

2010-2011

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Work Health and Safety (Transitional
and Consequential Provisions) Bill 2011**

No. , 2011

(Education, Employment and Workplace Relations)

**A Bill for an Act to deal with transitional and
consequential matters in connection with the *Work
Health and Safety Act 2011*, and for related
purposes**

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1 **A Bill for an Act to deal with transitional and**
2 **consequential matters in connection with the *Work***
3 ***Health and Safety Act 2011*, and for related**
4 **purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act may be cited as the *Work Health and Safety (Transitional*
8 *and Consequential Provisions) Act 2011*.

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

1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

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 this Act receives the Royal Assent.	
2. Sections 4 and 5	At the same time as the <i>Work Health and Safety Act 2011</i> commences.	1 January 2012
3. Schedules 1 to 4	At the same time as the <i>Work Health and Safety Act 2011</i> commences.	1 January 2012

4 Note: This table relates only to the provisions of this Act as originally
5 enacted. It will not be amended to deal with any later amendments of
6 this Act.

7 (2) Any information in column 3 of the table is not part of this Act.
8 Information may be inserted in this column, or information in it
9 may be edited, in any published version of this Act.

10 3 Schedule(s)

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12 repealed as set out in the applicable items in the Schedule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

15 4 Definitions

16 In this Act:

17 **Comcare** means the body corporate established under section 68 of
18 the SRC Act.

19 **commencing day** means 1 January 2012.

20 **Commission** means the Safety, Rehabilitation and Compensation
21 Commission established by section 89A of the SRC Act.

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modifications include additions, omissions and substitutions.

OHS Act means the *Occupational Health and Safety Act 1991* and includes any instrument made under that Act.

plant:

- (a) in relation to duties imposed under the OHS Act that continue to apply because of a provision of this Act—has the same meaning as in the OHS Act; and
- (b) in relation to duties imposed under the WHS Act—has the same meaning as in the WHS Act.

residual operation of OHS Act has the meaning given by item 13 of Schedule 2.

SRC Act means the *Safety, Rehabilitation and Compensation Act 1988* and includes any instrument made under that Act.

structure:

- (a) in relation to duties imposed under the OHS Act that continue to apply because of a provision of this Act—has the same meaning as in the OHS Act; and
- (b) in relation to duties imposed under the WHS Act—has the same meaning as in the WHS Act.

substance:

- (a) in relation to duties imposed under the OHS Act that continue to apply because of a provision of this Act—has the same meaning as in the OHS Act; and
- (b) in relation to duties imposed under the WHS Act—has the same meaning as in the WHS Act.

supply:

- (a) in relation to duties imposed under the OHS Act that continue to apply because of a provision of this Act—has the same meaning as in the OHS Act; and
- (b) in relation to duties imposed under the WHS Act—has the same meaning as in the WHS Act.

WHS Act means the *Work Health and Safety Act 2011* and includes any instrument made under that Act.

1 **5 Regulations**

2 (1) The Governor-General may make regulations prescribing matters:

3 (a) required or permitted by this Act to be prescribed; or

4 (b) necessary or convenient to be prescribed for carrying out or
5 giving effect to this Act.

6 (2) Without limiting subsection (1):

7 (a) the regulations may make provisions of a transitional,
8 application or saving nature relating to the repeal of the OHS
9 Act and the enactment of the WHS Act; and

10 (b) regulations made for the purposes of paragraph (a) may make
11 modifications of this Act, the WHS Act, the OHS Act and the
12 SRC Act.
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**Schedule 1—Repeal of the Occupational
Health and Safety Act 1991**

Occupational Health and Safety Act 1991

1 The whole of the Act

Repeal the Act.

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Schedule 2—Transitional provisions

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Part 1—Application generally

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1 Application of OHS Act to certain breaches etc.

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(1) The OHS Act continues to apply in relation to a breach of the OHS Act that occurred before the commencing day, or is alleged to have occurred before that day, as if the OHS Act had not been repealed.

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(2) However, if the action or failure to act that constitutes the breach continues on or after the commencing day then, subject to any other item of this Schedule, the OHS Act does not apply to that action or failure to act to the extent that it occurs on or after the commencing day.

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Part 2—Application of duties imposed under WHS Act

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2 Duties of designers

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(1) Subject to this item, the duties imposed on a designer under section 22 of the WHS Act do not apply in relation to any plant, substance or structure if the designer started (or started and completed) designing the plant, substance or structure before the commencing day.

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(2) If a designer started designing any plant, substance or structure before the commencing day but has not completed the design by the second anniversary of the commencing day, then:

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(a) the designer will, in relation to the plant, substance or structure, cease to have the benefit of subitem (1); and

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(b) the designer must comply with the requirements of the WHS Act in relation to the duties of a designer.

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(3) If a designer carries out any calculations, analysis, testing or examination that may be relevant to determining whether any plant, substance or structure is designed to be without risks to the health and safety of persons mentioned in paragraphs 22(2)(a) to (f) of the WHS Act then, despite subitem (1):

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(a) the duty imposed on the designer under paragraph 22(4)(b) of the WHS Act applies to the results of the calculations, analysis, testing or examination; and

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(b) to the extent that it relates to the results, subsection 22(5) of the WHS Act applies to the designer.

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3 Duties of manufacturers

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(1) Subject to this item, the duties imposed on a manufacturer under section 23 of the WHS Act do not apply in relation to any plant, substance or structure if the manufacturer started (or started and completed) any process associated with the manufacture of the plant, substance or structure before the commencing day.

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(2) Despite the repeal of the OHS Act, the duties imposed on a manufacturer under subsections 18(1) and (2) of the OHS Act apply to and in relation to any plant or substance if the manufacturer started (or

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Schedule 2 Transitional provisions

Part 2 Application of duties imposed under WHS Act

- 1 started and completed) any process associated with the manufacture of
2 the plant or substance before the commencing day.
- 3 (3) If a duty under the OHS Act applies because of subitem (2), the OHS
4 Act applies in relation to a breach, or alleged breach, of that duty,
5 despite the repeal of that Act.
- 6 (4) If a manufacturer started any process associated with the manufacture of
7 any plant, substance or structure before the commencing day but has not
8 completed the manufacture by the first anniversary of the commencing
9 day, then:
- 10 (a) the manufacturer will, in relation to the plant, substance or
11 structure, cease to have the benefit of subitem (1); and
- 12 (b) the manufacturer must comply with the requirements of the
13 WHS Act in relation to the duties of a manufacturer.
- 14 (5) If a manufacturer carries out any calculations, analysis, testing or
15 examination that may be relevant to determining whether any plant,
16 substance or structure is manufactured to be without risks to the health
17 and safety of persons mentioned in paragraphs 23(2)(a) to (f) of the
18 WHS Act then, despite subitem (1):
- 19 (a) the duty imposed on the manufacturer under paragraph
20 23(4)(b) of the WHS Act applies to the results of the
21 calculations, analysis, testing or examination; and
- 22 (b) to the extent that it relates to the results, subsection 23(5) of
23 the WHS Act applies to the manufacturer.

24 **4 Duties of importers**

- 25 (1) Subject to this item, the duties imposed on an importer under section 24
26 of the WHS Act do not apply in relation to any plant, substance or
27 structure if the importer started (or started and completed) any steps
28 constituting the importation of the plant, substance or structure before
29 the commencing day.
- 30 (2) Despite the repeal of the OHS Act, the duties imposed under
31 subsections 18(1) and (2) of the OHS Act on an importer who is taken
32 to be the manufacturer of any plant or substance because of subsection
33 18(3) of that Act apply to and in relation to the plant or substance if the
34 importer started (or started and completed) any steps constituting the
35 importation of the plant or substance before the commencing day.

- 1 (3) If a duty under the OHS Act applies because of subitem (2), the OHS
2 Act applies in relation to a breach, or alleged breach, of that duty,
3 despite the repeal of that Act.
- 4 (4) If an importer started any process associated with the importing of any
5 plant, substance or structure before the commencing day but has not
6 completed the importing by the first anniversary of the commencing
7 day, then:
8 (a) the importer will, in relation to the plant, substance or
9 structure, cease to have the benefit of subitem (1); and
10 (b) the importer must comply with the requirements of the WHS
11 Act in relation to the duties of an importer.
- 12 (5) If an importer carries out any calculations, analysis, testing or
13 examination that may be relevant to determining whether any plant,
14 substance or structure that is imported is without risks to the health and
15 safety of persons mentioned in paragraphs 24(2)(a) to (f) of the WHS
16 Act, or ensures that they have been carried out, then, despite
17 subitem (1):
18 (a) the duty imposed on the importer under paragraph 24(4)(b) of
19 the WHS Act applies to the results of the calculations,
20 analysis, testing or examination; and
21 (b) to the extent that it relates to the results, subsection 24(5) of
22 the WHS Act applies to the importer.

23 **5 Duties of suppliers**

- 24 (1) Subject to this item, the duties imposed on a supplier under section 25
25 of the WHS Act do not apply in relation to any plant, substance or
26 structure if the supplier started (or started and completed) any process
27 associated with the supply of the plant, substance or structure before the
28 commencing day.
- 29 (2) Despite the repeal of the OHS Act, the duties imposed under subsection
30 19(1) of the OHS Act:
31 (a) on a supplier; or
32 (b) on a person who, because of subsection 19(2) of the OHS
33 Act, is taken to be a supplier;
34 apply to and in relation to any plant or substance if any process
35 associated with the supply of the plant or substance was started (or
36 started and completed) before the commencing day.

Schedule 2 Transitional provisions

Part 2 Application of duties imposed under WHS Act

- 1 (3) If a duty under the OHS Act applies because of subitem (2), the OHS
2 Act applies in relation to a breach, or alleged breach, of that duty,
3 despite the repeal of that Act.
- 4 (4) If a supplier started any process associated with the supply of any plant,
5 substance or structure before the commencing day but has not
6 completed the supply by the first anniversary of the commencing day,
7 then:
8 (a) the supplier will, in relation to the plant, substance or
9 structure, cease to have the benefit of subitem (1); and
10 (b) the supplier must comply with the requirements of the WHS
11 Act in relation to the duties of a supplier.
- 12 (5) If a supplier carries out any calculations, analysis, testing or
13 examination that may be relevant to determining whether any plant,
14 substance or structure that is supplied is without risks to the health and
15 safety of persons mentioned in paragraphs 25(2)(a) to (f) of the WHS
16 Act, or ensures that they have been carried out, then, despite
17 subitem (1):
18 (a) the duty imposed on the supplier under paragraph 25(4)(b) of
19 the WHS Act applies to the results of the calculations,
20 analysis, testing or examination; and
21 (b) to the extent that it relates to the results, subsection 25(5) of
22 the WHS Act applies to the supplier.

23 **6 Duties of persons who install, construct or commission**
24 **plant or structures**

- 25 (1) In this item:
26 *OHS installer* means a person who erects or installs plant.
27 *WHS installer* means a person who conducts a business or undertaking
28 that installs, constructs or commissions plant or a structure.
- 29 (2) Subject to this item, the duties imposed on a WHS installer under
30 section 26 of the WHS Act do not apply in relation to any plant or
31 structure if the WHS installer started (or started and completed) any
32 process associated with the installation, construction or commissioning
33 of the plant or structure before the commencing day.
- 34 (3) Despite the repeal of the OHS Act, the duties imposed on an OHS
35 installer under subsection 20(1) of the OHS Act apply to and in relation
36 to any plant if the OHS installer started (or started and completed) any
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1 process associated with the installation or erection of the plant before
2 the commencing day.

3 (4) If a duty under the OHS Act applies because of subitem (3), the OHS
4 Act applies in relation to a breach, or alleged breach, of that duty,
5 despite the repeal of that Act.

6 (5) If a WHS installer started any process associated with the installation,
7 construction or commissioning of any plant or structure before the
8 commencing day but had not completed the installation, construction or
9 commissioning by the second anniversary of the commencing day, then:

10 (a) the WHS installer will, in relation to the plant or structure,
11 cease to have the benefit of subitem (2); and

12 (b) the WHS installer must comply with the requirements of the
13 WHS Act in relation to the duties of a WHS installer.
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2 **Part 3—Notifiable incidents etc.**

3 **7 Notifiable incidents etc.**

4 The WHS Act applies in relation to a notifiable incident arising out of
5 the conduct of a business or undertaking of which the person
6 conducting the business or undertaking becomes aware on or after the
7 commencing day, even if the incident occurred before the commencing
8 day.

9 **8 Accidents and dangerous occurrences**

10 If, before the commencing day, a person was required to maintain a
11 record of an accident or dangerous occurrence under section 69 of the
12 OHS Act then, on and after the commencing day, that section and any
13 regulations made under it continue to apply in relation to the accident or
14 dangerous occurrence.
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2 **Part 4—Work groups, health and safety**
3 **representatives and committees**

4 **9 Work groups, health and safety representatives and health**
5 **and safety committees continue as such**

6 (1) On the commencing day:

7 (a) a designated work group, as established under section 24 of
8 the OHS Act or established and varied under that section, that
9 is in operation immediately before the commencing day is
10 taken to have been determined as a work group under the
11 WHS Act; and

12 (b) a person who held office immediately before the
13 commencing day as a health and safety representative or
14 deputy health and safety representative under the OHS Act is
15 taken to hold the corresponding office under the WHS Act
16 (with a term of office of 3 years beginning on the day on
17 which the person was last selected under the OHS Act); and

18 (c) a health and safety committee established under section 34 of
19 the OHS Act that is in operation immediately before the
20 commencing day is taken to be a health and safety committee
21 under the WHS Act.

22 (2) If a process or proceeding:

23 (a) to establish or vary a designated work group; or

24 (b) to select a health and safety representative or deputy health
25 and safety representative; or

26 (c) to establish a health and safety committee;

27 has been started (but not completed) under the OHS Act before the
28 commencing day, the process or proceeding (and any flow-on process
29 or proceeding) may be completed under the OHS Act as if the OHS Act
30 were still in operation and will then have effect for the purposes of the
31 WHS Act.

32 (3) Subitem (2) will cease to apply in relation to the selection of a health
33 and safety representative or a deputy health and safety representative at
34 the expiration of 3 months after the commencing day (and any process
35 or proceeding not completed at the expiration of that period will need to
36 be recommenced under the WHS Act).

- 1 (4) If, because of paragraph (1)(c), a health and safety committee
2 established under the OHS Act is taken to be a health and safety
3 committee under the WHS Act, then on the commencing day, the
4 membership of the committee for the purposes of the WHS Act is made
5 up as follows:
- 6 (a) each person who is a member of the committee immediately
7 before the commencing day is taken to be a member of the
8 committee for the purposes of the WHS Act;
- 9 (b) if, on the commencing day, there is a health and safety
10 representative for a workplace in relation to which the
11 committee is taken to be a health and safety committee under
12 the WHS Act because of paragraph (1)(c), that
13 representative, if he or she consents, is a member of the
14 committee;
- 15 (c) if, on the commencing day, there are 2 or more health and
16 safety representatives for a workplace in relation to which the
17 committee is taken to be a health and safety committee under
18 the WHS Act because of paragraph (1)(c), those
19 representatives may choose one or more of their number
20 (who consent) to be members of the committee.
- 21 (5) Nothing in subitem (4) affects any right or power to change the
22 constitution of the committee in accordance with section 76 of the WHS
23 Act.

24 **10 Training**

- 25 (1) A person who has completed a course of training accredited by the
26 Commission for the purposes of section 27 of the OHS Act will be
27 taken to have completed any training required under subsection 85(6) or
28 90(4) of the WHS Act.
- 29 (2) Subitem (1) will cease to apply at the expiration of 12 months after the
30 commencing day (and any relevant course of training under the OHS
31 Act will then cease to have effect for the purposes of the WHS Act).

32 **11 Provisional improvement notices**

- 33 (1) If a provisional improvement notice is in effect under section 29 of the
34 OHS Act immediately before the commencing day:
- 35 (a) the OHS Act continues to apply in relation to the notice as if
36 the OHS Act had not been repealed; and
-

1 (b) to the extent that the notice relates to a matter, the OHS Act
2 continues to apply in relation to the matter as if the OHS Act
3 had not been repealed.

4 (2) To avoid doubt, paragraph 160(c) of the WHS Act does not apply in
5 relation to a provisional improvement notice that is in effect under the
6 OHS Act immediately before the commencing day.

7 **12 Disqualification**

8 (1) If, immediately before the commencing day, a person is disqualified
9 under section 32 of the OHS Act from being a health and safety
10 representative for any designated work group, that person is taken to be
11 disqualified from being a health and safety representative for the
12 purposes of the WHS Act on the commencing day.

13 (2) The period of the disqualification under the WHS Act is the balance of
14 the period of disqualification under the OHS Act.

15 (3) If an application is made under section 65 of the WHS Act to disqualify
16 a health and safety representative:

17 (a) the exercise of powers and the performance of functions as a
18 health and safety representative under the OHS Act for an
19 improper purpose are relevant in the determination of the
20 application; and

21 (b) the use or disclosure of information acquired as a health and
22 safety representative under the OHS Act for a purpose other
23 than in connection with the role of health and safety
24 representative (either under that Act or the WHS Act) is
25 relevant in the determination of the application.

26 (4) This item applies to a deputy health and safety representative in the
27 same way as it applies to a health and safety representative.
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Part 5—Comcare and inspectors

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13 Residual operation of the OHS Act

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Residual operation of the OHS Act means the operation of the OHS Act:

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(a) in relation to actions and failures to act that occur before the commencing day; and

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(b) to the extent that the OHS Act continues to apply in relation to actions and failures to act that occur on or after the commencing day because of a provision of this Act or any other law—in relation to those actions and failures to act.

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14 Appointment

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(1) On the commencing day, a person who:

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(a) held office immediately before the commencing day as an investigator under the OHS Act; and

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(b) is a member of the staff of Comcare;

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is taken to have been appointed as an inspector under the WHS Act.

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(2) An identity card held by an investigator under or for the purposes of the OHS Act immediately before the commencing day will be taken to be an identity card given by the regulator under section 157 of the WHS Act (and to comply with the requirements of subsection 157(1) in all respects).

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15 Use of WHS functions and powers to enforce OHS Act

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(1) An inspector may, on or after the commencing day, perform a function or exercise a power under Division 3, 4 or 5 of Part 9 of the WHS Act in relation to anything arising in connection with the residual operation of the OHS Act.

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(2) The WHS Act will apply in relation to the performance or exercise of such a function or power as if a reference to the WHS Act included a reference to the OHS Act.

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(3) Without limiting subitem (2), a reference in the WHS Act to an offence against the WHS Act will be taken to include a reference to an offence against the OHS Act.

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- 1 (4) Any action taken or information acquired under the WHS Act or
2 because of the operation of this item may be used in relation to the
3 residual operation of the OHS Act.
- 4 (5) To avoid doubt, the reference in section 188 of the WHS Act to the
5 compliance powers of an inspector includes the functions and powers
6 conferred on the inspector because of this item.
- 7 (6) Nothing in this item affects or limits any action that may be taken under
8 or with respect to the OHS Act because of the residual operation of the
9 OHS Act.

10 **16 WHS inspectors may exercise functions and powers**
11 **under OHS Act**

12 An inspector may exercise the functions and powers of an investigator
13 under the OHS Act in connection with the residual operation of the
14 OHS Act.

15 **17 Comcare may use powers of investigation under WHS Act**
16 **for OHS Act**

- 17 (1) Comcare may, on or after the commencing day, exercise a power under
18 section 155 of the WHS Act in relation to anything arising in
19 connection with the residual operation of the OHS Act.
- 20 (2) The WHS Act will apply in relation to the exercise of the power as if a
21 reference to the WHS Act included a reference to the OHS Act.
- 22 (3) Without limiting subitem (2):
23 (a) a reference in the WHS Act to a contravention of the WHS
24 Act will be taken to include a reference to a contravention of
25 the OHS Act; and
26 (b) a reference in the WHS Act to an offence against the WHS
27 Act will be taken to include a reference to an offence against
28 the OHS Act.
- 29 (4) Any action taken or information acquired under the WHS Act or
30 because of the operation of this item may be used in relation to the
31 residual operation of the OHS Act.
- 32 (5) Nothing in this item affects or limits any action that may be taken under
33 or with respect to the OHS Act because of the residual operation of the
34 OHS Act.

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2 **Part 6—Enforcement measures**

3 **18 Prohibition notices**

4 If a prohibition notice is in effect under section 46 of the OHS Act
5 immediately before the commencing day:

- 6 (a) the OHS Act continues to apply in relation to the notice as if
7 the OHS Act had not been repealed; and
8 (b) to the extent that the notice relates to a matter, the OHS Act
9 continues to apply in relation to the matter as if the OHS Act
10 had not been repealed.

11 **19 Improvement notices**

12 If an improvement notice is in effect under section 47 of the OHS Act
13 immediately before the commencing day:

- 14 (a) the OHS Act continues to apply in relation to the notice as if
15 the OHS Act had not been repealed; and
16 (b) to the extent that the notice relates to a matter, the OHS Act
17 continues to apply in relation to the matter as if the OHS Act
18 had not been repealed.

19 **20 Undertakings**

- 20 (1) This item applies if Comcare accepts a written undertaking under
21 clause 16 of Schedule 2 to the OHS Act.
- 22 (2) During the transitional period for the undertaking, the OHS Act
23 continues to apply in relation to the undertaking, and any proceedings in
24 which the undertaking may be relevant, as if the OHS Act had not been
25 repealed.
- 26 (3) The *transitional period for the undertaking* is a period beginning at the
27 start of the commencing day and ending:
28 (a) 2 years later; or
29 (b) if the undertaking is revoked or otherwise ceases to be in
30 force before then—when the undertaking is revoked or
31 ceases to be in force.
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2 **Part 7—Other matters**

3 **21 Authorisations**

- 4 (1) This item applies in relation to a registration, licence, permit,
5 accreditation or other form of authorisation under the OHS Act that is of
6 a class prescribed by the regulations for the purposes of this item (a
7 *preserved authorisation*).
- 8 (2) A preserved authorisation has effect under the WHS Act, subject to any
9 modifications of the WHS Act in relation to preserved authorisations of
10 that class made by the regulations.

11 **22 Exemptions**

- 12 (1) This item applies in relation to an exemption under the OHS Act that is
13 of a class prescribed by the regulations for the purposes of this item (a
14 *preserved exemption*).
- 15 (2) A preserved exemption has effect under the WHS Act, subject to any
16 modifications of the WHS Act in relation to preserved exemptions of
17 that class made by the regulations.

18 **23 Codes of practice**

- 19 (1) This item applies in relation to each Part of the *Occupational Health*
20 *and Safety Code of Practice 2008*, as in force immediately before the
21 commencing day, that is prescribed by the regulations for the purposes
22 of this item as a *preserved code of practice*.
- 23 (2) A preserved code of practice is taken to be a code of practice approved
24 for the purposes of the WHS Act under section 274 of that Act.
- 25 (3) Subitem (2) ceases to have effect on the second anniversary of the
26 commencing day.
- 27 (4) Nothing in this item affects the power of the Minister under section 274
28 of the WHS Act to vary or revoke a code of practice that is taken to
29 have been approved because of subitem (2).

30 **24 Annual reports**

Schedule 2 Transitional provisions

Part 7 Other matters

- 1 (1) Despite the repeal of the OHS Act, sections 74, 75 and 75A of that Act
2 continue to apply in relation to the financial year beginning on 1 July
3 2011.
- 4 (2) However, where, because of one of those sections, information relating
5 to the financial year beginning on 1 July 2011 is to be included in a
6 report, that information need only relate to the period beginning on
7 1 July 2011 and ending on 31 December 2011.
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2 **Schedule 3—Safety, Rehabilitation and**
3 **Compensation Act 1988**

4 **Part 1—Consequential amendments**

5 *Safety, Rehabilitation and Compensation Act 1988*

6 **1 Subparagraph 69(e)(ii)**

7 After “*Occupational Health and Safety Act 1991*”, insert “, the *Work*
8 *Health and Safety Act 2011* and the *Work Health and Safety*
9 *(Transitional and Consequential Provisions) Act 2011*”.

10 **2 Section 69 (note)**

11 Omit “*Occupational Health and Safety Act 1991*”, substitute “*Work*
12 *Health and Safety Act 2011*”.

13 **3 Subsection 73(1)**

14 After “under this Act”, insert “or the *Work Health and Safety Act 2011*”.

15 **4 Subsection 73A(3)**

16 Omit “or section 12A of the *Occupational Health and Safety Act 1991*”.

17 **5 Section 73B**

18 After “functions and powers”, insert “other than the functions and
19 powers of Comcare under the *Work Health and Safety Act 2011*”.

20 **6 Section 73B (note)**

21 Omit “Note”, substitute “Note 1”.

22 **7 At the end of section 73B**

23 Add:

24 Note 2: The delegation of Comcare’s functions and powers under the *Work*
25 *Health and Safety Act 2011* is dealt with in section 154 of that Act.

26 **8 At the end of section 89B**

27 Add:

1 Note: Functions have also been conferred on the Commission by the *Work*
2 *Health and Safety Act 2011*.

3 **9 Subsection 89D(1)**

4 After “under this Act”, insert “or the *Work Health and Safety Act 2011*”.

5 **10 Paragraph 89E(1)(b)**

6 Repeal the paragraph.

7 **11 Paragraph 89E(1)(c)**

8 Omit “2”, substitute “3”.

9 **12 Subsection 89R(1)**

10 Omit “The Commission”, substitute “Subject to subsection (1A), the
11 Commission”.

12 **13 After subsection 89R(1)**

13 Insert:

14 (1A) The Commission must not delegate to the Chief Executive Officer
15 any of its functions or powers under the *Work Health and Safety*
16 *Act 2011*.

17 **14 Subsection 91(3)**

18 Omit “shall”, substitute “must”.

19 **15 Paragraph 91(3)(a)**

20 Repeal the paragraph, substitute:

21 (a) in payment or discharge of the expenses, charges, obligations
22 and liabilities incurred or undertaken by Comcare in the
23 performance of its functions and the exercise of its powers
24 under all or any of the following Acts:

25 (i) this Act;

26 (ii) the *Occupational Health and Safety Act 1991*;

27 (iii) the *Work Health and Safety Act 2011*;

28 (iv) the *Work Health and Safety (Transitional and*
29 *Consequential Provisions) Act 2011*;

30 (v) the *Asbestos-related Claims (Management of*
31 *Commonwealth Liabilities) Act 2005*;

1 **16 Section 96**

2 Omit “it is a Commonwealth authority for the purposes of the
3 *Occupational Health and Safety Act 1991*”, substitute “it is a public
4 authority for the purposes of the *Work Health and Safety Act 2011*”.

5 **17 Paragraph 97D(2)(d)**

6 After “*Occupational Health and Safety Act 1991*”, insert “, the *Work*
7 *Health and Safety Act 2011* and the *Work Health and Safety*
8 *(Transitional and Consequential Provisions) Act 2011*”.

9 **18 After subsection 104(2)**

10 Insert:

11 (2A) The Commission must not grant a licence to the applicant if:

- 12 (a) because of the past conduct of the applicant, including the
13 applicant’s performance in complying with the law of the
14 Commonwealth or of a State or Territory dealing with
15 occupational health and safety, the Commission is satisfied
16 that it is unlikely that the applicant will, if licensed, meet the
17 standards set by the Commission for the occupational health
18 and safety of the applicant’s employees; or
19 (b) because of the past conduct of the applicant, including the
20 applicant’s performance in meeting obligations in relation to
21 rehabilitation under the law of the Commonwealth or of a
22 State or Territory, the Commission is satisfied that it is
23 unlikely that the applicant will, if licensed, meet the
24 standards set by the Commission for the rehabilitation of the
25 applicant’s employees; or
26 (c) because of the past conduct of the applicant, including the
27 applicant’s performance in meeting obligations in relation to
28 claims management under the law of the Commonwealth or
29 of a State or Territory, the Commission is satisfied that it is
30 unlikely that the applicant will, if licensed, manage claims in
31 accordance with the standards set by the Commission.

32 **19 Paragraph 104A(2)(b)**

33 Repeal the paragraph, substitute:

- 34 (b) that part of the cost incurred (if any) by the Commission and
35 by Comcare in carrying out their respective functions under
36 the *Occupational Health and Safety Act 1991*, the *Work*

1 *Health and Safety Act 2011* and the *Work Health and Safety*
2 *(Transitional and Consequential Provisions) Act 2011* during
3 the relevant period that is reasonably referable to the
4 licensee.

5 **20 Subsection 150(2)**

6 Repeal the subsection, substitute:

7 (2) The Commission must not make guidelines that are inconsistent
8 with:

9 (a) any directions under section 149 of this Act; and

10 (b) any directions given to Comcare under section 73 of this Act
11 in relation to the performance of its functions or the exercise
12 of its powers under the *Work Health and Safety Act 2011*.

13 **21 Paragraph 158(2)(b)**

14 After "*Occupational Health and Safety Act 1991*", insert ", the *Work*
15 *Health and Safety Act 2011* and the *Work Health and Safety*
16 *(Transitional and Consequential Provisions) Act 2011*".

17 **22 Application of items 17, 19 and 21**

18 The amendments made by items 17, 19 and 21 apply in relation to the
19 financial year starting on 1 July 2011 and each later financial year.

20 **23 Application of other items**

21 The amendments made by all of the other items in this Part apply on
22 and from 1 July 2011.
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2 **Part 2—Transitional provisions relating to regulatory**
3 **contributions and licence fees**

4 **24 Variation of determination of regulatory contribution**

- 5 (1) Comcare may, in writing, vary a determination of the amount of an
6 Entity's or Commonwealth authority's regulatory contribution for the
7 financial year beginning on 1 July 2011, so that the contribution
8 includes:
- 9 (a) that part of the estimated cost incurred by the Commission
10 and Comcare in carrying out their respective functions under
11 the OHS Act that Comcare determines, in accordance with
12 guidelines under section 97E of the SRC Act, to be referable
13 to that Entity or authority (as adjusted, if necessary, to take
14 into account the repeal of the OHS Act and the enactment of
15 the WHS Act and this Act); and
- 16 (b) that part of the estimated cost incurred by the Commission
17 and Comcare in carrying out their respective functions under
18 the WHS Act and this Act that Comcare determines, in
19 accordance with guidelines under section 97E of the SRC
20 Act, to be referable to that Entity or authority.
- 21 (2) This item applies despite subsection 97M(1) of the SRC Act.
- 22 (3) However, the remainder of section 97M of the SRC Act applies in
23 relation to a variation under this item, and the regulatory contribution to
24 which the variation relates, in the same way as it applies to a variation
25 under that section, and a regulatory contribution to which that variation
26 relates.

27 **25 Variation of licence fee**

- 28 (1) Comcare may, by notice in writing to a licensee, vary the amount of the
29 licence fee that the licensee is liable to pay for the financial year
30 beginning on 1 July 2011, so that the licence fee includes:
- 31 (a) that part of the estimated cost incurred by the Commission
32 and Comcare in carrying out their respective functions under
33 the OHS Act during the financial year that is reasonably
34 referable to the licensee (as adjusted, if necessary, to take

1 into account the repeal of the OHS Act and the enactment of
2 the WHS Act and this Act); and

3 (b) that part of the estimated cost incurred by the Commission
4 and Comcare in carrying out their respective functions under
5 the WHS Act and this Act during the financial year that is
6 reasonably referable to the licensee.

7 (2) If the licence fee that the licensee is liable to pay increases as a result of
8 a variation under subitem (1), an amount equal to the increase is
9 payable to Comcare within such period after the variation is notified to
10 the licensee as the Commission determines.

11 (3) Nothing in this item affects the power of Comcare to vary the licence
12 fee for any other reason.

13 **26 Variation of determination of regulatory contribution by**
14 **Defence Department**

15 (1) Comcare may, in writing, vary a determination of the amount of the
16 Defence Department's regulatory contribution for the financial year
17 beginning on 1 July 2011, so that the contribution includes:

18 (a) that part of the estimated cost incurred by the Commission
19 and Comcare in carrying out their respective functions under
20 the OHS Act that Comcare determines, in accordance with
21 guidelines under section 97E of the SRC Act, to be referable
22 to the Defence Department in relation to defence service (as
23 adjusted, if necessary, to take into account the repeal of the
24 OHS Act and the enactment of the WHS Act and this Act);
25 and

26 (b) that part of the estimated cost incurred by the Commission
27 and Comcare in carrying out their respective functions under
28 the WHS Act and this Act that Comcare determines, in
29 accordance with guidelines under section 97E of the SRC
30 Act, to be referable to the Defence Department in relation to
31 defence service.

32 (2) This item applies despite subsection 97M(1) of the SRC Act (as applied
33 under section 159 of that Act).

34 (3) However, the remainder of section 97M of the SRC Act (as applied
35 under section 159 of that Act) applies in relation to a variation under
36 this item, and the regulatory contribution to which the variation relates,

- 1 in the same way as it applies to a variation under that section, and a
2 regulatory contribution to which that variation relates.

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Schedule 4—Other consequential amendments

Social Security Act 1991

1 Paragraph 120(a)

7 Repeal the paragraph, substitute:
8 (a) a worker carrying out work in any capacity for the
9 Commonwealth, or an employee of the Commonwealth, for
10 the purposes of the *Work Health and Safety Act 2011*; or

2 Paragraphs 501D(4)(a), 544B(8)(a), 631C(a) and 745L(a)

12 Repeal the paragraphs, substitute:
13 (a) a worker carrying out work in any capacity for the
14 Commonwealth, or an employee of the Commonwealth, for
15 the purposes of the *Work Health and Safety Act 2011*;

3 Paragraph 1188BB(a)

17 Repeal the paragraph, substitute:
18 (a) a worker carrying out work in any capacity for the
19 Commonwealth, or an employee of the Commonwealth, for
20 the purposes of the *Work Health and Safety Act 2011*; or