does not prevent the establishment of these additional committees.

Item 26 – Subsection 37(3)

- 1.59 This amendment substitutes Comcare for the Safety, Rehabilitation and Compensation Commission as the appropriate body, in addition to an investigator, to which a health and safety representative (HSR) or a supervisor can make a request for an investigation, where there is a disagreement between the HSR and a supervisor about whether sufficient action has been taken to remove an immediate threat to the health and safety of employees, or whether a direction by an HSR for employees to cease work, under subsection 37(1)(b), was necessary.

Item 27 – Section 39

- 1.60 This item repeals section 39 and substitutes two new provisions, sections 38A and 39, conferring powers on Comcare which are currently exercised by the Commission.
- 1.61 New section 38A will allow Comcare to advise employers, employees or contractors, either on its own initiative or on request on occupational health and safety matters affecting those employers, employees or contractors.
- 1.62 New section 39 will allow Comcare to refer persons seeking advice about an occupational health and safety matter to experts, where Comcare considers that a person other than a member of the staff of, or a consultant to, Comcare has special knowledge or experience relevant to the request for advice.
- 1.60 This item confers powers on Comcare, which are currently exercised by the Commission.

Item 28 – Subsection 41(2)

Item 29 – Subsection 41(2)

Item 30 – Subsection 41(3)

Item 31 – Subsection 41(3)

Item 32 – Subsection 41(4)

- 1.61 Section 41 of the Act enables the Commission upon direct investigators to conduct investigations concerning compliance with the Act, contravention of the Act and accidents or dangerous occurrences in the performance of work.
- 1.62 These items amend section 41 to enable Comcare to have a similar role to the Commission in the conduct of investigations under this section. They also provide that although the Commission can revoke a direction to conduct an investigation by Comcare, Comcare does not have the power to revoke such a direction made by the Commission.

Item 33 – Subsection 41(5)

- 1.63 The amendment in this item is consequential to other amendments in the Bill concerning representation of employees in provisions relating to the employer's duty of care and workplace arrangements and the new role for Comcare in the conduct of investigations under this section.

1.64 The proposed subsection 41(5) will provide that an employee representative, if requested by an employee, may make a request to Comcare or the Commission that an investigation be conducted at a workplace at which the employee performs work for the employer.

Item 34 – At the end of Section 43(3)

1.65 Item 33 will add a new subsection 43(3). The proposed subsection will require an investigator to return documents or copies of documents if they are no longer needed for the conduct of an investigation and either, a decision is made by the investigator not to use the documents in proceedings or the documents have been used in such proceedings.

Item 35 – Subsection 47(7)

1.66 Subsection 47(7) provides that a penalty will be imposed upon a Government business enterprise for failing to comply with an improvement notice. The penalty provisions are now dealt with in Schedule 2 of the Act. Item 35 will repeal s 47(7).

Item 36 – Paragraph 48(1)(k)

Item 37 – Before paragraph 48(1)(m)

Item 38 – Paragraph 48(1)(m)

Item 39 – Paragraphs 48(2)(d) and (e)

1.67 Items 36 to 39 are consequential amendments to reflect the changes to provide for employee representatives under the Act. The items amend subsection 48(1) to provide that appeals against decisions taken by investigators may be made by an employee representative in relation to a designated workgroup at the request of an employee working in an affected designated workgroup. If there is no designated workgroup, an affected employee may request an employee representative to make the appeal.

1.68 Item 39 is a consequential amendment. It provides that an employee representative (if requested by an affected employee) may appeal under subsection 48(2) against a decision of an investigator to cancel a notice under section 29, or a decision by an investigator that an employer has taken adequate action to remove a threat to safety under section 46.

Item 40 – Section 50

1.69 Section 50 currently prohibits a person from tampering with or removing notices issued by investigators that must be displayed under various sections of the Act. This item repeals section 50 and inserts a new section which maintains the obligation not to remove or tamper with notices and, in addition, reflects amendments to the requirements to the display of notices, copies of notices or variations to notices under the relevant subsections. The requirement not to tamper or remove a notice stands until the notice or direction to which it relates has expired, is revoked or a new notice is issued following the variation of the notice or direction.

Item 41 - paragraph 67C(a) and (c)

- 1.70 This item replaces the reference to the obsolete ‘*Commonwealth Employees’ Rehabilitation and Compensation Act 1988*’ with the correct reference ‘*Safety, Rehabilitation and Compensation Act 1988*’.

Item 42 – Subsection 68(1)

Item 43 – Subsection 68(2)

- 1.71 Section 68 provides for the notification and reporting of accidents and dangerous occurrences. These items are proposed to amend section 68 to remove the need for employers to provide both a notice and a report to the Safety, Rehabilitation and Compensation Commission (the Commission) when an accident or death occurs in the workplace.
- 1.72 Item 42 removes the requirement for an employer to provide a report to the Commission from subsection 68(1). As a consequence item 43 removes the provision to make regulations relating to the making of reports under this section.

Item 44 – Subsection 70(7)

- 1.73 Subsection 70(7) currently provides that the Safety, Rehabilitation and Compensation Commission must at all times ensure that there is available for inspection at its offices an up to date copy of each document incorporated in a code of practice under subsection 70(3). Inspection of such documents at the offices of Comcare is preferable because Comcare’s offices are more readily accessible.
- 1.74 This item amends the Act to enable documents incorporated in codes of practice under subsection 70(3) to be inspected at the offices of Comcare.

Item 45 – Paragraph 74(1)(c)

Item 46 – Paragraph 74(1)(d)

Item 47 – After paragraph 74(1)(d)

Item 48 – Paragraph 74(1)(f)

Item 49 – Subparagraph 74(1)(g)

- 1.75 These items make a number of amendments to the matters that are to be included in annual reports that are required to be submitted by Commonwealth Departments or Commonwealth authorities under section 74. The purpose of the amendments is to streamline the annual reporting requirements by reducing some of the prescriptive aspects of reporting under the section and making it more outcomes focussed.
- 1.76 Item 45 deletes paragraph 74(1)(c) removing prescriptive elements to be included in an annual report and specific elements that will be no longer relevant as a consequence of amendments to the Act. An employer will now be required to include in an annual report details of the safety management arrangements in a workplace required under paragraph 16(2)(d). (See notes on item 12, above.)

- 1.77 Item 46 replaces the word ‘measures’ with the word ‘initiatives’ in paragraph 74(1)(d) to reflect modern terminology.
- 1.78 Item 47 inserts a new paragraph 74(1)(da) to require that health and safety outcomes, including the impact on injury rates of employees achieved as a result of initiatives taken under paragraph 74(1)(d), or previous initiatives, must be included in the annual report.
- 1.79 Item 48 substitutes a new simplified paragraph (f) that provides that the annual report must include details of investigations and notices given to an employer under sections 29, 46 and 47 during the year.
- 1.80 Item 49 repeals paragraph 74(1)(g) and substitutes a new paragraph providing that the annual report must include details of other such matters as are required by guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit. If the Committee issues guidelines on occupational health and safety matters, annual reports will be required by this Act to comply with such guidelines.

Item 50 – Subsections 77(1) and (2)

Item 51 – Subsection 77(3)

Item 52 – Subsection 77(3)

- 1.81 Section 77 provides for the institution of proceedings for a breach against the Act or the regulations. The section provides that Comcare or an investigator may institute such proceedings and, in the event that proceedings have not been instituted within 6 months, a health and safety representative for a designated work group (DWG) or an involved union in relation to a DWG, may request in writing that Comcare institute such proceedings.
- 1.82 Item 50 repeals subsections 77(1) and (2) and substitutes subsections (1), (2), (2A) and (2B). The new subsections provide a clearer structure to the section and reflect the change in the representation of employees in the conduct of health safety matters in the workplace from involved unions to employee representatives acting on the request of employees. New subsection (2B) will provide that any requests to Comcare to institute proceedings by health and safety representatives, or employee representatives in relation to DWGs, must be in writing.
- 1.83 Items 51 and 52 are consequential amendments to reflect the new structure of the section and the change from involved unions to employee representatives.

Item 53 – Paragraph 82(1)(c)

- 1.84 This item amends paragraph 82(1)(c) in accordance with the amendments proposed to section 25 of the Act which provide that elections for health and safety representatives may be requested to be conducted in accordance with the relevant Regulations. (See notes on item 18, above.)

Item 54 – Paragraphs 82(1)(d) and (e)

- 1.85 Section 82 provides for the making of regulations under the Act. This item repeals paragraphs 82(1)(d) and (e). The amendments reflect changes to the provisions in relation to workplace arrangements under the Act and also allow for higher penalties for contraventions of the regulations.

Item 55 – Schedule 1- Government business enterprises

- 1.86 The Schedule to the Act specifies some statutory corporations that are Government business enterprises (GBEs) for the purposes of the Act as per the definition of ‘Government business enterprise’ in subsection 5(1). Other GBEs are automatically covered by the definition in subsection 5(1). GBEs are able to be prosecuted for breaches of the Act.
- 1.87 Item 55 amends Schedule 1 to the Act to omit those bodies for which it is no longer appropriate that they be included in the Schedule, or include certain bodies that are GBEs for the purposes of the Act but do not fall automatically fall within the definition of ‘Government business enterprise’ in subsection 5(1).
- 1.88 Item 55 inserts the following bodies into the Schedule:
- Australian Government Solicitor
 - Defence Housing Authority.
- 1.89 Item 55 will omit the following bodies from the Schedule:
- ANL Limited
 - Health Insurance Commission
 - Housing Loans Insurance Corporation
 - Pipeline Authority
 - Telstra Corporation Limited.
- 1.90 Telstra Corporation Limited remains a GBE for the purposes of the Act, as it comes within paragraph (b) of the definition of *Government business enterprise* in section 5 of the Act.

PART 2 – TRANSITIONAL, APPLICATION AND SAVING PROVISIONS

DIVISION 1 – PROVISIONS RELATING TO EMPLOYER’S DUTIES

- 1.91 This part contains transitional provisions related to the amendments to employers’ duties contained in Part 1 of Schedule 1.

Item 56 – Definitions

- 1.92 This item contains definitions used in the transitional provisions in this division.

Item 57 – Health and safety management arrangements

- 1.93 This item provides that an employer is not in breach of section 16(1) of the Act by reason only of having failed to develop safety management arrangements under paragraph s16(2)(d) of that Act. The provision will be in force for 18 months after commencement and, in effect, gives an employer 18 months to develop safety management arrangements.

Item 58 – Occupational health and safety policies

- 1.94 This provision will preserve OH&S policies developed under the repealed paragraph 16(2)(d) until such time that health and safety management arrangements have been developed. Employers and employees may preserve their OH&S policies if incorporated in the health and safety management arrangements or if the health and safety management arrangements provide that those policies continue to apply. (See notes on item 12, above.)

Item 59 – Agreements between employers and involved unions

- 1.95 This item preserves agreements made under repealed or amended provisions. Agreements made under subsection 16(3) will continue while the occupational health and safety policy under which they were made has effect. Agreements under paragraph 21(2)(a) in force immediately before commencement will continue to be effective, despite the amendment to paragraph 21(2)(a), between the employer and any involved union.

DIVISION 2 – PROVISIONS RELATING TO DESIGNATED WORK GROUPS AND HEALTH AND SAFETY REPRESENTATIVES

1.96 This part contains transitional provisions relating to the proposals to amend the workplace arrangements provisions of the Act contained in Part 1 of this Schedule.

Item 60 – Definitions

1.97 This item contains definitions used in the transitional provisions in this division.

Item 61 – Designated work groups

1.98 This item provides, in the interest of ensuring continuity, that a designated work group in existence immediately before the commencement of the proposed amendments to the Act continues in existence as if had been established under the amended section 24.

Item 62 – Consultations

1.99 This item will allow completion of consultations with respect to the establishment of designated work groups under section 24 that are underway but not completed before commencement. This item will apply for 3 months after commencement.

Item 63 – Health and safety representative

1.100 This item ensures continuity by allowing a health and safety representative holding office at the time of commencement, to remain in office subject to the Act as it is in force after commencement

Item 64 - Elections

1.101 This item will allow for the completion of an election for a health and safety representative that has commenced at the time this Schedule commences under the relevant procedures prior to the commencement of the amendments.

Item 65 – Applications under section 32

1.102 This item will allow an application for disqualification of a health and safety representative that has been made but not determined upon the commencement of the amendments to continue to be determined under the old procedures as if the Act had not been amended. (See notes on item 23, above.)

Item 66 – Health and safety committees

1.103 This item will allow existing health and safety committees to remain in place in their present form after the commencement of amendments to the Act until the replacement of the committee by a committee established under section 34 of the Act as in force after commencement or the end of the period of 6 months after commencement, whichever is earlier. (See notes on items 61, above.)

- 1.104 An employer is not taken to be in breach of the amended section 34, which outlines the new circumstances when an employer is required to establish a health and safety committee, if a committee continues in existence under this item in respect of the employer's employees.

SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001

Item 1 – Subsection 2(3)

Item 2 – Schedule 1 (Act heading after item 88)

Item 3 – Items 89 to 132 of Schedule 1

1.105 These items repeal various amendments in the *Employment, Workplace Relations and Small Business Legislation Amendments (Application of the Criminal Code) Act 2001* which related to what would have been the *Occupational Health and Safety (Commonwealth Employment) Amendment Act 2001*. These consequential amendments are necessary given that the Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2000 lapsed when Parliament was prorogued prior to the 2001 election