

2004-2005

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**National Occupational Health and Safety
Commission (Repeal, Consequential and
Transitional Provisions) Bill 2005**

No. , 2005

(Employment and Workplace Relations)

**A Bill for an Act to repeal the *National
Occupational Health and Safety Commission Act
1985*, to deal with consequential and transitional
matters related to that repeal and to the enactment
of the *Australian Workplace Safety Standards Act
2005*, and for related purposes**

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1 **A Bill for an Act to repeal the *National***
2 ***Occupational Health and Safety Commission Act***
3 ***1985, to deal with consequential and transitional***
4 ***matters related to that repeal and to the enactment***
5 ***of the *Australian Workplace Safety Standards Act****
6 ***2005, and for related purposes***

7 The Parliament of Australia enacts:

8 **1 Short title**

9 This Act may be cited as the *National Occupational Health and*
10 *Safety Commission (Repeal, Consequential and Transitional*
11 *Provisions) Act 2005.*

1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.
6

Commencement information

| Column 1 | Column 2 | Column 3 |
|---|---|---------------------|
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | |
| 2. Schedules 1 and 2 | At the same time as section 3 of the <i>Australian Workplace Safety Standards Act 2005</i> commences. | |

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

10 (2) Column 3 of the table contains additional information that is not
11 part of this Act. Information in this column may be added to or
12 edited in any published version of this Act.

13 **3 Schedule(s)**

14 Each Act that is specified in a Schedule to this Act is amended or
15 repealed as set out in the applicable items in the Schedule
16 concerned, and any other item in a Schedule to this Act has effect
17 according to its terms.

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**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*

1 The whole of the Act

Repeal the Act.

1

2 **Part 2—Transitional and saving arrangements**

3 **2 Definitions**

4 In this Part:

5 **abolition day** means the day on which section 3 of the Standards Act
6 commences.

7 **assets** means property of every kind and, without limiting the generality
8 of the foregoing, includes:

- 9 (a) choses in action; and
10 (b) rights, interests and claims of every kind in or to property,
11 whether arising under an instrument or otherwise, and
12 whether legal or equitable, liquidated or unliquidated, certain
13 or contingent, accrued or accruing.

14 **Australian Safety and Compensation Council** has the same meaning as
15 in the Standards Act.

16 **authorised officer** means the Minister, the Secretary of the Department
17 or any other person authorised by the Minister for the purposes of this
18 Part.

19 **Commission** means the National Occupational Health and Safety
20 Commission that was established under section 6 of the NOHSC Act.

21 **Commission instrument** means an instrument subsisting immediately
22 before abolition day:

- 23 (a) to which the Commission was a party; or
24 (b) that was given to, or in favour of, the Commission; or
25 (c) in which a reference is made to the Commission; or
26 (d) under which money is or was, or may become or may have
27 become, payable to the Commission; or
28 (e) under which any other property is or was to be, or may
29 become liable to be or to have been, transferred to or by the
30 Commission.

31 **liabilities** means liabilities of every kind and, without limiting the
32 generality of the foregoing, includes obligations of every kind, whether
33 arising at law or in equity, whether arising under or by virtue of an
34 instrument or otherwise, and whether liquidated or unliquidated, certain
35 or contingent, accrued or accruing.

1 *NOHSC Act* means the *National Occupational Health and Safety*
2 *Commission Act 1985*.

3 *Secretary* means the Secretary of the Department.

4 *Standards Act* means the *Australian Workplace Safety Standards Act*
5 *2005*.

6 **3 Transfer of assets and liabilities**

7 On abolition day:

- 8 (a) any assets that, immediately before that day, were vested in
9 the Commission are, by force of this item, vested in the
10 Commonwealth; and
11 (b) the Commonwealth becomes, by force of this item, liable to
12 pay and discharge liabilities of the Commission that existed
13 immediately before that day.

14 **4 Custody of Commission records or documents**

- 15 (1) Any record or document, including a Commission instrument other than
16 a Commission instrument declaring a national standard or code of
17 practice under section 38 of the NOHSC Act, that was in the custody of
18 the Commission immediately before abolition day is to be transferred
19 into the custody of the Commonwealth on or after that day.
- 20 (2) Any Commission instrument declaring a national standard or code of
21 practice under section 38 of the NOHSC Act that was in the custody of
22 the Commission immediately before abolition day is to be transferred
23 into the custody of the Australian Safety and Compensation Council on
24 or after that day.

25 **5 Pending proceedings**

26 If, immediately before abolition day, proceedings to which the
27 Commission was a party were pending in any court or tribunal, the
28 Commonwealth is, on and after that day and despite the provisions of
29 any other law or instrument, substituted for the Commission as a party
30 to the proceedings and has the same rights in the proceedings as the
31 Commission had.

32 **6 Exemption from taxation**

- 33 (1) Any transfer of assets or liabilities, or any other dealing, under this Part,
34 and any instrument facilitating or evidencing such a transfer or other

- 1 dealing, is not subject to stamp duty or other tax under a law of the
2 Commonwealth or of a State or Territory if an authorised officer
3 certifies, in writing:
- 4 (a) that the transfer or dealing is a transfer or dealing for a
5 purpose connected with, or arising out of, the operation of
6 this Part; or
- 7 (b) that the instrument facilitating or evidencing a transfer or
8 dealing is an instrument made or given because of, or for a
9 purpose connected with, or arising out of, the operation of
10 this Part.
- 11 (2) A certificate given by an authorised officer under subitem (1) is not a
12 legislative instrument for the purposes of the *Legislative Instruments*
13 *Act 2003*.

14 **7 Commission instruments**

- 15 (1) A Commission instrument, other than a national standard or code of
16 practice declared by the Commission under section 38 of the NOHSC
17 Act, that was in force immediately before abolition day has effect on
18 and after that day, in relation to everything occurring on or after that
19 day, as if a reference in the instrument to the Commission were a
20 reference to the Commonwealth.
- 21 (2) A national standard or code of practice relating to an occupational
22 health and safety matter:
- 23 (a) that was declared by the Commission under section 38 of the
24 NOHSC Act; and
- 25 (b) that was in force immediately before abolition day;
- 26 has effect on and after that day as if it were a national standard or code
27 of practice made by the Australian Safety and Compensation Council
28 under the Standards Act.

29 **8 Certificates relating to assets, liabilities and instruments**

- 30 (1) An authorised officer may certify, in writing, that:
- 31 (a) an asset or liability specified in the certificate becomes or
32 became, because of item 3 of this Schedule, an asset or
33 liability of the Commonwealth; or
- 34 (b) an instrument specified in the certificate is a Commission
35 instrument.

- 1 (2) The certificate is, in all courts and for all purposes, prima facie evidence
2 of the matter stated in the certificate.
- 3 (3) If:
- 4 (a) under item 3 of this Schedule, an estate or interest in land
5 becomes an asset of the Commonwealth; and
- 6 (b) a certificate under subitem (1) to that effect is lodged with the
7 Registrar-General, Registrar of Titles or other proper officer
8 of the State or Territory in which the land is situated;
- 9 the officer with whom the certificate is lodged may deal with and give
10 effect to the certificate as if it were a grant, conveyance, memorandum
11 or instrument of transfer of the estate or interest to the Commonwealth,
12 duly executed under the laws in force in that State or Territory.
- 13 (4) If a document purports to be a certificate under subitem (1) or (3)
14 signed by a person purporting to be an authorised officer, judicial notice
15 must be taken of the signature of the person and of the fact that the
16 person is or was an authorised officer.

17 **9 Final report and financial statements for Commission**

- 18 (1) The Secretary must, as soon as practicable after, but not later than 90
19 days after, abolition day, prepare and give to the Minister:
- 20 (a) a report on the operations of the Commission during the
21 period (the *closure period*) commencing on 1 July 2005 and
22 ending immediately before abolition day; and
- 23 (b) financial statements that relate to the Commission during that
24 period in such form as the Minister administering the
25 *Commonwealth Authorities and Companies Act 1997*
26 approves.
- 27 (2) The Secretary must give a copy of the financial statements to the
28 Auditor-General before giving them to the Minister under subitem (1).
- 29 (3) As soon as practicable after, but not later than 90 days after, receipt of
30 the financial statements, the Auditor-General must report to the
31 Minister:
- 32 (a) whether, in the Auditor-General's opinion, the statements are
33 based on proper accounts and records; and
- 34 (b) whether the statements are in agreement with the accounts
35 and records and, in the Auditor-General's opinion, show

- 1 fairly the financial transactions and state of affairs of the
2 Commission; and
- 3 (c) whether, in the Auditor-General's opinion, the receipt,
4 expenditure and investment of money, and the acquisition
5 and disposal of assets by the Commission during the closure
6 period were in accordance with the NOHSC Act; and
- 7 (d) such other matters arising out of the statements as the
8 Auditor-General considers should be reported to the Minister.
- 9 (4) The Secretary and the Auditor-General may, in discharging their
10 obligations under this item, rely on accounts and records of the
11 Commission that are in the possession of the Commonwealth or to
12 which the Secretary is allowed access, and on any other information
13 provided to a person who was a member of the Commission or who was
14 a member of the staff of the Commission.
- 15 (5) The Minister must cause copies of the reports and financial reports,
16 together with a copy of the report by the Auditor-General, to be laid
17 before each House of the Parliament within 15 sitting days of that
18 House after the receipt by the Minister.

19 **10 Saving provision—rights of review of certain decisions**
20 **made before abolition day**

- 21 (1) For the purpose of this item, and without limiting the effect of item 5 of
22 this Schedule, each decision of a kind referred to in subsection 63(4) of
23 the NOHSC Act that was made by the Commission before abolition day
24 has effect, on and after that day, as a decision of the Commonwealth.
- 25 (2) Despite the repeal of section 63 of the NOHSC Act, that section
26 continues in force, on and after abolition day, for the purpose of
27 enabling persons to seek review of decisions referred to in subsection
28 63(4) of that Act that were made before that day as if:
- 29 (a) that section had not been repealed; and
30 (b) each reference in that section, as so continued in force, to a
31 decision of the Commission were a reference to a like
32 decision made by the Commonwealth.

33 **11 Saving provision—continuation of public consultations**
34 **underway on abolition day**

35 If:

- 1 (a) before abolition day, the Commission published a notice
2 under subsection 38(4) of the NOHSC Act in relation to a
3 proposed national standard or code of practice; and
4 (b) by abolition day, the Commission has not declared the
5 proposed standard or code of practice;
- 6 then:
- 7 (c) in relation to any subsequent declaration of that standard or
8 code of practice by the Australian Safety and Compensation
9 Council—the publication of the notice by the Commission is
10 taken to have satisfied the Australian Safety and
11 Compensation Council’s obligations under subsection 7(1) of
12 the Standards Act; and
- 13 (d) subsection 7(2) of the Standards Act applies in relation to any
14 representation made in accordance with the notice published
15 by the Commission as if the representation had been made in
16 accordance with steps taken under subsection 7(1) of that
17 Act.

18 **12 Delegation of powers and functions conferred under this** 19 **Part**

- 20 (1) The Minister may, by written instrument, delegate to:
21 (a) the Secretary or any other Agency Head within the meaning
22 of the *Public Service Act 1999*; or
23 (b) an SES employee or acting SES employee;
24 all or any of the powers and functions conferred on or acquired by the
25 Minister under this Part.
- 26 (2) The Secretary may, by written instrument, delegate to an SES employee
27 or acting SES employee the powers and functions of the Secretary
28 under this Part.

29 Note 1: The expressions *SES employee*, and *acting SES employee* are defined in section 17AA
30 of the *Acts Interpretation Act 1901*.

31 Note 2: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

32 **13 Committees and working parties**

1 For the avoidance of doubt, all persons, whether members of the
2 Commission or not, who, immediately before the abolition day, are
3 members of a committee of the Commission or members of a working
4 party of such a committee, cease to hold office with effect from that
5 day.

6 **14 Making of transitional etc. regulations**

7 The Governor-General may make regulations prescribing matters of a
8 transitional nature (including prescribing any saving or application
9 provisions) relating to:

- 10 (a) the enactment of the Standards Act or of this Act; or
11 (b) the repeal of the NOHSC Act by this Act; or
12 (c) the amendments made by this Act.

1
2 **Schedule 2—Amendment of other Acts and**
3 **related saving provisions**
4

5 *Industrial Chemicals (Notification and Assessment) Act 1989*

6 **1 Paragraph 100B(1)(j)**

7 Omit “the Account;”, substitute “the Account.”.

8 **2 Paragraphs 100B(1)(k) and (l)**

9 Repeal the paragraphs.

10 **3 Subsection 100B(2)**

11 Repeal the subsection.

12 **4 Paragraph 100C(1)(d)**

13 Omit “regulations; and”, substitute “regulations.”.

14 **5 Paragraph 100C(1)(e)**

15 Repeal the paragraph.

16 *Occupational Health and Safety (Commonwealth*
17 *Employment) Act 1991*

18 **6 Subsections 70(2) and (3)**

19 Repeal the subsections, substitute:

20 (2) Without limiting the generality of the matters that may be included
21 in codes of practice prepared by the Commission, the Commission
22 must, in respect of each advisory standard or code declared after
23 this subsection commences, as soon as practicable after that
24 advisory standard or code is declared, incorporate in a code of
25 practice prepared by the Commission for Ministerial approval
26 under this section so much of that advisory standard or code:

27 (a) as is capable of relating to Commonwealth employment; and

28 (b) as has not been applied, adopted or incorporated, with or
29 without modification, in regulations made for the purposes of
30 section 23.

- 1 (3) A code of practice incorporating a document (other than an
2 advisory standard or code) that is prepared by a body may
3 incorporate that document as in force at the time the code of
4 practice is approved or as amended by the body from time to time.

5 **7 Saving provision**

6 Subsection 70(2) of the *Occupational Health and Safety*
7 *(Commonwealth Employment) Act 1991*, as in force immediately before
8 the commencement of item 6 of this Schedule, is to be taken to continue
9 in force for the purpose of incorporating, in a code of practice prepared
10 by the Commission for Ministerial approval under section 70 of that Act
11 as so in force, any national standard or a code of practice:

- 12 (a) that was declared under subsection 38(1) of the *National*
13 *Occupational Health and Safety Commission Act 1985*; and
14 (b) that it was not practicable to so incorporate before the repeal
15 of subsection 70(2).

16 **8 Subsection 70(9)**

17 Repeal the subsection, substitute:

- 18 (9) In this section:

19 *advisory standard or code* means a national standard, or a code of
20 practice, in relation to an occupational health and safety matter that
21 is declared by the Australian Safety and Compensation Council
22 under subsection 6(1) of the *Australian Workplace Safety*
23 *Standards Act 2005*, other than a standard or code:

- 24 (a) that is to be treated, by operation of subitem 7(2) of
25 Schedule 1 to this Act, as if it had been so declared; and
26 (b) that has not been amended or varied since it was first
27 required to be so treated.

28 ***Occupational Health and Safety (Maritime Industry) Act*** 29 ***1993***

30 **9 Subsections 109(2) and (3)**

31 Repeal the subsections, substitute:

- 32 (2) Without limiting the generality of the matters that may be included
33 in codes of practice prepared by the Authority, the Authority must,
34 in respect of each advisory standard or code declared after this
-

1 subsection commences, as soon as practicable after that advisory
2 standard or code is declared, incorporate in a code of practice
3 prepared by the Authority for Ministerial approval under this
4 section that advisory standard or code to the extent that:

- 5 (a) it has not been incorporated in regulations; and
6 (b) it is capable of relating to employment in the maritime
7 industry.

- 8 (3) A code of practice incorporating a document (other than an
9 advisory standard or code) that is prepared by a body may
10 incorporate that document as in force at the time the code of
11 practice is approved or as amended by the body from time to time.

12 **10 Saving provision**

13 Subsection 109(2) of the *Occupational Health and Safety (Maritime*
14 *Industry) Act 1993*, as in force immediately before the commencement
15 of item 9 of this Schedule, is to be taken to continue in force for the
16 purpose of incorporating, in a code of practice prepared by the
17 Authority for Ministerial approval under section 109 of that Act as so in
18 force, any national standard or a code of practice:

- 19 (a) that was declared under subsection 38(1) of the *National*
20 *Occupational Health and Safety Commission Act 1985*; and
21 (b) that it was not practicable to so incorporate before the repeal
22 of subsection 109(2).

23 **11 Subsection 109(9)**

24 Repeal the subsection, substitute:

- 25 (9) In this section:

26 *advisory standard or code* means a national standard, or a code of
27 practice, in relation to an occupational health and safety matter that
28 is declared by the Australian Safety and Compensation Council
29 under subsection 6(1) of the *Australian Workplace Safety*
30 *Standards Act 2005*, other than a standard or code:

- 31 (a) that is to be treated, by operation of subitem 7(2) of
32 Schedule 1 to this Act, as if it had been so declared; and
33 (b) that has not been amended or varied since it was first
34 required to be so treated.

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

1 **12 Paragraph 89E(1)(f)**

2 Repeal the paragraph, substitute:

3 (f) a member who, in the Minister's opinion, represents the
4 Australian Safety and Compensation Council.