



Work Health and Safety (Transitional and Consequential Provisions) Act 2011

No. 146, 2011

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 146, 2011

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

[Assented to 29 November 2011]

The Parliament of Australia enacts:

1 Short title

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

Work Health and Safety (Transitional and Consequential Provisions) Act 2011 No. 146, 2011

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2 Commencement

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

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.	29 November 2011
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

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Definitions

In this Act:

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

commencing day means 1 January 2012.

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

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.

5 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1):
 - (a) the regulations may make provisions of a transitional, application or saving nature relating to the repeal of the OHS Act and the enactment of the WHS Act; and
 - (b) regulations made for the purposes of paragraph (a) may make modifications of this Act, the WHS Act, the OHS Act and the SRC Act.

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.

Schedule 2—Transitional provisions

Part 1—Application generally

1 Application of OHS Act to certain breaches etc.

- (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.
- (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.

Part 2—Application of duties imposed under WHS Act

2 Duties of designers

- (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.
- (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:
 - (a) the designer will, in relation to the plant, substance or structure, cease to have the benefit of subitem (1); and
 - (b) the designer must comply with the requirements of the WHS Act in relation to the duties of a designer.
- (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):
 - (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
 - (b) to the extent that it relates to the results, subsection 22(5) of the WHS Act applies to the designer.

3 Duties of manufacturers

- (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.
- (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

Schedule 2 Transitional provisions

Part 2 Application of duties imposed under WHS Act

started and completed) any process associated with the manufacture of the plant or substance before the commencing day.

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

4 Duties of importers

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

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

5 Duties of suppliers

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

Schedule 2 Transitional provisions

Part 2 Application of duties imposed under WHS Act

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

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

- (1) In this item:

OHS installer means a person who erects or installs plant.

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

- (4) If a duty under the OHS Act applies because of subitem (3), the OHS Act applies in relation to a breach, or alleged breach, of that duty, despite the repeal of that Act.
- (5) If a WHS installer started any process associated with the installation, construction or commissioning of any plant or structure before the commencing day but had not completed the installation, construction or commissioning by the second anniversary of the commencing day, then:
 - (a) the WHS installer will, in relation to the plant or structure, cease to have the benefit of subitem (2); and
 - (b) the WHS installer must comply with the requirements of the WHS Act in relation to the duties of a WHS installer.

Part 3—Notifiable incidents etc.

7 Notifiable incidents etc.

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

8 Accidents and dangerous occurrences

If, before the commencing day, a person was required to maintain a record of an accident or dangerous occurrence under section 69 of the OHS Act then, on and after the commencing day, that section and any regulations made under it continue to apply in relation to the accident or dangerous occurrence.

Part 4—Work groups, health and safety representatives and committees

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

- (1) On the commencing day:
- (a) a designated work group, as established under section 24 of the OHS Act or established and varied under that section, that is in operation immediately before the commencing day is taken to have been determined as a work group under the WHS Act; and
 - (b) a person who held office immediately before the commencing day as a health and safety representative or deputy health and safety representative under the OHS Act is taken to hold the corresponding office under the WHS Act (with a term of office of 3 years beginning on the day on which the person was last selected under the OHS Act); and
 - (c) a health and safety committee established under section 34 of the OHS Act that is in operation immediately before the commencing day is taken to be a health and safety committee under the WHS Act.
- (2) If a process or proceeding:
- (a) to establish or vary a designated work group; or
 - (b) to select a health and safety representative or deputy health and safety representative; or
 - (c) to establish a health and safety committee;
- has been started (but not completed) under the OHS Act before the commencing day, the process or proceeding (and any flow-on process or proceeding) may be completed under the OHS Act as if the OHS Act were still in operation and will then have effect for the purposes of the WHS Act.
- (3) Subitem (2) will cease to apply in relation to the selection of a health and safety representative or a deputy health and safety representative at the expiration of 3 months after the commencing day (and any process or proceeding not completed at the expiration of that period will need to be recommenced under the WHS Act).
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- (4) If, because of paragraph (1)(c), a health and safety committee established under the OHS Act is taken to be a health and safety committee under the WHS Act, then on the commencing day, the membership of the committee for the purposes of the WHS Act is made up as follows:
- (a) each person who is a member of the committee immediately before the commencing day is taken to be a member of the committee for the purposes of the WHS Act;
 - (b) if, on the commencing day, there is a health and safety representative for a workplace in relation to which the committee is taken to be a health and safety committee under the WHS Act because of paragraph (1)(c), that representative, if he or she consents, is a member of the committee;
 - (c) if, on the commencing day, there are 2 or more health and safety representatives for a workplace in relation to which the committee is taken to be a health and safety committee under the WHS Act because of paragraph (1)(c), those representatives may choose one or more of their number (who consent) to be members of the committee.
- (5) Nothing in subitem (4) affects any right or power to change the constitution of the committee in accordance with section 76 of the WHS Act.

10 Training

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

11 Provisional improvement notices

- (1) If a provisional improvement notice is in effect under section 29 of the OHS Act immediately before the commencing day:
- (a) the OHS Act continues to apply in relation to the notice as if the OHS Act had not been repealed; and
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- (b) to the extent that the notice relates to a matter, the OHS Act continues to apply in relation to the matter as if the OHS Act had not been repealed.
- (2) To avoid doubt, paragraph 160(c) of the WHS Act does not apply in relation to a provisional improvement notice that is in effect under the OHS Act immediately before the commencing day.

12 Disqualification

- (1) If, immediately before the commencing day, a person is disqualified under section 32 of the OHS Act from being a health and safety representative for any designated work group, that person is taken to be disqualified from being a health and safety representative for the purposes of the WHS Act on the commencing day.
- (2) The period of the disqualification under the WHS Act is the balance of the period of disqualification under the OHS Act.
- (3) If an application is made under section 65 of the WHS Act to disqualify a health and safety representative:
 - (a) the exercise of powers and the performance of functions as a health and safety representative under the OHS Act for an improper purpose are relevant in the determination of the application; and
 - (b) the use or disclosure of information acquired as a health and safety representative under the OHS Act for a purpose other than in connection with the role of health and safety representative (either under that Act or the WHS Act) is relevant in the determination of the application.
- (4) This item applies to a deputy health and safety representative in the same way as it applies to a health and safety representative.

Part 5—Comcare and inspectors

13 *Residual operation of the OHS Act*

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

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

14 Appointment

- (1) On the commencing day, a person who:
 - (a) held office immediately before the commencing day as an investigator under the OHS Act; and
 - (b) is a member of the staff of Comcare;is taken to have been appointed as an inspector under the WHS Act.
- (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).

15 Use of WHS functions and powers to enforce OHS Act

- (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.
- (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.
- (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.

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

16 WHS inspectors may exercise functions and powers under OHS Act

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

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

- (1) Comcare may, on or after the commencing day, exercise a power under section 155 of the WHS Act in relation to anything arising in connection with the residual operation of the OHS Act.
- (2) The WHS Act will apply in relation to the exercise of the power as if a reference to the WHS Act included a reference to the OHS Act.
- (3) Without limiting subitem (2):
 - (a) a reference in the WHS Act to a contravention of the WHS Act will be taken to include a reference to a contravention of the OHS Act; and
 - (b) 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.
- (4) Any action taken or information acquired under the WHS Act or because of the operation of this item may be used in relation to the residual operation of the OHS Act.
- (5) Nothing in this item affects or limits any action that may be taken under or with respect to the OHS Act because of the residual operation of the OHS Act.

Part 6—Enforcement measures

18 Prohibition notices

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

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

19 Improvement notices

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

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

20 Undertakings

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

Part 7—Other matters

21 Authorisations

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

22 Exemptions

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

23 Codes of practice

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

24 Annual reports

Schedule 2 Transitional provisions

Part 7 Other matters

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

Schedule 3—Safety, Rehabilitation and Compensation Act 1988

Part 1—Consequential amendments

Safety, Rehabilitation and Compensation Act 1988

1 Subparagraph 69(e)(ii)

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

2 Section 69 (note)

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

3 Subsection 73(1)

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

4 Subsection 73A(3)

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

5 Section 73B

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

6 Section 73B (note)

Omit “Note”, substitute “Note 1”.

7 At the end of section 73B

Add:

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

8 At the end of section 89B

Add:

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

9 Subsection 89D(1)

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

10 Paragraph 89E(1)(b)

Repeal the paragraph.

11 Paragraph 89E(1)(c)

Omit “2”, substitute “3”.

12 Subsection 89R(1)

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

13 After subsection 89R(1)

Insert:

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

14 Subsection 91(3)

Omit “shall”, substitute “must”.

15 Paragraph 91(3)(a)

Repeal the paragraph, substitute:

- (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by Comcare in the performance of its functions and the exercise of its powers under all or any of the following Acts:
 - (i) this Act;
 - (ii) the *Occupational Health and Safety Act 1991*;
 - (iii) the *Work Health and Safety Act 2011*;
 - (iv) the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011*;
 - (v) the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005*;

16 Section 96

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

17 Paragraph 97D(2)(d)

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

18 After subsection 104(2)

Insert:

- (2A) The Commission must not grant a licence to the applicant if:
- (a) because of the past conduct of the applicant, including the applicant’s performance in complying with the law of the Commonwealth or of a State or Territory dealing with occupational health and safety, the Commission is satisfied that it is unlikely that the applicant will, if licensed, meet the standards set by the Commission for the occupational health and safety of the applicant’s employees; or
 - (b) because of the past conduct of the applicant, including the applicant’s performance in meeting obligations in relation to rehabilitation under the law of the Commonwealth or of a State or Territory, the Commission is satisfied that it is unlikely that the applicant will, if licensed, meet the standards set by the Commission for the rehabilitation of the applicant’s employees; or
 - (c) because of the past conduct of the applicant, including the applicant’s performance in meeting obligations in relation to claims management under the law of the Commonwealth or of a State or Territory, the Commission is satisfied that it is unlikely that the applicant will, if licensed, manage claims in accordance with the standards set by the Commission.

19 Paragraph 104A(2)(b)

Repeal the paragraph, substitute:

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

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

20 Subsection 150(2)

Repeal the subsection, substitute:

- (2) The Commission must not make guidelines that are inconsistent with:
- (a) any directions under section 149 of this Act; and
 - (b) any directions given to Comcare under section 73 of this Act in relation to the performance of its functions or the exercise of its powers under the *Work Health and Safety Act 2011*.

21 Paragraph 158(2)(b)

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

22 Application of items 17, 19 and 21

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

23 Application of other items

The amendments made by all of the other items in this Part apply on and from 1 July 2011.

Part 2—Transitional provisions relating to regulatory contributions and licence fees

24 Variation of determination of regulatory contribution

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

25 Variation of licence fee

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

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

- (b) that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under the WHS Act and this Act during the financial year that is reasonably referable to the licensee.
- (2) If the licence fee that the licensee is liable to pay increases as a result of a variation under subitem (1), an amount equal to the increase is payable to Comcare within such period after the variation is notified to the licensee as the Commission determines.
 - (3) Nothing in this item affects the power of Comcare to vary the licence fee for any other reason.

26 Variation of determination of regulatory contribution by Defence Department

- (1) Comcare may, in writing, vary a determination of the amount of the Defence Department's regulatory contribution for the financial year beginning on 1 July 2011, so that the contribution includes:
 - (a) that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under the OHS Act that Comcare determines, in accordance with guidelines under section 97E of the SRC Act, to be referable to the Defence Department in relation to defence service (as adjusted, if necessary, to take into account the repeal of the OHS Act and the enactment of the WHS Act and this Act); and
 - (b) that part of the estimated cost incurred by the Commission and Comcare in carrying out their respective functions under the WHS Act and this Act that Comcare determines, in accordance with guidelines under section 97E of the SRC Act, to be referable to the Defence Department in relation to defence service.
- (2) This item applies despite subsection 97M(1) of the SRC Act (as applied under section 159 of that Act).
- (3) However, the remainder of section 97M of the SRC Act (as applied under section 159 of that Act) applies in relation to a variation under this item, and the regulatory contribution to which the variation relates,

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

Schedule 4—Other consequential amendments

Social Security Act 1991

1 Paragraph 120(a)

Repeal the paragraph, substitute:

- (a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*; or

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

Repeal the paragraphs, substitute:

- (a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*;

3 Paragraph 1188BB(a)

Repeal the paragraph, substitute:

- (a) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*; or

[Minister's second reading speech made in—
House of Representatives on 6 July 2011
Senate on 31 October 2011]

(140/11)

28 *Work Health and Safety (Transitional and Consequential Provisions) Act 2011* No.
146, 2011