

2004-2005-2006

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As read a third time

**OHS and SRC Legislation Amendment
Bill 2006**

No. , 2006

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 THIS Bill originated in the House of
2 Representatives; and, having this day passed,
3 is now ready for presentation to the Senate
4 for its concurrence.

5 I.C. HARRIS
6 *Clerk of the House of Representatives*

7 House of Representatives
8 29 March 2006

9 ***A Bill for an Act to amend the Occupational Health
10 and Safety (Commonwealth Employment) Act 1991
11 and the Safety, Rehabilitation and Compensation Act
12 1988, and for other purposes***

13 The Parliament of Australia enacts:

14 **1 Short title**

15 This Act may be cited as the *OHS and SRC Legislation
16 Amendment Act 2006.*

17 **2 Commencement**

18 (1) Each provision of this Act specified in column 1 of the table
19 commences, or is taken to have commenced, in accordance with
20 column 2 of the table. Any other statement in column 2 has effect
21 according to its terms.
22

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. 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.	

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
5. Schedule 1, item 53	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of item 7 of Schedule 4 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.	
6. Schedule 1, item 54	At the same time as the provision(s) covered by table item 2. However, this provision does not commence at all if item 18 of Schedule 5 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.	
7. Schedule 1, items 55 to 57	At the same time as the provision(s) covered by table item 2.	
8. Schedule 2, Part 1	Either: (a) if this Act receives the Royal Assent on 1 July in a year—the day on which this Act receives the Royal Assent; or (b) otherwise—on the 1 July that next follows the day on which this Act receives the Royal Assent.	
9. Schedule 2, Part 2	The day on which this Act receives the Royal Assent.	

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

1
2
3

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 **3A Section 4**

22 Repeal the section, substitute:

23 **4 Act excludes some State and Territory laws**

24 *Exclusion of State and Territory laws*

- 25 (1) Subject to subsection (2), this Act is intended to apply to the
26 exclusion of any law of a State or Territory (other than a law
27 prescribed under subsection (3)) to the extent that the law of the
28 State or Territory relates to occupational health or safety and would
29 otherwise apply in relation to employers, employees or the
30 employment of employees.

1 Note: For the meaning of *employer* and *employee*, see section 5.

2 *State or Territory laws not excluded from applying to situations not*
3 *covered by this Act*

4 (2) If, because of section 14 or 15, provisions of this Act do not apply
5 in relation to a particular situation, subsection (1) is not intended to
6 affect the application of State or Territory laws to that situation.

7 *Allowing certain State or Territory laws to apply*

8 (3) If a State or Territory law deals with a matter relating to
9 occupational health or safety that is not dealt with by or under this
10 Act, the regulations may prescribe the law as not being intended to
11 be excluded by this Act.

12 *Interpretation*

13 (4) In this section, a reference to laws of a State or Territory includes a
14 reference to such laws as they have effect as applied provisions
15 within the meaning of the *Commonwealth Places (Application of*
16 *Laws) Act 1970*.

17 (5) In this section:

18 *law* includes a provision of a law (including, for example, a
19 formula or a component of a formula).

20 **4 Subsection 5(1) (definition of *chief executive officer*)**

21 Repeal the definition, substitute:

22 *chief executive officer* means:

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

30 **5 Subsection 5(1) (at the end of the definition of** 31 ***Commonwealth authority*)**

32 Add:

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

8 **6 Subsection 5(1)**

9 Insert:

10 *Commonwealth authority contractor* has the meaning given by
11 section 9A.

12 **7 Subsection 5(1)**

13 Insert:

14 *Commonwealth authority employee* has the meaning given by
15 section 9.

16 **8 Subsection 5(1)**

17 Insert:

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

19 **9 Subsection 5(1)**

20 Insert:

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

22 **10 Subsection 5(1) (definition of *contractor*)**

23 Repeal the definition, substitute:

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

25 Note: In section 14, the meaning of *contractor* is affected by subsection
26 14(3).

27 **11 Subsection 5(1) (definition of *employer*)**

28 Repeal the definition, substitute:

29 *employer* means:

- 1 (a) the Commonwealth; or
2 (b) a Commonwealth authority; or
3 (c) a non-Commonwealth licensee.

4 **12 Subsection 5(1) (paragraph (a) of the definition of**
5 ***employing authority*)**

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

10 **13 Subsection 5(1) (paragraph (a) of the definition of**
11 ***Government business enterprise*)**

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

13 **14 Subsection 5(1)**

14 Insert:

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

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

23 **15 Subsection 5(1)**

24 Insert:

25 *non-Commonwealth licensee contractor* has the meaning given by
26 section 9A.

27 **16 Subsection 5(1)**

28 Insert:

29 *non-Commonwealth licensee employee* has the meaning given by
30 section 9.

31 **17 Subsection 5(1)**

1 Insert:

2 ***non-Commonwealth licensee premises***, in relation to a particular
3 non-Commonwealth licensee, means premises owned or occupied
4 by the non-Commonwealth licensee.

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

6 Repeal the definition, substitute:

7 ***workplace*** means:

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

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

19 **19 Subsection 5(2)**

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

24 **20 Subsection 9(1)**

25 Repeal the subsection, substitute:

26 ***Employee***

27 (1) An ***employee*** is:

- 28 (a) a Commonwealth employee (see subsection (1A)); or
29 (b) a Commonwealth authority employee (see subsection (2A));
30 or
31 (c) a non-Commonwealth licensee employee (see
32 subsection (3A)).

1 *Commonwealth employee*

2 (1A) A **Commonwealth employee** is a person who is employed by the
3 Commonwealth, whether the person is so employed under a law of
4 the Commonwealth or of a Territory or under a contract of service
5 or apprenticeship.

6 Note: The heading to section 9 is replaced by the heading “**Meaning of employee etc.**”.

7 **21 Subsection 9(2)**

8 Omit “subsection (1)”, substitute “subsection (1A)”.

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

10 Insert:

11 *Commonwealth authority employee*

12 (2A) A **Commonwealth authority employee** of a particular
13 Commonwealth authority is a person who is employed by the
14 authority, whether the person is so employed under a law of the
15 Commonwealth or of a Territory or under a contract of service or
16 apprenticeship.

17 **23 Subsection 9(3)**

18 Omit “A person who:”, substitute “Without limiting the generality of
19 subsection (2A), a person who:”.

20 **24 After subsection 9(3)**

21 Insert:

22 *Non-Commonwealth licensee employee*

23 (3A) Subject to subsection (3B), a **non-Commonwealth licensee**
24 **employee** of a particular non-Commonwealth licensee is a person
25 who is employed by the licensee, whether the person is so
26 employed under a law of the Commonwealth or of a State or
27 Territory, or under a contract of service or apprenticeship.

28 (3B) If, under the *Safety, Rehabilitation and Compensation Act 1988*,
29 the licence of a non-Commonwealth licensee covers only some of
30 the people referred to in subsection (1), only such of those people
31 as are covered by the licence are **non-Commonwealth licensee**
32 **employees** of the licensee for the purposes of this Act.

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

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

5 **25 After section 9**

6 Insert:

7 **9A Meaning of *contractor* etc.**

8 *Contractor*

- 9 (1) A ***contractor*** is:
10 (a) a Commonwealth contractor (see subsection (2)); or
11 (b) a Commonwealth authority contractor (see subsection (3)); or
12 (c) a non-Commonwealth licensee contractor (see
13 subsection (4)).

14 Note: In section 14, the meaning of ***contractor*** is affected by subsection
15 14(3).

16 *Commonwealth contractor*

- 17 (2) A ***Commonwealth contractor*** is a natural person (other than a
18 Commonwealth employee or a Commonwealth authority
19 employee) who performs work on Commonwealth premises in
20 connection with a contract between:
21 (a) the Commonwealth; and
22 (b) that person or another person (whether a natural person or
23 not);
24 which is in connection with an undertaking being carried on by the
25 Commonwealth.

26 *Commonwealth authority contractor*

- 27 (3) A ***Commonwealth authority contractor*** of a particular
28 Commonwealth authority is a natural person (other than a
29 Commonwealth employee or a Commonwealth authority
30 employee) who performs work on Commonwealth premises in
31 connection with a contract between:
32 (a) the authority; and

1 (b) that person or another person (whether a natural person or
2 not);
3 which is in connection with an undertaking being carried on by the
4 authority.

5 *Non-Commonwealth licensee contractor*

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

16 **26 Paragraph 10(1)(a)**

17 Omit “those persons employed by the Commonwealth, and those
18 contractors,”, substitute “those Commonwealth employees, and those
19 Commonwealth contractors,”.

20 **27 Paragraphs 11(4)(a) and (b)**

21 Repeal the paragraphs, substitute:
22 (a) a Commonwealth employee; or
23 (b) a Commonwealth authority employee (including an
24 employee of a Government business enterprise); or

25 **28 Paragraph 12(1)(c)**

26 Omit “Commonwealth employment”, substitute “the employment of
27 employees”.

28 **29 Subsection 14(1) (note)**

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

31 **30 Subsection 14(2)**

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

1 **31 At the end of section 14**

2 Add:

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

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

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

13 **32 Section 15**

14 Omit “not Commonwealth premises”, substitute “neither
15 Commonwealth premises nor non-Commonwealth licensee premises”.

16 **33 Subsection 41(3)**

17 Omit “or a Commonwealth authority”, substitute “, a Commonwealth
18 authority or a non-Commonwealth licensee”.

19 **34 Subsection 41(4)**

20 After “Commonwealth authority”, insert “or of the non-Commonwealth
21 licensee”.

22 **35 Paragraph 43(1)(a)**

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

25 **36 Section 52**

26 After “Government business enterprise”, insert “or a
27 non-Commonwealth licensee”.

28 **37 Paragraph 53(3)(b)**

29 Omit “if it thinks it appropriate,”, substitute “if the employer is the
30 Commonwealth or a Commonwealth authority and the Commission
31 thinks it appropriate to do so—”.

32 **38 Paragraph 70(2)(a)**

1 Omit “Commonwealth employment”, substitute “the employment of
2 employees”.

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

4 Omit “Commonwealth Entity or Commonwealth authority”, substitute
5 “Entity, Commonwealth authority or non-Commonwealth licensee”.

6 **40 Special provision about licence fees**

7 (1) In this item:

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

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

10 *extension commencement* means the commencement of item 11 of this
11 Schedule.

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

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

14 (2) This item applies if:

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

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

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

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

30 (4) The amount of the licence fee is the amount notified in writing to the
31 licensee by the Commission, being the amount estimated by the
32 Commission to represent that part of the cost incurred by the
33 Commission and by Comcare in carrying out their respective functions
34 under the OHS Act during the relevant financial year that is reasonably
35 referable to the licensee.

- 1 (5) The licence fee is payable to Comcare within such period after it is
2 notified to the licensee as Comcare determines.
- 3 (6) The SRC Act applies in relation to the licence fee as if it were a licence
4 fee under section 104A of that Act.
- 5 (7) The licence fee is in addition to the licence fee for which the licensee is
6 liable under section 104A of the SRC Act in relation to the relevant
7 financial year.

1

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

3 *Safety, Rehabilitation and Compensation Act 1988*

4 **41 Subparagraph 69(e)(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)**

- 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).
13
14

(195/05)
