

2004-2005

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**OHS and SRC Legislation Amendment  
Bill 2005**

**No.     , 2005**

*(Employment and Workplace Relations)*

***A Bill for an Act to amend the *Occupational Health  
and Safety (Commonwealth Employment) Act 1991*  
and the *Safety, Rehabilitation and Compensation Act  
1988*, and for other purposes***

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1     **A Bill for an Act to amend the *Occupational Health***  
2     ***and Safety (Commonwealth Employment) Act 1991***  
3     **and the *Safety, Rehabilitation and Compensation Act***  
4     ***1988, and for other purposes***

5     The Parliament of Australia enacts:

6     **1 Short title**

7                     This Act may be cited as the *OHS and SRC Legislation*  
8                     *Amendment Act 2005.*

9     **2 Commencement**

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

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, items 1 to 50	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1, item 51	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of item 16 of Schedule 2 to the <i>Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 1, item 52	At the same time as the provision(s) covered by table item 2.  However, the provision(s) do not commence at all if item 7 of Schedule 4 to the <i>Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005</i> commences before, or at the same time as, the provision(s) covered by table item 2.	

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

4                   **3 Schedule(s)**

5                   Each Act that is specified in a Schedule to this Act is amended or  
6                   repealed as set out in the applicable items in the Schedule  
7                   concerned, and any other item in a Schedule to this Act has effect  
8                   according to its terms.

1  
2 **Schedule 1—Extending the coverage of the**  
3 **Occupational Health and Safety**  
4 **(Commonwealth Employment) Act**  
5 **1991**

6 **Part 1—Main amendments**

7 *Occupational Health and Safety (Commonwealth*  
8 *Employment) Act 1991*

9 **1 Title**

10 Omit “and Commonwealth authorities”, substitute “,  
11 Commonwealth authorities and certain licensed corporations”.

12 **2 Section 1**

13 Omit “(*Commonwealth Employment*)”.

14 Note: This item amends the short title of the Act. If another amendment of the Act is  
15 described by reference to the Act’s previous short title, that other amendment has effect  
16 after the commencement of this item as an amendment of the Act under its amended  
17 short title (see section 10 of the *Acts Interpretation Act 1901*).

18 **3 Paragraph 3(a)**

19 Omit “and of Commonwealth authorities”, substitute “, of  
20 Commonwealth authorities and of non-Commonwealth licensees”.

21 **4 Subsection 5(1) (definition of *chief executive officer*)**

22 Repeal the definition, substitute:

23 *chief executive officer* means:

- 24 (a) for a Commonwealth authority—the person (by whatever  
25 name called) who is responsible for the administration of the  
26 authority; or  
27 (b) for a non-Commonwealth licensee—the person (by whatever  
28 name called) who is primarily and directly responsible to the  
29 directors of the licensee for the general and overall  
30 management of the licensee.

1 **5 Subsection 5(1) (at the end of the definition of**  
2 **Commonwealth authority)**

3 Add:

4 ; or (d) a body corporate:

- 5 (i) that is not covered by paragraph (a), (b) or (c); and  
6 (ii) for which a licence under Part VIII of the *Safety,*  
7 *Rehabilitation and Compensation Act 1988* is in force  
8 (whether or not the licence is suspended); and  
9 (iii) that was not an eligible corporation for the purposes of  
10 that Part when the licence was granted.

11 **6 Subsection 5(1)**

12 Insert:

13 *Commonwealth authority contractor* has the meaning given by  
14 section 9A.

15 **7 Subsection 5(1)**

16 Insert:

17 *Commonwealth authority employee* has the meaning given by  
18 section 9.

19 **8 Subsection 5(1)**

20 Insert:

21 *Commonwealth contractor* has the meaning given by section 9A.

22 **9 Subsection 5(1)**

23 Insert:

24 *Commonwealth employee* has the meaning given by section 9.

25 **10 Subsection 5(1) (definition of contractor)**

26 Repeal the definition, substitute:

27 *contractor* has the meaning given by section 9A.

28 Note: In section 14, the meaning of *contractor* is affected by subsection  
29 14(3).

30 **11 Subsection 5(1) (definition of employer)**

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1 Repeal the definition, substitute:

2 *employer* means:

- 3 (a) the Commonwealth; or  
4 (b) a Commonwealth authority; or  
5 (c) a non-Commonwealth licensee.

6 **12 Subsection 5(1) (paragraph (a) of the definition of**  
7 ***employing authority*)**

8 Omit “employed by the Commonwealth or who is a contractor of a kind  
9 referred to in paragraph (a) of the definition of *contractor* in this  
10 subsection”, substitute “a Commonwealth employee or a  
11 Commonwealth contractor”.

12 **13 Subsection 5(1) (paragraph (a) of the definition of**  
13 ***Government business enterprise*)**

14 After “paragraph (a)”, insert “or (d)”.

15 **14 Subsection 5(1)**

16 Insert:

17 *non-Commonwealth licensee* means a body corporate:

- 18 (a) for which a licence under Part VIII of the *Safety,*  
19 *Rehabilitation and Compensation Act 1988* is in force  
20 (whether or not the licence is suspended); and  
21 (b) that was an eligible corporation for the purposes of that Part  
22 when the licence was granted; and  
23 (c) that is not a Commonwealth authority for the purposes of this  
24 Act.

25 **15 Subsection 5(1)**

26 Insert:

27 *non-Commonwealth licensee contractor* has the meaning given by  
28 section 9A.

29 **16 Subsection 5(1)**

30 Insert:

1                            *non-Commonwealth licensee employee* has the meaning given by  
2                            section 9.

3                            **17 Subsection 5(1)**

4                            Insert:

5                            *non-Commonwealth licensee premises*, in relation to a particular  
6                            non-Commonwealth licensee, means premises owned or occupied  
7                            by the non-Commonwealth licensee.

8                            **18 Subsection 5(1) (definition of *workplace*)**

9                            Repeal the definition, substitute:

10                            *workplace* means:

- 11                            (a) any Commonwealth premises in which Commonwealth  
12                            employees or Commonwealth contractors work; or  
13                            (b) any Commonwealth premises in which Commonwealth  
14                            authority employees or Commonwealth authority contractors  
15                            work; or  
16                            (c) any non-Commonwealth licensee premises of a  
17                            non-Commonwealth licensee in which non-Commonwealth  
18                            licensee employees, or non-Commonwealth licensee  
19                            contractors, of the licensee work.

20                            However, *workplace* does not include any part of premises that is  
21                            primarily used as a private dwelling.

22                            **19 Subsection 5(2)**

23                            After “employer” (first occurring), insert “, other than a Commonwealth  
24                            authority covered by paragraph (c) or (d) of the definition of  
25                            *Commonwealth authority* in subsection 5(1) or a non-Commonwealth  
26                            licensee,”.

27                            **20 Subsection 9(1)**

28                            Repeal the subsection, substitute:

29                            *Employee*

- 30                            (1) An *employee* is:  
31                            (a) a Commonwealth employee (see subsection (1A)); or  
32                            (b) a Commonwealth authority employee (see subsection (2A));  
33                            or
-

1 (c) a non-Commonwealth licensee employee (see  
2 subsection (3A)).

3 *Commonwealth employee*

4 (1A) A **Commonwealth employee** is a person who is employed by the  
5 Commonwealth, whether the person is so employed under a law of  
6 the Commonwealth or of a Territory or under a contract of service  
7 or apprenticeship.

8 Note: The heading to section 9 is replaced by the heading "**Meaning of employee etc.**".

9 **21 Subsection 9(2)**

10 Omit "subsection (1)", substitute "subsection (1A)".

11 **22 After subsection 9(2)**

12 Insert:

13 *Commonwealth authority employee*

14 (2A) A **Commonwealth authority employee** of a particular  
15 Commonwealth authority is a person who is employed by the  
16 authority, whether the person is so employed under a law of the  
17 Commonwealth or of a Territory or under a contract of service or  
18 apprenticeship.

19 **23 Subsection 9(3)**

20 Omit "A person who:", substitute "Without limiting the generality of  
21 subsection (2A), a person who:".

22 **24 After subsection 9(3)**

23 Insert:

24 *Non-Commonwealth licensee employee*

25 (3A) Subject to subsection (3B), a **non-Commonwealth licensee**  
26 **employee** of a particular non-Commonwealth licensee is a person  
27 who is employed by the licensee, whether the person is so  
28 employed under a law of the Commonwealth or of a State or  
29 Territory, or under a contract of service or apprenticeship.

30 (3B) If, under the *Safety, Rehabilitation and Compensation Act 1988*,  
31 the licence of a non-Commonwealth licensee covers only some of

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1 the people referred to in subsection (1), only such of those people  
2 as are covered by the licence are ***non-Commonwealth licensee***  
3 ***employees*** of the licensee for the purposes of this Act.

4 Note 1: The following heading to subsection (4) is inserted “*External territory public servants*  
5 *not covered*”.

6 Note 2: The following heading to subsection (5) is inserted “*Minister’s power to declare people*  
7 *to be employed by Commonwealth or Commonwealth authority*”.

8 **25 After section 9**

9 Insert:

10 **9A Meaning of *contractor* etc.**

11 *Contractor*

12 (1) A ***contractor*** is:

- 13 (a) a Commonwealth contractor (see subsection (2)); or  
14 (b) a Commonwealth authority contractor (see subsection (3)); or  
15 (c) a non-Commonwealth licensee contractor (see  
16 subsection (4)).

17 Note: In section 14, the meaning of ***contractor*** is affected by subsection  
18 14(3).

19 *Commonwealth contractor*

20 (2) A ***Commonwealth contractor*** is a natural person (other than a  
21 Commonwealth employee or a Commonwealth authority  
22 employee) who performs work on Commonwealth premises in  
23 connection with a contract between:

- 24 (a) the Commonwealth; and  
25 (b) that person or another person (whether a natural person or  
26 not);

27 which is in connection with an undertaking being carried on by the  
28 Commonwealth.

29 *Commonwealth authority contractor*

30 (3) A ***Commonwealth authority contractor*** of a particular  
31 Commonwealth authority is a natural person (other than a  
32 Commonwealth employee or a Commonwealth authority

1 employee) who performs work on Commonwealth premises in  
2 connection with a contract between:  
3 (a) the authority; and  
4 (b) that person or another person (whether a natural person or  
5 not);  
6 which is in connection with an undertaking being carried on by the  
7 authority.

8 *Non-Commonwealth licensee contractor*

9 (4) A *non-Commonwealth licensee contractor* of a particular  
10 non-Commonwealth licensee is a natural person (other than an  
11 employee of the licensee) who performs work on  
12 non-Commonwealth licensee premises of the licensee in  
13 connection with a contract between:  
14 (a) the licensee; and  
15 (b) that person or another person (whether a natural person or  
16 not);  
17 which is in connection with an undertaking being carried on by the  
18 licensee.

19 **26 Paragraph 10(1)(a)**

20 Omit “those persons employed by the Commonwealth, and those  
21 contractors,”; substitute “those Commonwealth employees, and those  
22 Commonwealth contractors,”.

23 **27 Paragraphs 11(4)(a) and (b)**

24 Repeal the paragraphs, substitute:  
25 (a) a Commonwealth employee; or  
26 (b) a Commonwealth authority employee (including an  
27 employee of a Government business enterprise); or

28 **28 Paragraph 12(1)(c)**

29 Omit “Commonwealth employment”, substitute “the employment of  
30 employees”.

31 **29 Subsection 14(1) (note)**

32 Omit “subsection 5(1)”, substitute “section 9A and subsection (3) of  
33 this section”.

1 **30 Subsection 14(2)**

2 Omit “a Commonwealth employee”, substitute “an employee of the  
3 employer for which the contractor is performing work”.

4 **31 At the end of section 14**

5 Add:

6 (3) For the purpose of this section, *contractor* has the meaning given  
7 by section 9A, except that:

8 (a) it also includes persons who would be contractors under  
9 section 9A if references in subsections 9A(2), (3) and (4) to  
10 natural persons were extended to also include bodies  
11 corporate, other than any body corporate that is a  
12 Commonwealth authority or a non-Commonwealth licensee;  
13 and

14 (b) it does not include any person who is an employee (as  
15 defined in section 9).

16 **32 Section 15**

17 Omit “not Commonwealth premises”, substitute “neither  
18 Commonwealth premises nor non-Commonwealth licensee premises”.

19 **33 Subsection 41(3)**

20 Omit “or a Commonwealth authority”, substitute “, a Commonwealth  
21 authority or a non-Commonwealth licensee”.

22 **34 Subsection 41(4)**

23 After “Commonwealth authority”, insert “or of the non-Commonwealth  
24 licensee”.

25 **35 Paragraph 43(1)(a)**

26 After “Commonwealth authority”, insert “or of a non-Commonwealth  
27 licensee”.

28 **36 Section 52**

29 After “Government business enterprise”, insert “or a  
30 non-Commonwealth licensee”.

31 **37 Paragraph 53(3)(b)**

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1 Omit “if it thinks it appropriate,”, substitute “if the employer is the  
2 Commonwealth or a Commonwealth authority and the Commission  
3 thinks it appropriate to do so—”.

4 **38 Paragraph 70(2)(a)**

5 Omit “Commonwealth employment”, substitute “the employment of  
6 employees”.

7 **39 Paragraph 2(3)(f) of Schedule 2**

8 Omit “Commonwealth Entity or Commonwealth authority”, substitute  
9 “Entity, Commonwealth authority or non-Commonwealth licensee”.

10 **40 Special provision about licence fees**

11 (1) In this item:

12 *Comcare* has the same meaning as in the SRC Act.

13 *Commission* has the same meaning as in the SRC Act.

14 *extension commencement* means the commencement of item 11 of this  
15 Schedule.

16 *OHS Act* means the *Occupational Health and Safety Act 1991*.

17 *SRC Act* means the *Safety, Rehabilitation and Compensation Act 1988*.

18 (2) This item applies if:

19 (a) the extension commencement occurs on a day in a financial  
20 year (the *relevant financial year*), other than on the 1 July  
21 that is the start of that financial year; and

22 (b) a body corporate (the *licensee*), in relation to which a licence  
23 under Part VIII of the SRC Act is in force on the extension  
24 commencement, becomes an employer for the purposes of  
25 the OHS Act on the extension commencement because of an  
26 amendment or amendments made by this Schedule.

27 Note: If the extension commencement is on the 1 July that is the start of a financial year, the  
28 licence fee imposed by section 104A of the SRC Act will cover recoupment of costs  
29 incurred in carrying out functions under both the SRC Act and OHS Act in relation to  
30 the licensee and that year. It is only if the extension commencement is on a later day in  
31 a financial year that the OHS costs will not (but for this item) be able to be recouped.

32 (3) On the extension commencement, the licensee becomes liable to pay a  
33 licence fee in respect of the continued holding of the licence.

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**Part 1** Main amendments

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- 1 (4) The amount of the licence fee is the amount notified in writing to the  
2 licensee by the Commission, being the amount estimated by the  
3 Commission to represent that part of the cost incurred by the  
4 Commission and by Comcare in carrying out their respective functions  
5 under the OHS Act during the relevant financial year that is reasonably  
6 referable to the licensee.
- 7 (5) The licence fee is payable to Comcare within such period after it is  
8 notified to the licensee as Comcare determines.
- 9 (6) The SRC Act applies in relation to the licence fee as if it were a licence  
10 fee under section 104A of that Act.
- 11 (7) The licence fee is in addition to the licence fee for which the licensee is  
12 liable under section 104A of the SRC Act in relation to the relevant  
13 financial year.



1

2 **Part 2—Consequential amendments of other Acts**

3 *Safety, Rehabilitation and Compensation Act 1988*

4 **41 Subparagraph 69(ef)(ii)**

5 Omit “(Commonwealth Employment)”.

6 **42 Section 69 (note)**

7 Omit “(Commonwealth Employment)”.

8 **43 Subsection 73A(3)**

9 Omit “(Commonwealth Employment)”.

10 **44 Paragraph 91(3)(a)**

11 Omit “(Commonwealth Employment)”.

12 **45 Section 96**

13 Omit “(Commonwealth Employment)”.

14 **46 Paragraph 97D(2)(d)**

15 Omit “(Commonwealth Employment)”.

16 **47 Paragraph 104A(2)(b)**

17 Omit “(Commonwealth Employment)”.

18 **48 Subsection 150(2)**

19 Omit “(Commonwealth Employment)”.

20 **49 Subsection 157(3)**

21 Omit “(Commonwealth Employment)”.

22 **50 Paragraph 158(2)(b)**

23 Omit “(Commonwealth Employment)”.

24 *Social Security Act 1991*

25 **51 Paragraph 120(a)**

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**Schedule 1** Extending the coverage of the Occupational Health and Safety  
(Commonwealth Employment) Act 1991

**Part 2** Consequential amendments of other Acts

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1 Omit “(Commonwealth Employment)”.

2 **52 Paragraph 501B(8)(a)**

3 Omit “(Commonwealth Employment)”.

4 **53 Paragraph 501D(4)(a)**

5 Omit “(Commonwealth Employment)”.

6 **54 Paragraph 541E(3)(a)**

7 Omit “(Commonwealth Employment)”.

8 **55 Paragraph 544B(8)(a)**

9 Omit “(Commonwealth Employment)”.

10 **56 Paragraph 631C(a)**

11 Omit “(Commonwealth Employment)”.

12 **57 Paragraph 745L(a)**

13 Omit “(Commonwealth Employment)”.

1  
2 **Schedule 2—Regulatory contributions and**  
3 **licence fees under the Safety,**  
4 **Rehabilitation and Compensation Act**  
5 **1988**

6 **Part 1—Amendments**

7 *Safety, Rehabilitation and Compensation Act 1988*

8 **1 Subsection 4(1) (at the end of the definition of**  
9 ***Commonwealth authority*)**

10 Add:

11 Note: For the purposes of the provisions relating to regulatory contributions  
12 under Division 4A of Part VII, *Commonwealth authority* has an  
13 extended meaning—see section 96.

14 **2 Before section 97**

15 Insert:

16 **96 Extended meaning of *Commonwealth authority* for purposes of**  
17 **regulatory contributions**

18 For the purposes of section 97D, and the other provisions of this  
19 Division as they apply in relation to regulatory contributions under  
20 that section, a body that would not otherwise be a Commonwealth  
21 authority for the purposes of this Act is taken to be such an  
22 authority if it is a Commonwealth authority for the purposes of the  
23 *Occupational Health and Safety (Commonwealth Employment) Act*  
24 *1991*.

25 **3 Application of amendments**

26 The amendments made by this Part apply in relation to regulatory  
27 contributions for the financial year starting on the day on which this  
28 Part commences and later financial years.

1

2 **Part 2—Validation provisions**

3 **4 Definitions**

4 In this Part:

5 *Comcare* has the same meaning as it has in the SRC Act.

6 *Commission* has the same meaning as it has in the SRC Act.

7 *OHS Act* means the *Occupational Health and Safety (Commonwealth*  
8 *Employment) Act 1991*.

9 *SRC Act* means the *Safety, Rehabilitation and Compensation Act 1988*.

10 Note: Unless otherwise indicated, references in this Part to the SRC Act are references to that  
11 Act as amended by the *Safety, Rehabilitation and Compensation and Other Legislation*  
12 *Amendment Act 2001*.

13 **5 Validation of regulatory contributions purportedly**  
14 **determined for certain bodies**

15 (1) This item applies if:

16 (a) during a period, being all or part of the financial year starting  
17 on 1 July 2002, a body was a Commonwealth authority for  
18 the purposes of the OHS Act but was not a Commonwealth  
19 authority for the purposes of the SRC Act; and

20 (b) Comcare has purported to make a determination under  
21 section 97D of the SRC Act of an amount of regulatory  
22 contribution to be paid by the body in respect of that  
23 financial year; and

24 (c) the body has paid that amount to Comcare.

25 (2) The determination referred to in paragraph (1)(b), and any other steps  
26 taken by Comcare or the body in relation to the determination, are taken  
27 to be, and always to have been, as valid as they would have been if the  
28 body had been a Commonwealth authority for the purposes of the SRC  
29 Act during the period referred to in paragraph (1)(a).

30 **6 Validation of licence fees purportedly notified to certain**  
31 **bodies**

32 (1) This item applies if:

33 (a) during a period, being all or part of the financial year starting  
34 on 1 July 2002, a body held a licence under Part VIIIIB of the

- 1 SRC Act as continued in force (despite its repeal) by item 50  
2 of Schedule 2 to the *Safety, Rehabilitation and Compensation*  
3 *and Other Legislation Amendment Act 2001*; and  
4 (b) the Commission has purported to make a notification under  
5 section 104A of the SRC Act of an amount of licence fee to  
6 be paid by the body in respect of that financial year; and  
7 (c) the body has paid that amount to Comcare.
- 8 (2) The notification referred to in paragraph (1)(b), and any other steps  
9 taken by the Commission, Comcare or the body in relation to the  
10 notification, are taken to be, and always to have been, as valid as they  
11 would have been if the body had held a licence under Part VIII of the  
12 SRC Act during the period referred to in paragraph (1)(a).