

2004-2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**OHS AND SRC LEGISLATION AMENDMENT BILL 2005**

EXPLANATORY MEMORANDUM

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

## OHS AND SRC LEGISLATION AMENDMENT BILL 2005

### OUTLINE

The *OHS and SRC Legislation Amendment Bill 2005* addresses the following matters:

1. implementing the Australian Government's response to the Productivity Commission Inquiry Report No. 27 into *National Workers' Compensation and OHS Frameworks* to cover, under the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS(CE) Act), corporations licensed under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act);
2. ensuring Commonwealth authorities licensed under the SRC Act, but not covered under the OHS(CE) Act, are covered by the OHS(CE) Act;
3. allowing Comcare to charge all Commonwealth authorities an OHS contribution for the administration of the OHS(CE) Act; and
4. validating payments purported to have been made under the SRC Act by some licensees and Commonwealth authorities for OHS contributions in the 2002-2003 financial year.

### **Response to the *National Workers' Compensation and OHS Frameworks Report***

Currently corporations licensed under the SRC Act are not subject to the OHS(CE) Act. OHS obligations for these corporations are provided by the different State and Territory OHS legislation.

The Productivity Commission recommended that the Australian Government amend the OHS(CE) Act to enable those corporations that are licensed under the Australian Government's workers' compensation scheme to elect to be covered by the Australian Government's OHS legislation. Currently, corporations may seek coverage under the SRC Act.

The Australian Government workers' compensation and OHS schemes are effectively integrated. There are significant benefits to both employers and employees if covered by a single set of workers' compensation and OHS laws. The Bill, therefore, would provide OHS coverage under the OHS(CE) Act for all SRC Act licensees.

### **Coverage of licensed Commonwealth authorities**

For consistency, the Bill would also ensure that all Commonwealth authorities licensed under the SRC Act are covered by the OHS(CE) Act. Most licensed Commonwealth authorities are already covered by the OHS(CE) Act because they also meet the definition of *Commonwealth authority* in the OHS(CE) Act. However, coverage under both Acts is not automatic. The Bill provides consistent coverage for all licensees.

### **Ability to charge a fee to recover administration costs for the schemes**

The SRC Act requires Entities (i.e. Commonwealth departments, agencies and other prescribed bodies), Commonwealth authorities and licensed eligible corporations to pay one regulatory contribution at the beginning of each financial year in relation to services and costs of the Safety, Rehabilitation and Compensation Commission (the Commission) and Comcare in administering the OHS(CE) Act and the SRC Act.

Prior to 1 July 2002 separate regulatory contributions were paid under the SRC Act and OHS(CE) Act. The *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001* (the SRCOLA Act) rationalised funding arrangements under the OHS and workers' compensation schemes and placed these arrangements in the SRC Act.

While the definitions of *Entity* in the SRC Act and the OHS(CE) Act are the same, each Act contains a different definition of *Commonwealth authority*. As the requirement to pay a regulatory contribution, which includes costs in relation to the administration of the OHS scheme, is now contained in the SRC Act, there is no legal basis to charge a body which is a Commonwealth authority under the OHS(CE) Act that is not also covered by the SRC Act. The Bill corrects a drafting oversight in the SRCOLA Act.

The Bill would extend the definition of *Commonwealth authority* under the SRC Act, but only for the purposes of charging regulatory contributions under section 97D, to those Commonwealth authorities that could not otherwise be charged a regulatory contribution under the SRC Act.

### **Validation of OHS contributions in 2002-2003**

Following the commencement of the SRCOLA Act, a number of Commonwealth authorities, that were not covered by the SRC Act paid OHS contributions under section 97D of the SRC Act for the period 1 July 2002 – 30 June 2003. The payments were retained by Comcare, as agreed with the authorities, for services to be provided during the 2002-2003 financial year and with the understanding that an amendment would be made to the legislation to validate the payments and provide for future payments. The Bill validates these payments and acts by Comcare in determining the amounts of the payments.

The SRCOLA Act also streamlined licensing provisions under the SRC Act so that one generic licence is issued to all licensees. For the 2002-2003 financial year a number of licensees paid licence fees under the new licensing provisions rather than under the old licensing provisions that continued to apply for the duration of the licence. The payments were recalculated by the Commission under the correct provisions. The original payments were retained by Comcare, as agreed with the licensees, for services to be provided during the 2002-2003 financial year and with the understanding that an amendment would be made to the legislation to validate the payments. The Bill validates these payments and associated acts by the Commission in determining the amounts of the licence fees.

### **FINANCIAL IMPACT STATEMENT**

Costs borne by Comcare to administer the OHS(CE) Act in relation to private sector corporations would be covered by an OHS contribution included in the corporation's self-insurance licence fee. As corporations are self-funded, OHS contribution costs would not be borne by the Commonwealth from revenue.

## REGULATION IMPACT STATEMENT

### BACKGROUND

The *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the OHS(CE) Act) provides a legal basis for the protection of the health and safety of Commonwealth employees in Departments, Statutory Authorities, and Government Business Enterprises (GBEs). The OHS(CE) Act imposes responsibilities on employers, employees, manufacturers and suppliers of plant and substances, and persons erecting or installing plant in a workplace. The OHS(CE) Act also establishes a framework for cooperative workplace arrangements and a criminal and civil enforcement regime.

The *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) establishes both a premium based and licensed self-insurance based workers' compensation scheme to provide coverage for work-related injuries sustained by employees of the Commonwealth and certain private sector corporations.

Both the OHS(CE) Act and the SRC Act are administered by the Commonwealth's regulatory body, Comcare.

The SRC Act provides scope for certain corporations to apply for a licence to self-insure and/or manage their own workers' compensation claims. The Minister for Employment and Workplace Relations may declare a corporation eligible to be granted a self-insurance licence under the SRC Act. Eligible corporations include former Commonwealth authorities, existing Commonwealth authorities that are about to be privatised, and private sector corporations operating in competition with an existing or former Commonwealth authority. The Safety, Rehabilitation and Compensation Commission has the power to grant a licence under the SRC Act to an eligible corporation.

The licensing arrangements enable Commonwealth authorities to maintain SRC Act coverage as licensed corporations following privatisation. This ensures continuity of workers' compensation arrangements for employees of former Commonwealth authorities. In order to maintain a 'level playing field', these provisions also enable private sector corporations in competition with existing and former Commonwealth authorities to access the SRC Act licensing arrangements.

The OHS(CE) Act applies to defined Commonwealth authorities. A body corporate which is not established for a public purpose under a law of the Commonwealth or a Territory (i.e. a private sector corporation) is only a "Commonwealth authority" for the purposes of the OHS(CE) Act if:

- the Commonwealth retains a controlling interest in the body and it has not been declared not to be a "Commonwealth authority" by the Minister; or
- the Commonwealth retains a substantial interest in the body and the Minister has declared the body to be a "Commonwealth authority" for the purposes of the Act.

This Regulatory Impact Statement concerns proposals for amendment of the OHS(CE) Act to extend coverage under the OHS(CE) Act to private sector corporations which obtain a self-insurance licence under the SRC Act and their employees.

## **OBJECTIVE**

To provide for optimum levels of health and safety by facilitating an integrated approach to workers' compensation and OHS across the Commonwealth scheme.

## **THE PROBLEM**

### *Coverage under the OHS(CE) Act*

The OHS(CE) Act, in conjunction with the SRC Act, seeks to limit the human and financial costs of work-related injury. The Commonwealth's approach to injury prevention and management is to promote continuous improvement in OHS, rehabilitation and workers' compensation through a systems-based and integrated approach.

While certain private sector corporations can retain or obtain workers' compensation coverage under the Commonwealth scheme through a self-insurance licence, there is no corresponding mechanism for them to obtain coverage under the Commonwealth OHS scheme.

The current circumstances where corporations could consider applying for SRC Act coverage but are unable to be covered by the OHS(CE) Act are:

- (i) Commonwealth authorities in the process of privatisation that wish to continue their workers' compensation coverage post privatisation through SRC Act licensing arrangements;
- (ii) former Commonwealth authorities that have left the Commonwealth scheme and operate under State/Territory schemes, but are able to return to SRC Act coverage after Ministerial declaration and SRC Commission approval of a licence application; and
- (iii) corporations which operate in competition with existing or former Commonwealth authorities.

Most Commonwealth authorities are covered by both the SRC Act and OHS(CE) Act. Former Commonwealth authorities can, if they wish, remain covered by the provisions of the SRC Act via a self-insurance licence. Alternatively, they would default to coverage under the relevant State or Territory workers' compensation legislation.

If the Commonwealth retains at least a substantial interest in a corporation, that corporation could remain covered by the OHS(CE) Act by virtue of its meeting the definition of a "Commonwealth authority" under that Act. However, a former Commonwealth authority cannot be covered by the OHS(CE) Act. As such, while a privatised former Commonwealth authority may retain SRC Act coverage, there is no scope for its coverage under the OHS(CE) Act. This may compromise health and safety because it prevents former Commonwealth authorities licensed under the SRC Act from having integrated OHS and workers' compensation arrangements. Their OHS arrangements which are directed to the prevention of workplace injury are subject to State and Territory OHS legislation, while their rehabilitation and workers' compensation arrangements are subject to Commonwealth legislation.

Corporations carrying on business in competition with an existing or former Commonwealth authority can be declared by the Minister to be an eligible corporation to apply for a self-

insurance licence under the SRC Act. If such competitors were to be licensed under the SRC Act for workers' compensation purposes, they would still remain covered by State and Territory OHS legislation. This may place them at a competitive disadvantage where they would be required to comply with up to eight separate sets of State/Territory OHS legislation, compared to a Commonwealth authority which is subject to the Commonwealth regulatory framework. While the principles of the Commonwealth and State/Territory OHS legislation are the same, there are many differences in the detailed provisions. Where such differences occur, there may be increased compliance costs for a competitor operating in multiple jurisdictions. Therefore the Commonwealth legislation currently provides a barrier to competitive neutrality for these corporations.

It is preferable to maintain consistency across the scheme through an integrated approach to workers' compensation and OHS by providing for all organisations covered by the SRC Act through the licensing arrangements to be covered concurrently by the OHS(CE) Act. This would also assist in ensuring that private sector corporations which are licensed under the SRC Act are able to operate in a competitively neutral environment.

The Productivity Commission recommended in its report on *National Workers' Compensation and Occupational Health and Safety Frameworks* that the OHS(CE) Act be amended "to enable those employers who are licensed to self-insure under the Australian Government's workers' compensation scheme to elect to be covered by the Australian Government's occupational health and safety legislation". The Productivity Commission considered that this would increase the administrative savings for multi-state corporations and enable greater coordination and feedback between the workers' compensation and OHS regimes. It would also enable improved data monitoring, feedback and reform.

The Australian Government supported the Productivity Commission's recommendation with the modification that there should be mandatory coverage under the OHS(CE) Act for non-Commonwealth employers who gain a self-insurance licence under the SRC Act. The Australian Government considers there is merit in opening up access to the Government's OHS regime to give those firms granted a self-insurance licence under the SRC Act scheme a single set of national OHS rules. The Government's workers' compensation and OHS schemes are effectively integrated and there are benefits to employers having coverage under both schemes. For these reasons the Government does not support eligible corporations having the choice as proposed by the Productivity Commission.

There are currently 5 eligible corporations which have obtained licences under the SRC Act but are not covered by the OHS(CE) Act. The figures provided to Comcare indicate that the number of employees of the 5 licensees is currently approximately 15,000. It is not possible to identify how many other corporations would apply for, and be successful in obtaining, a self-insurance licence.

## **OPTIONS**

Options available for regulating OHS in the Commonwealth jurisdiction include:

- A.** no change to the current provisions; or

- B.** providing for coverage under the OHS(CE) Act for employers that obtain a self-insurance licence under the SRC Act. The Minister's power to declare corporations as eligible corporations under the SRC Act would not be affected by this option.

## **IMPACT ANALYSIS (COSTS AND BENEFITS)**

### **Option A - No change**

#### Costs to private sector licensees

- (i) Former Commonwealth authorities licensed under the SRC Act are:
- required to leave the Commonwealth OHS scheme and comply with State/Territory OHS legislation where differences in OHS requirements may give rise to increased compliance costs, depending on the number of jurisdictions in which the former Commonwealth authority operates. There are also costs associated with the potential increase in their corporate governance management systems to accommodate up to eight State/Territory OHS legislative requirements;
  - required to pay the equivalent of an OHS contribution to each State/Territory OHS regulator where the former Commonwealth authority operates, rather than one contribution to the Commonwealth regulator;
  - unable to maintain a consistent and integrated approach to workers' compensation and OHS;
  - subject to training costs in relation to different State/Territory OHS requirements without any benefit of increased OHS standards and protection; and
  - subject to different penalties under State/Territory OHS legislation for similar breaches, giving rise to inequities in OHS enforcement against employers.
- (ii) Competitors of existing and former Commonwealth authorities licensed under the SRC Act are:
- potentially subject to higher compliance costs than Commonwealth authorities through additional administration associated with complying with up to eight sets of State/Territory OHS legislation;
  - required to pay the equivalent of an OHS contribution to each State/Territory OHS regulator where the competitor operates;
  - unable to maintain a consistent and integrated approach to workers' compensation and OHS;
  - subject to training costs in relation to different State/Territory OHS requirements without any benefit of increased OHS standards and protection.
  - potentially placed at a competitive disadvantage when competing with a Commonwealth authority covered by the OHS(CE) Act as a Commonwealth authority is mainly covered by the OHS(CE) Act and only required to pay an OHS contribution to Comcare, whereas competitors would be required to comply with up to eight sets of State/Territory OHS legislation and pay the equivalent of an OHS contribution to up to eight OHS authorities; and

- subject to different penalties under State/Territory OHS legislation for similar breaches, giving rise to inequities in OHS enforcement against employers.

Benefits to private sector licensees

- (iii) No benefits identified.

Costs to licensee employees

- (iv) Employees of former Commonwealth authorities may have to undergo new training or obtain additional qualifications to understand and comply with the OHS legislation of the State/Territory in which they work;
- (v) Confusion in relation to OHS requirements could arise for employees working in different jurisdictions. Differential requirements also restrict an employee's ability to take up, at short notice, duties in another State/Territory for the employer; and
- (vi) Inequities in enforcing OHS obligations against employees for similar breaches would arise due to differing penalty provisions in State/Territory OHS legislation.

Benefits to licensee employees

- (vii) Employees of corporations operating in competition with existing or former Commonwealth authorities would remain covered by State/Territory OHS legislation and would not have to undergo new training to comply with Commonwealth OHS requirements.

Impact on small businesses and their employees

- (i) No adverse impact on small businesses or their employees. Providing coverage under the OHS(CE) Act for private sector corporations which self-insure under the SRC Act is likely to have little or no impact on small business. The States currently fund their OHS prevention and enforcement activities through special OHS contributions paid by employers or through their respective budgets. State governments also receive revenue through fines imposed on organisations that breach OHS laws.

Costs to Government

- (viii) No cost is borne by the Commonwealth as corporations are self-funded and the cost to the SRC Commission in monitoring the OHS components of the licensing conditions is fully covered by the licensing fees.

Benefits to Government

- (ix) No benefits identified.

**Option B - Providing for coverage under the OHS(CE) Act for private sector corporations that obtain a self-insurance licence under the SRC Act**

Costs to private sector licensees



- (x) Former Commonwealth authorities and competitors of existing and former Commonwealth authorities licensed under the SRC Act would be required to pay an OHS contribution towards the costs of administering the OHS(CE) Act by the Comcare. Currently, these corporations are not required to pay an OHS contribution under the OHS(CE) Act as they are only required to comply with State/Territory OHS legislation.
- (xi) For competitors of existing and former Commonwealth authorities, there may be initial costs in acquiring knowledge and implementing changes to ensure compliance with Commonwealth OHS requirements.
- (xii) Potentially, two separate systems of OHS regulation could apply to a single site if a self-insurer engaged contractors who are covered by State/Territory OHS laws. However this situation already exists for all employers covered by the OHS(CE) Act and does not create any significant problems.

#### Benefits to private sector licensees

- (xiii) Former Commonwealth authorities licensed under the SRC Act would:
  - no longer be required to leave the Commonwealth OHS scheme;
  - no longer be potentially subject to increased compliance costs associated with State/Territory OHS legislation implementation;
  - no longer be required to pay the equivalent of an OHS contribution to each State/Territory OHS regulator where the corporation operates;
  - retain the benefits of a single integrated prevention, compensation and rehabilitation scheme; and
  - potentially be placed in a competitively neutral environment vis-a-vis Commonwealth authorities.
- (xiv) Competitors of existing and former Commonwealth authorities would:
  - obtain nationally consistent OHS arrangements where the corporation operates in multiple jurisdictions;
  - no longer be subject to multiple costs associated with State/Territory OHS legislation compliance;
  - no longer be required to pay the equivalent of an OHS contribution to each State/Territory OHS regulator where the corporation operates;
  - have the benefits of a single integrated prevention, compensation and rehabilitation scheme; and
  - be placed in a competitively neutral environment vis-a-vis Commonwealth authorities.

#### Costs to licensee employees

- (i) Employees of corporations operating in competition with an existing or former Commonwealth authority may need to undergo new training to undertake certain work to comply with Commonwealth OHS requirements.

- (ii) Employees of self-insurers which operate in multiple jurisdictions may at times be performing work otherwise than at their employer's workplace and at a site subject to State/Territory laws. However this situation already occurs in relation to Commonwealth employees under the OHS(CE) Act and does not create any significant problems.

#### Benefits to licensee employees

- (i) Greater certainty for employees who work in more than one jurisdiction in relation to their OHS rights and obligations.
- (ii) Equity in the enforcement of OHS obligations for employees of corporation across Australia.

#### Impact on small businesses and their employees

- (i) Providing coverage under the OHS(CE) Act for private sector corporations which self-insure under the SRC Act is expected to have little or no impact on small business. The States currently fund their OHS prevention and enforcement activities through special OHS contributions paid by employers or through the budget. State governments also receive revenue through fines imposed on organisations that breach OHS laws.

#### Costs to Government

- (i) Costs borne by Comcare to administer the OHS(CE) Act in relation to private sector corporations would be covered by an OHS contribution included in the corporation's self-insurance licence fee. As corporations are self-funded, OHS contribution costs would not be borne by the Commonwealth from revenue.

#### Benefits to Government

- (i) No cost is borne by the Commonwealth as corporations are self-funded and the cost to the SRC Commission in monitoring the OHS components of the licensing conditions is fully covered by the licensing fees. Administration of the OHS(CE) Act by the regulator is cost neutral.
- (ii) Workers' compensation data could be used by Comcare to assist licensed corporations to develop improved prevention strategies, which would assist them in lowering their workers' compensation costs.

### **CONSULTATION**

Consultations have been undertaken with all Commonwealth authorities and private sector corporations which have obtained a licence under the SRC Act. All licensees support the proposed amendment of the OHS(CE) Act to provide coverage under that Act for corporations which are licensed under the SRC Act. They see significant advantages in operating under one OHS regime rather than having to operate under a multiplicity of jurisdictions. For example, one licensee said it currently found it almost impossible to develop a demonstrable national approach which is essential to achieving successful outcomes. Another licensee indicated that the work involved in complying with multiple jurisdictions is an inefficient and inappropriate

use of resources as it does nothing to improve workplace health and safety because the costs of establishing a separate OHS management system for a number of jurisdictions do not lead to any increased health and safety protection for their employees. The primary benefit of the proposed amendment is therefore better safety outcomes for employees.

Licensees also noted that the amendment would provide a number of administrative and commercial benefits, including considerable cost savings in relation to training.

## CONCLUSION AND RECOMMENDED OPTION

In summary:

- **Option A** would maintain the current level of coverage of the OHS(CE) Act which does not provide for coverage for all corporations covered by the SRC Act.
- **Option B** would provide coverage under the OHS(CE) Act for employers that obtain a self-insurance licence under the SRC Act. This would allow competitors of existing and former Commonwealth authorities to compete with such organisations in a neutral environment in regard to OHS compliance requirements, and provide them with the benefits of an integrated workers' compensation and OHS scheme, as well as cost savings. Employees would have the benefits of certainty in relation to their OHS rights and obligations and equity in the enforcement of their duty of care, regardless of their work location. This option is strongly supported by licensees.

**Option B** is the preferred option.

## IMPLEMENTATION AND REVIEW

Implementation of the proposed changes would involve four stages:

- (i) legislative amendment to the OHS(CE) Act;
- (ii) preparation of guidance material by Comcare to advise Commonwealth authorities, applicants for licences which are former Commonwealth authorities and competitors of existing and former Commonwealth authorities of the legislative amendment;
- (iii) preparation of advice by Comcare to the OHS authorities in each of the States and Territories advising of the legislative amendment; and
- (iv) while no formal review is planned, a review of the effectiveness of the proposed legislative amendment would be undertaken by Comcare on a continuing basis and reported to the Safety, Rehabilitation and Compensation Commission which would advise the Minister if a change to the arrangements were necessary.

## **NOTES ON CLAUSES**

### **Clause 1 – Short title**

The enacted Bill will be known as the *OHS and SRC Legislation Amendment Act 2005*.

### **Clause 2 – Commencement**

Clause 2 specifies when the various provisions of the Act 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 main amendments to the OHS(CE) Act and any consequential amendments (Schedule 1) will commence on a day or days fixed by Proclamation. The amendments to the SRC Act relating to regulatory contributions and licence fees (Part 1 of Schedule 2) commence on the first 1 July following Royal Assent to coincide with the beginning of a financial year. The validation provisions (Part 2 of Schedule 2) commence on the day on which the Act receives the Royal Assent. The technical amendments relating to legislative instruments (Schedule 3) commence on Royal Assent.

### **Clause 3 – Schedule(s)**

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 – EXTENDING THE COVERAGE OF THE OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) ACT 1991**

### **PART 1 – MAIN AMENDMENTS**

#### **Item 1 – Long Title**

Currently the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act) covers employers and employees of the Commonwealth and Commonwealth authorities only. This item amends the long title of the Act to insert a reference to “certain licensed corporations” to reflect a new category of employer and employees to be covered by the Act - *non-Commonwealth licensees* and *non-Commonwealth licensee employees* (see items 14 and 16).

#### **Item 2 – Section 1 Short Title**

This item amends the short title of the Act to reflect extended coverage of the Act to non-Commonwealth licensees. The note following section 1 explains that if another act refers to the short title of this Act, section 10 of the *Acts Interpretation Act 1901* allows the new title to be read in place of the old title.

#### **Item 3 – Section 3(a) Objects**

Currently the objects of the Act are to secure the health, safety and welfare at work of employees of the Commonwealth and Commonwealth authorities. This item extends those objects to apply to employees of non-Commonwealth licensees.

#### **Item 4 – Subsection 5(1) Definition of *chief executive officer***

This item amends the definition of *chief executive officer* to include the chief executive officer, or equivalent person, of a non-Commonwealth licensee. This item identifies the person responsible for carrying out the employer’s role under the Act.

#### **Item 5 - Subsection 5(1) Definition of *Commonwealth authority***

Section 103 of the SRC Act allows the Commission to grant a licence to a Commonwealth authority to accept liability for workers’ compensation claims and/or manage such claims in relation to its employees. The OHS(CE) Act and the SRC Act contain similar but different definitions of *Commonwealth authority*. Not all Commonwealth authorities covered by the SRC Act are also covered by the OHS(CE) Act. Item 5 addresses this issue by extending the definition of ‘Commonwealth authority’ under the OHS(CE) Act to ensure all Commonwealth authorities licensed under the SRC Act are also covered by the OHS(CE) Act. Commonwealth authorities covered under existing paragraphs (a)-(c) will not have their status altered if they also fall into paragraph (d).

#### **Item 6 Subsection 5(1) Definition of *Commonwealth authority contractor***

The existing definition of *contractor* includes a contractor to the Commonwealth or a Commonwealth authority. Item 10 amends the definition of *contractor* to reflect the three categories of contractor under the Act - a Commonwealth contractor, a Commonwealth authority contractor and a non-Commonwealth licensee contractor. A contractor to a

Commonwealth authority is called a *Commonwealth authority contractor*. This item provides that a *Commonwealth authority contractor* is defined in new section 9A (see item 25).

**Item 7 Subsection 5(1) Definition of *Commonwealth authority employee***

The existing definition of *employee* includes an employee of the Commonwealth or a Commonwealth authority. Item 20 amends the definition of *employee* to reflect the three categories of employee under the Act – an employee of the Commonwealth, a Commonwealth authority or a non-Commonwealth licensee. This item clarifies that an employee of a Commonwealth authority is called a *Commonwealth authority employee*. A *Commonwealth authority employee* is defined in amended section 9 (see item 20).

**Item 8 Subsection 5(1) Definition of *Commonwealth contractor***

This item clarifies that a contractor to the Commonwealth is called a *Commonwealth contractor*. A *Commonwealth contractor* is defined in new section 9A (see item 25).

**Item 9 Subsection 5(1) Definition of *Commonwealth employee***

This item provides that an employee of the Commonwealth is called a *Commonwealth employee*. A *Commonwealth employee* is defined in amended section 9 (see item 20).

**Item 10 Subsection 5(1) Definition of *contractor***

This item moves the definition of *contractor* from subsection 5(1) to new section 9A (see item 25). The note following this definition alerts readers that the definition of contractor under section 14 is extended by new subsection 14(3) (see item 31).

**Item 11 Subsection 5(1) Definition of *employer***

This item repeals the existing definition of *employer* and specifies three separate categories of employer to which the Act applies - the Commonwealth, a Commonwealth authority or a non-Commonwealth licensee.

**Item 12 Subsection 5(1) Definition of *employing authority***

The Act places obligations on an employer in relation to its employees. Because the Commonwealth is an indivisible entity, the Act uses *employing authority* to identify the Department or Agency within the Commonwealth that is responsible for discharging the Commonwealth's obligations as an employer to its employees. This item amends the definition of *employing authority* as a consequence of the amendments made by items 7 and 11. The amendment makes it clear that the duty of an *employing authority* is to a Commonwealth employee or a Commonwealth contractor.

**Item 13 Subsection 5(1) Definition of *Government business enterprise***

A number of Commonwealth authorities under the Act are also Government business enterprises (GBEs). GBEs are bodies corporate that are removed from the Commonwealth and do not attract the shield of the Crown. GBEs and their employees are, therefore, subject to both the criminal sanctions and civil remedies under the Act. This item provides a mechanism by which

the new category of Commonwealth authority, as defined under new paragraph (d) of that definition, may also be scheduled or declared as a GBE under the Act.

**Item 14 Subsection 5(1) Definition of *non-Commonwealth licensee***

This item inserts a new category of employer to be covered by the Act – a *non-Commonwealth licensee*. A *non-Commonwealth licensee* is an eligible corporation that holds a licence under Part VIII of the SRC Act. A non-Commonwealth licensee does not include a licensee that is a Commonwealth authority.

This item also provides that if the licence of a non-Commonwealth licensee is suspended, the OHS(CE) Act would still apply to the non-Commonwealth licensee. A non-Commonwealth licensee is subject to all criminal penalties and civil remedies available under the OHS(CE) Act.

**Item 15 Subsection 5(1) Definition of *non-Commonwealth licensee contractor***

This item inserts a reference to a new category of contractor – a *non-Commonwealth licensee contractor*. A *non-Commonwealth licensee contractor* is defined in new section 9A (see item 31).

**Item 16 Subsection 5(1) Definition of *non-Commonwealth licensee employee***

This item inserts a reference to a new category of employee – a *non-Commonwealth licensee employee*. A *non-Commonwealth licensee employee* is defined in section 9 (see item 20).

**Item 17 Subsection 5(1) Definition of *non-Commonwealth licensee premises***

The Act currently defines *Commonwealth premises* in relation to a workplace owned or occupied by the Commonwealth or a Commonwealth authority. Item 17 inserts a reference to a new type of premises to which the Act applies – the premises of a non-Commonwealth licensee. *Non-Commonwealth licensee premises* include premises owned or occupied by a non-Commonwealth licensee.

**Item 18 Subsection 5(1) Definition of *workplace***

Currently the Act covers workplaces that are Commonwealth premises in which employees or contractors work, other than a private dwelling. Item 18 amends and extends the definition of *workplace* to reflect the three categories of employee that work on the premises of their respective employers. The definition of workplace continues to exclude premises used primarily as a private dwelling.

**Item 19 Subsection 5(2) Responsible Minister**

Entities and some Commonwealth authorities report to a Minister who is responsible for it to the Parliament. For example, where a report of an investigation is undertaken it is provided to the responsible Minister.

Some Commonwealth authorities, that are removed from the Commonwealth and have their own accountability mechanisms separate from the Parliamentary process, do not report to a responsible Minister. The SRC Act licence provisions provide alternative accountability

mechanisms for a licensee's workers' compensation and OHS performance. This item maintains the status quo in relation to existing Commonwealth authorities and amends subsection 5(2) to clarify that there is no responsible Minister allocated to a new paragraph (d) Commonwealth authority which is licensed under the SRC Act.

### **Items 20 - 24 Section 9 Meaning of *employee***

Currently the Act covers employees of the Commonwealth and Commonwealth authorities. These items expand the application of the Act to cover employees of a non-Commonwealth licensee.

These items restructure section 9 by separating employees into three categories – a Commonwealth employee, a Commonwealth authority employee and a non-Commonwealth licensee employee.

A licence under Part VIII of the SRC Act may cover some or all of the employees of a licensed eligible corporation. A reference in the Act to a *non-Commonwealth licensee employee* includes only those employees of the licensed eligible corporation that are covered by the SRC Act licence. An employee of a non-Commonwealth licensee is subject to all criminal penalties and civil remedies available under the Act.

Item 24 also inserts new headings for subsections 9(4) and 9(5).

Existing subsections 9(4), (5) and (6) are retained unamended.

### **Item 25 New section 9A Meaning of *contractor***

This item inserts a new section 9A that defines the term *contractor*. New section 9A separates contractors into 3 categories – a Commonwealth contractor, a Commonwealth authority contractor, and a non-Commonwealth licensee contractor.

The note following this subsection (1) notes that the definition of *contractor* under section 14 is extended by new subsection 14(3) (see item 31).

The new definitions of a *Commonwealth contractor*, a *Commonwealth authority contractor*, and a *non-Commonwealth licensee contractor* are used to explain who is a contractor in relation to each type of employer under the Act.

### **Item 26 Paragraph 10(1)(a) Acting through an employing authority**

This item is a consequential amendment to item 25 which clarifies that the reference to contractor in paragraph 10(1)(a) is a reference to a *Commonwealth contractor* and not one of the other categories of contractors.

### **Item 27 Paragraph 11(4)(a) & (b) Extent to which the Act binds the Crown**

This item makes consequential amendments resulting from items 20 and 22. This item updates references to employees in paragraph 11(4) to references to a *Commonwealth employee* and *Commonwealth authority employee*.



**Item 28 Paragraph 12(1)(c) Extended functions of Commission to non-Commonwealth licensee employees**

Item 28 provides that the Commission’s function under paragraph 12(1)(c) of the Act includes the ability to collect, interpret and report information relating to the occupational health and safety of all employees (including non-Commonwealth licensee employees) covered by the Act.

**Item 29 Subsection 14(1) note**

This item amends the note following subsection 14(1).

**Item 30 Subsection 14(2) Application of Act to workplaces controlled by contractors**

A workplace continues to be controlled by a contractor for construction and maintenance purposes, despite the presence at the workplace of an employee of the employer, if that employee has no right to control the workplace. Item 30 updates the reference to “a Commonwealth employee” in subsection 14(2) to reflect the expanded coverage of the Act to include non-Commonwealth employees.

**Item 31 Extended meaning of *contractor* under section 14**

Section 14 excludes the application of the Act, except section 20, to a workplace that is controlled by a contractor for the purpose of maintenance or construction. OHS legislation from the jurisdiction in which that contractor operates applies to that workplace, contractors and employees in that case.

This item inserts new paragraph 14(3) which extends the definition of *contractor* under section 14 to include bodies corporate as well as natural persons.

**Item 32 Section 15 Application of Act to workplaces**

Section 15 provides that where a person ordinarily performs work at premises other than the employer’s premises certain parts of the Act only apply if prescribed by regulation. This arrangement recognises that where the employer does not have direct control over the workplace and employees the responsibility for OHS is shared with the person who has control over the premises and employee. This item extends the operation of section 15 to apply to non-Commonwealth licensee employees.

**Item 33 Subsection 41(3) Updated references to non-Commonwealth licensees**

**Item 34 Subsection 41(4)**

**Item 35 Paragraph 43(1)(a)**

Each of these items inserts a reference to “non-Commonwealth licensee” after a reference to a “Commonwealth authority” to ensure that the investigation powers under sections 41 and 43 apply to a non-Commonwealth licensee in the same way it currently applies to a Commonwealth authority.

**Item 36 Section 52 Application of Division to non-Commonwealth licensees**

Division 3 of Part 4 of the Act provides procedures for OHS investigations to be carried out at Commonwealth and Commonwealth authority workplaces. Employers are held accountable for their OHS performance via public hearings and inquiries. Division 3 has limited effect on Government business enterprises and is not necessary for non-Commonwealth licensees because they are subject to the full range of sanctions and penalties under the Act.

**Item 37 Paragraph 53(3)(b) Reports of Investigations**

Paragraph 53(3)(b) provides that, where it considers it appropriate, the Commission must give an investigation report to the responsible Minister in relation to the employer. This item clarifies that a reference to an employer in paragraph 53(3)(b) is a reference only to the Commonwealth or a Commonwealth authority.

**Item 38 Paragraph 70(2)(a) Updated reference to Commonwealth employment**

This item updates a reference in section 70 to “Commonwealth employment”, as amended by the *National Occupational Health and Safety Commission (Repeal, Consequential and Transitional Provisions) Act 2005*, to reflect the extended coverage of the Act to non-Commonwealth licensees.

**Item 39 Paragraph 2(3)(f) of Schedule 2 Updated reference to non-Commonwealth licensees**

This item updates a reference to “Commonwealth Entity or Commonwealth authority” to reflect the extended coverage of the Act to non-Commonwealth licensees in relation to sanctions.

**Item 40 Special provision about licence fees**

Currently the SRC Act only allows for a licensee to be charged a fee on commencement of a licence or on 1 July each year. Non-Commonwealth licensees may have already paid a fee for the current period in relation to workers’ compensation under section 104A of the SRC Act. This item provides that if the Act commences on a day other than a 1 July, Comcare and the Commission can use section 104A of the SRC Act to charge a non-Commonwealth licensee an additional regulatory contribution for the administration of OHS(CE) Act for the period until the next 1 July.

The Commission must notify the non-Commonwealth licensee of the amount it must pay in relation to OHS before the non-Commonwealth licensee is liable to pay the fee.

## **SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS OF OTHER ACTS**

### **PART 2 – CONSEQUENTIAL AMENDMENTS**

#### **Items 41 – 50 Updated references to the short title in the *Safety, Rehabilitation and Compensation Act 1988***

These items make consequential amendments to the *Safety, Rehabilitation and Compensation Act 1988* to reflect the change of short title at item 2 to the *Occupational Health and Safety Act 1991*.

#### **Items 51 – 57 Updated references to the short title in the *Social Security Act 1991***

These items make consequential amendments to the *Social Security Act 1991* to reflect the change of short title at item 2 to the *Occupational Health and Safety Act 1991*. However, items 51-54 are also being amended by the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005*. The items will also make amendments to that Bill following its commencement.

## **SCHEDULE 2 – REGULATORY CONTRIBUTIONS AND LICENCE FEES UNDER THE SAFETY, REHABILITATION AND COMPENSATION ACT 1988**

### **PART 1 – AMENDMENTS**

#### **Item 1 - Subsection 4(1) Definition of *Commonwealth authority***

This item inserts a note following the definition of ‘Commonwealth authority’ under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) alerting readers to an extended meaning of ‘Commonwealth authority’ for the purposes of Division 4A of Part VII (see item 2).

#### **Item 2 - Before section 97 Extended meaning of *Commonwealth authority***

This item extends the meaning of *Commonwealth authority* under the SRC Act for the purposes of charging regulatory contributions.

Entities (Commonwealth departments, agencies and other prescribed bodies) and Commonwealth authorities are required to pay a regulatory contribution under section 97D of the SRC Act at the beginning of each financial year in relation to services and costs to the Commission and Comcare in administering the OHS(CE) and SRC Acts.

Prior to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001* (the SRCOLA Act) contributions for the administration of the SRC Act were paid under the SRC Act and contributions for the administration of the OHS(CE) Act were paid under the OHS(CE) Act. The SRCOLA Act rationalised funding arrangements so that regulatory contributions in relation to both Acts were payable only under the SRC Act.

While the definition of *Entity* under each Act is the same, the Acts contain a similar, but slightly different, definition of *Commonwealth authority*. This results in a number of bodies being Commonwealth authorities for the purposes of the OHS(CE) Act but not the SRC Act. Commonwealth authorities that are not covered by the SRC Act cannot be charged a contribution in relation to the administration of the OHS(CE) Act.

Item 2 inserts new section 96 which extends the meaning of *Commonwealth authority* to include all Commonwealth authorities covered by the OHS(CE) Act. This allows Comcare to charge a regulatory contribution for the administration of the OHS(CE) Act to all Commonwealth authorities covered by that Act. This item also applies to all other provisions in Division 4A of Part VII the SRC Act that relate to regulatory contributions.

#### **Item 3 - Application of amendments**

This item aligns the application, and therefore the commencement, of item 2 with the beginning of the next financial year. This streamlines the application of the provisions with other contributions charged by Comcare and the Commission under the SRC Act.

## **PART 2 – VALIDATION PROVISIONS**

### **Item 4 – Definitions for Part 2**

This item inserts a number of definitions into Part 2 of this Schedule for reference when reading the provisions.

### **Item 5 - Validation of regulatory contributions purportedly determined for certain bodies**

As noted at item 2 of this Schedule, an unintended consequence of the SRCOLA Act amendments in 2001 was that Comcare can no longer charge Commonwealth authorities covered by the OHS(CE) Act a regulatory contribution toward the administration of the Act unless they are also covered by the SRC Act.

A number of Commonwealth authorities, however, paid a contribution under section 97D of the SRC Act in relation to the administration of the OHS(CE) Act for the 2002-2003 financial year. The payments were retained by Comcare, as agreed with the authorities, for services to be provided during the 2002-2003 financial year with the understanding that an amendment would be made to the legislation to validate the payments and provide for future payments. Three Commonwealth authorities are known to have paid such contributions.

Item 5 validates determinations purported to be made under section 97D of the SRC Act and payments received by Comcare for the 2002-2003 financial year in relation to the above bodies.

### **Item 6 - Validation of licence fees purportedly notified to certain bodies**

Also following the SRCOLA Act amendments a number of bodies which held licences under the pre-SRCOLA Act licence provisions paid licence fees in accordance with new section 104A rather than the pre-SRCOLA provisions. The pre-SRCOLA fee provisions continued in operation for the duration of the licence. The original payments were retained by Comcare and put toward the amount determined to be owed under the pre-SRCOLA provisions, as agreed with each licensee, and with the understanding that an amendment would be made to the legislation to validate the payments. There are three licensees known to have paid fees under section 104A of the SRC Act for the 2002-2003 financial year.

Item 6 validates determinations purported to be made by the Commission and payments received by Comcare under section 104A of the SRC Act for the 2002-2003 financial year in relation to the above bodies.

This item also makes it plain that no additional notification is necessary under paragraph 104A(1)(b) as notification was provided when the initial determination was made and each body agreed to and paid the contribution at the time the contribution was determined.