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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**NATIONAL OCCUPATIONAL HEALTH AND SAFETY COMMISSION
(REPEAL, CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2005**

EXPLANATORY MEMORANDUM

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

**NATIONAL OCCUPATIONAL HEALTH AND SAFETY COMMISSION
(REPEAL, CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2005**

OUTLINE

The National Occupational Health and Safety Commission (Repeal, Consequential and Transitional Provisions) Bill 2005 implements the Australian Government's decision to abolish the National Occupational Health and Safety Commission (NOHSC).

The Bill will repeal the *National Occupational Health and Safety Commission Act 1985* and will deal with consequential and transitional matters arising from that repeal and from the enactment of the *Australian Workplace Safety Standards Act 2005*.

FINANCIAL IMPACT STATEMENT

The proposed amendments are budget-neutral.

NOTES ON CLAUSES

Clause 1 - Short title

This clause provides for the short title of the Act.

Clause 2 – Commencement

This clause provides that sections 1-3 and anything in the Act not covered by the table in clause 2 commence on Royal Assent. Schedules 1 and 2 commence on the same day as the commencement of section 3 of the *Australian Workplace Safety Standards Act 2005* (the Standards Act). Section 3 will commence on proclamation.

Clause 3 - Schedule(s)

This clause provides that each Act specified in a Schedule to the Act is amended or repealed as set out in the Schedule, and any other item in a Schedule has effect according to its terms.

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

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

National Occupational Health and Safety Commission Act 1985

Item 1 – The whole of the Act

1.1 This item repeals the *National Occupational Health and Safety Commission Act 1985*. The effect of this repeal is to abolish the National Occupational Health and Safety Commission (NOHSC). NOHSC will be replaced by the Australian Safety and Compensation Council (ASCC), a body to be established under the executive power of the Commonwealth. The ASCC's functions will include the declaration of national standards and/or codes of practice relating to occupational health and safety and workers' compensation matters under the proposed Standards Act.

Part 2 – Transitional and saving arrangements

Item 2 – Definitions

1.2 This item contains definitions of a number of terms used in Part 2 of the Bill.

Item 3 – Transfer of assets and liabilities

1.3 This item provides that on abolition day - the day that NOHSC is abolished and the Standards Act commences - all NOHSC assets and liabilities automatically transfer to the Commonwealth. This means that, effective on abolition day, the Commonwealth will be liable to pay and discharge all pre-existing liabilities of NOHSC.

Item 4 – Custody of Commission records or documents

1.4 Subitem 4(1) provides for the transfer, on abolition day, of NOHSC records or documents to the Commonwealth, other than instruments declaring a national standard or code of practice under section 38 of the NOHSC Act which will transfer to the ASCC.

1.5 Subitem 4(2) transfers NOHSC instruments declaring a national standard or code of practice under section 38 of the NOHSC Act to the ASCC on or after abolition day.

Item 5 – Pending proceedings

1.6 This item substitutes the Commonwealth for NOHSC in relation to any outstanding court or tribunal proceedings to which NOHSC is a party. The Commonwealth shall have the same rights in the proceedings as the Commission had.

Item 6 – Exemption from taxation

1.7 Subitem 6(1) exempts any transfer of assets or liabilities, or any other dealing, under Part 2 (including any instrument facilitating or evidencing such a transfer or dealing) from stamp

duty or any other Commonwealth, State or Territory tax where that transfer, dealing or instrument is certified by an authorised officer as being for the purposes of Part 2.

1.8 Subitem 6(2) provides that any certificate given by an authorised officer under subitem 6(1) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. The certificate issued under subitem 6(1) is merely declaratory and does not determine or alter the content of the law.

Item 7 – Commission instruments

1.9 This item provides for the continuity of NOHSC instruments on and after abolition day. Subitem 7(1) provides that references to NOHSC in a NOHSC instrument, other than a national standard or code of practice declared by NOHSC under section 38 of the NOHSC Act, are to be read as references to the Commonwealth. Subitem 7(2) provides that national standards or codes of practice relating to occupational health and safety declared by NOHSC under section 38 of the NOHSC Act are to be treated as having been made by the ASCC under the Standards Act.

Item 8 – Certificates relating to assets, liabilities and instruments

1.10 Subitem 8(1) provides that an authorised officer may certify in writing that an asset or liability specified in a certificate becomes or became an asset or liability of the Commonwealth because of item 3 of this Schedule. An authorised officer may also certify in writing that an instrument specified in the certificate is a NOHSC instrument.

1.11 Subitem 8(2) provides that the certificate given by an authorised officer is, in all courts and for all purposes, *prima facie* evidence of the matter stated therein.

1.12 Subitem 8(3) authorises State or Territory land registration officials to treat any certificate lodged with respect to a transfer of land as if it were a transfer duly executed under the applicable State or Territory laws.

1.13 Subitem 8(4) provides for judicial notice of certificates given under subitems 8(1) and 8(3).

Item 9 - Final report and financial statements for Commission

1.14 Subitem 9(1) requires the Secretary of the Department, as soon as practicable but not later than 90 days after abolition day, to prepare and give to the Minister an annual report and financial statements in respect of NOHSC's operations for the period commencing on 1 July 2005 and ending immediately before the abolition day (the closure period).

1.15 Subitem 9(2) requires the Secretary to give to the Auditor-General a copy of the financial statements before giving them to the Minister.

1.16 Subitem 9(3) requires the Auditor-General to report to the Minister on NOHSC's financial statements in respect of the closure period.

1.18 Subitem 9(4) allows the Secretary and the Auditor-General, in discharging their obligations under item 9, to rely on accounts and records of NOHSC that are in the possession of

the Commonwealth or to which the Secretary is allowed access, and any other information provided to a person who was a member (or a member of the staff of) NOHSC.

1.19 Subitem 9(5) requires the Minister to table the annual report and financial report, together with a copy of the Auditor-General's report, before each House of the Parliament within 15 sitting days of the receipt by the Minister of such reports.

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

1.20 This item preserves the effect of decisions made under subsection 63(4) of the NOHSC Act, in particular, rights of review in respect of those decisions.

1.21 Section 63 deals with the dissemination and publication of certain information that has been provided to NOHSC and requires NOHSC to consult with persons who provided that information or may be adversely affected by its disclosure. Subsection 63(4) requires NOHSC to consider and make a decision in respect of an objection to disclosure. These decisions are reviewable by the Administrative Appeals Tribunal.

1.22 Subitem 10(1) provides that any decision made by NOHSC under subsection 63(4) of the NOHSC Act before abolition day has effect, on and after abolition day, as a decision of the Commonwealth.

1.23 Subitem 10(2) preserves the operation of section 63 for the purposes of exercising any right of review against the Commonwealth in respect of a NOHSC decision under subsection 63(4).

Item 11 – Saving provision – continuation of public consultations underway on abolition day

1.24 This item preserves the effect of any public consultations undertaken by NOHSC prior to abolition day that did not result in the declaration of the proposed national standard and/or code of practice.

1.25 This item enables the ASCC to declare a national standard and/or code of practice as if the public consultations under the NOHSC Act had occurred under the Standards Act. This item also requires the ASCC to have regard to any representations made to NOHSC in respect of the proposed national standard and/or code of practice as if those representations had been made in accordance with subsection 7(2) of the Standards Act. Should the ASCC think fit, it may make alterations to the proposed standard or code of practice in response to any such representations made. This provision does not require further consultation when a proposed standard has been altered in response to representations previously made.

Item 12 – Delegation of powers and functions conferred under this Part

1.26 Subitem 12(1) enables the Minister to delegate, by written instrument, all or any of the Minister's powers and functions under this Part to:

- the Secretary of the Department; or
- any other Agency Head within the meaning of the *Public Service Act 1999*; or
- any SES (or acting SES) employee.

1.27 Subitem 12(2) enables the Secretary of the Department to delegate, by written instrument, to an SES (or acting SES) employee the Secretary's powers and functions under this Part.

Item 13 – Committees and working parties

1.28 This item clarifies that all appointments of committee members or members of working parties are terminated on abolition day.

Item 14 – Making of transitional etc. regulations

1.29 This item enables the Governor-General to make regulations prescribing matters of a transitional nature relating to:

- the enactment of the Standards Act or of this Act; or
- the repeal of the NOHSC Act by this Act; or
- the amendments made by this Act.

Schedule 2 – Amendment of other Acts and related saving provisions

2.1 This schedule makes consequential amendments to the following Acts:

- *Industrial Chemicals (Notification and Assessment) Act 1989*
- *Occupational Health and Safety (Commonwealth Employment) Act 1991*
- *Occupational Health and Safety (Maritime Industry) Act 1993*
- *Safety, Rehabilitation and Compensation Act 1988.*

Industrial Chemicals (Notification and Assessment) Act 1989

2.2 Items 2-3 and 5 delete provisions in the *Industrial Chemicals (Notification and Assessment) Act 1989* (ICNA Act) relating to amounts that were payable to the Safety, Rehabilitation and Compensation Commission (SRCC) prior to the commencement of the *Therapeutic Goods and Other Legislation Amendment Act 2002*. That Act put in place new financial arrangements under the ICNA Act to remove NOHSC's responsibility for the National Industrial Chemicals Notification and Assessment Scheme. Following the enactment of that Act these provision are now spent. Items 1 and 4 make minor technical amendments that are consequential upon the deletion of these provisions.

Occupational Health and Safety (Commonwealth Employment) Act 1991

Item 6 – Subsections 70(2) and (3)

2.3 This item makes consequential amendments to the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS (CE) Act) to reflect that, following the abolition of NOHSC and the enactment of the Standards Act, the ASCC will have the responsibility for declaring national standards and codes of practice. Proposed new subsection 70(2) will require the SRCC to incorporate in a code of practice each advisory standard or code of practice declared by the ASCC to the extent it is capable of relating to Commonwealth employment and has not been incorporated in regulations. Proposed new subsection 70(3) will enable a code of practice developed by the SRCC to incorporate documents that are not advisory standards or codes declared by the ASCC.

Item 7 – Saving provision

2.4 This item preserves the operation of subsection 70(2) of the OHS (CE) Act to enable the SRCC to incorporate into a code of practice any national standard or code of practice declared by NOHSC prior to the repeal of that subsection.

Item 8 – Subsection 70(9)

2.5 This item replaces the definition of 'NOHSC standard or code' with a definition of 'advisory standard or code'. The term 'advisory standard or code' means a national standard or code of practice declared by the ASCC under the Standards Act, but does not include a standard or code of practice previously declared by NOHSC that has become an ASCC national standard or code of practice by virtue of this Act that has already been incorporated in a SRCC code of practice.

Occupational Health and Safety (Maritime Industry) Act 1993

Item 9 – Subsections 109(2) and (3)

2.6 This item makes consequential amendments to the *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS (MI) Act) to reflect that, following the abolition of NOHSC and the enactment of the Standards Act, the ASCC will have the responsibility for declaring national standards and codes of practice. Proposed new subsection 109(2) will require the Seafarers Safety, Rehabilitation and Compensation Authority (the Authority) to incorporate in a code of practice each advisory standard or code declared by the ASCC to the extent it is capable of relating to maritime industry employment and has not been incorporated in regulations. Proposed new subsection 109(3) will enable a code of practice developed by the Authority to incorporate documents that are not advisory standards or codes declared by the ASCC.

Item 10 – Saving provision

2.7 This item preserves the operation of subsection 109(2) of the OHS(MI) Act to enable the Authority to incorporate into a code of practice any NOHSC national standard or a code of practice not incorporated prior to the repeal of that section.

Item 11 – Subsection 109(9)

2.8 This item replaces the definition of ‘NOHSC standard or code’ with a definition of ‘advisory standard or code’. The term ‘advisory standard or code’ means a national standard or code of practice declared by the ASCC under the Standards Act but does not include a national standard or code of practice previously declared by NOHSC that has become an ASCC national standard or code of practice by virtue of this Act that has already been incorporated in a code of practice by the Authority.

Safety, Rehabilitation and Compensation Act 1988

Item 12 – Paragraph 89E(1)(f)

2.9 Section 89E(1) of the *Safety, Rehabilitation and Compensation Act 1988* provides for the constitution of the SRCC which currently includes the Chief Executive Officer of NOHSC. This item replaces CEO of NOHSC with a member who, in the Minister’s opinion, represents the ASCC.