



Safe Work Australia (Consequential and Transitional Provisions) Bill 2008

Paula Pyburne
Law and Bills Digest Section

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Safe Work Australia (Consequential and Transitional Provisions) Bill 2008

Date introduced: 4 September 2008

House: House of Representatives

Portfolio: Education, Employment and Workplace Relations

Commencement: Sections 1-3, on the day of the Royal Assent; all other provisions, at the same time as section 5 of the *Safe Work Australia Act 2008* commences.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Bill is to repeal the *Australia Workplace Safety Standards Act 2005* (Australian Workplace Safety Standards Act). The Bill also deals with consequential and transitional matters arising from that repeal and the enactment of the *Safe Work Australia Act 2008*.

Background

The [Australian Safety and Compensation Council](#) (ASCC) was established by the former Government to advise on the development of policies relating to occupational health and safety and workers' compensation matters. The ASCC is an advisory body which represents the interests of governments, employers and employees.¹

The ASCC is empowered by the Australian Workplace Safety Standards Act to declare a national standard or code of practice in relation to an occupational health and safety matter.²

At the meeting of the Workplace Relations Ministers' Council in Brisbane on 23 May 2008 all of the ministers agreed to replace the ASCC with a body with tripartite representation and which will be jointly funded by the Commonwealth, states and territories. That body is Safe Work Australia (SWA).

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1. Section 3 Australian Workplace Safety Standards Act 2005.
 2. Section 6 Australian Workplace Safety Standards Act 2005.

Warning:

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With the enactment of the *Safe Work Australia Act 2008* the functions of the ASCC will, amongst other things, be carried out by Safe Work Australia.

The [Bills Digest](#) for the Safe Work Australia Bill 2008 contains further information.³

Committee consideration

At its meeting of 4 September 2008, the Selection of Bills Committee resolved not to refer the bill to a committee for formal inquiry.⁴

Financial implications

The measures outlined in the Bill will be budget neutral.⁵ However, the cost of the primary bill, the Safe Work Australia Bill 2008, should be noted.

Main provisions

The Bill contains three schedules.

Schedule 1

Item 1 of Schedule 1 repeals the Australian Workplace Safety Standards Act. The Australian Workplace Safety Standards Act empowers the ASCC to declare occupational health and safety national standards and codes of practice. With the enactment of the *Safe Work Australia Act 2008*, the functions of the ASCC will be carried out by SWA.

Schedule 2

Schedule 2 of the Bill contains consequential amendments.

Items 1 and 2 of Schedule 2 amend the *Occupational Health and Safety Act 1991* (OH&S Act). Existing subsection 70(9) of the OH&S Act contains a definition of '**advisory standard or code**'. Under that definition a national standard, or code of practice about occupational health and safety matters, is declared by the ASCC under the Australia Workplace Safety Standards Act. **Item 1** repeals the definition and inserts a new definition of '**advisory standard or code**' so that SWA declares a national standard or code of practice under the transitional provisions contained in **item 2 of Schedule 3** of this Bill.

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3. Paula Pyburne, 'Safe Work Australia Bill 2008', *Bills Digest*, no. 23, 2008–09. An electronic copy is available at: <http://www.aph.gov.au/library/pubs/bd/2008-09/09bd023.pdf>, accessed on 16 September 2008.
 4. Selection of Bills Committee, Report No. 10 of 2008, 4 September 2008.
 5. Explanatory Memorandum, p. i.

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Item 2 of Schedule 2 provides that any standard or code in existence at the time this Bill is enacted, and which remains unamended, is not to be taken as a new advisory standard merely because of the change of definition.

Items 3 and 4 amend the *Occupational Health and Safety (Maritime Industry) Act 1993* (OH&S (Maritime Industry) Act). As with the OH&S Act, existing section 109(9) of the OH&S (Maritime Industry) Act contains a definition of '**advisory standard or code**'. Under that definition a national standard, or code of practice about occupational health and safety matters, is declared by the ASCC under the Australia Workplace Safety Standards Act. **Item 3** repeals the definition and inserts a new definition of '**advisory standard or code**' in the same terms as item 1. **Item 4** of Schedule 2 is in the same terms as item 2.

Items 5-7 of Schedule 2 amend the *Safety, Rehabilitation and Compensation Act 1988* (Safety, Rehabilitation and Compensation Act). Existing paragraph 89E(1)(f) of the Safety, Rehabilitation and Compensation Act provides that the Safety, Rehabilitation and Compensation Commission (the Commission) is comprised of, amongst other things, a member who represents the ASCC. **Item 5** of Schedule 2 repeals that paragraph and inserts **new paragraph 89E(1)(f)** so that the Chief Executive Officer of SWA will be a member of the Commission.

Item 6 repeals the definition of '**prescribed staff member**' in existing subsection 89E(3) of the Safety, Rehabilitation and Compensation Act. That definition makes reference to the *National Occupational Health and Safety Commission Act 1985* which has been repealed.⁶

Existing section 89H of the Safety, Rehabilitation and Compensation Act allows a member of the Commission to appoint a deputy. **Item 7** omits the reference to a 'prescribed staff member within the meaning of section 89E' which is in existing subsection 89H(2) and substitutes a reference to a 'member of staff of Safe Work Australia referred to in subsection 59(1) of the *Safe Work Australia Act 2008*'.

The effect of the substitution is that the Chief Executive Officer of SWA is able to appoint a deputy from the staff of SWA. In the event that the Chief Executive Officer is unable to attend a meeting of the Commission, then the person who has been appointed as deputy is permitted to attend in their place, and in those circumstances is taken to be a member of the Commission.

Schedule 3

Schedule 3 of the Bill contains transitional provisions.

6. Repeal was by the National Occupational Health and Safety Commission (Repeal, Consequential and Transitional Provisions) Act 2005 which took effect from 1 January 2006.

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Item 1 of Schedule 3 provides that a national standard or code of practice that is in force under the Australian Workplace Safety Standards Act immediately before the commencement of this item is taken to be a national standard or code of practice declared by SWA in accordance with the consequential amendments in Schedule 2 of this Bill. This may include national standards and codes of practice which were declared under the (now repealed) *National Occupational Health and Safety Commission Act 1985* and which have remained unamended since that time.

Item 2 confers on SWA an additional function, separate from those listed in clause 6 of the Safe Work Australia Bill 2008. That function is to declare national standards and codes of practice relating to occupational health and safety matters. This function is currently carried out by the ASCC under sections 4 and 6 of the Australian Workplace Safety Standards Act. Importantly, **item 4** of Schedule 3 provides that SWA will cease to have that function on 1 January 2011 or on such earlier or later date that is prescribed by regulations.

Item 3 sets out the consultation requirements that must be met before SWA can declare national standards and codes of practice as follows:

- SWA must publish a notice in the Gazette, inviting comments on the proposed standard or code: **item 3(1)**
- the notice must be in the prescribed form and allow at least four weeks for comments to be received: **item 3(2)**
- in addition to publishing the notice, SWA may use other means to invite public comments: **item 3(3)**
- SWA must consider any comments made to it in deciding whether or not the proposed standard or code should be altered: **item 3(6)**.

Item 5 requires that the first draft strategic plan and operational plan are to be prepared as soon as practicable after the commencement of sections 27 and 29 of the *Safe Work Australia Act 2008*.

Item 7 empowers the Governor-General to make regulations prescribing matters necessary and convenient for the carrying out or giving effect to the terms in this Bill when it is enacted.

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