



Australian Government

**Department of Employment and
Workplace Relations**

Senate Employment, Workplace Relations and Education Legislation Committee

***Inquiry into the provisions of the OHS and SRC
Legislation Amendment Bill 2005***

**Submission by the Department of Employment and Workplace Relations
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OHS and SRC Legislation Amendment Bill 2005

OVERVIEW

1. The OHS and SRC Legislation Amendment Bill 2005 (the Bill) was introduced into the House of Representatives on 7 December 2005. The provisions of the Bill were referred by the Senate to the Senate Employment, Workplace Relations and Education Legislation Committee on 1 March 2006.
2. The Bill has the following objectives:
 - to implement the Australian Government's response to the Productivity Commission's Inquiry Report No. 27 into *National Workers' Compensation and Occupational Health and Safety Frameworks*. In that response, the Government agreed to extend coverage under the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS(CE) Act) to firms licensed to self-insure for workers' compensation under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act);
 - to ensure that all Commonwealth authorities licensed under the SRC Act have OHS(CE) Act coverage;
 - to allow Comcare to charge all Commonwealth authorities a fee for administration of the OHS(CE) Act; and
 - to validate some OHS contributions and licence fees paid in the 2002-2003 financial year.

POLICY RATIONALE

Extension of OHS(CE) Act coverage to self-insured licensees

3. The SRC Act establishes a premium-based and self-insurance based workers' compensation system for employees of the Commonwealth and certain private sector corporations. The OHS(CE) Act provides for the protection of the health and safety in the workplace of Commonwealth employees. However, as the legislation current stands, corporations that can apply for a self-insurance licence under the SRC Act are not going to be covered by the OHS(CE) Act where they are:
 - Commonwealth authorities in the process of privatisation and wish to continue their SRC Act coverage by becoming self-insurers post-privatisation;
 - former Commonwealth authorities that have left the Commonwealth scheme and operate under State/Territory schemes, but are able to return to SRC Act coverage provided they qualify for approval as self-insured licensees; and
 - corporations in competition with existing or former Commonwealth authorities.
4. One of the Productivity Commission's recommendations in its Inquiry Report No. 27 was that employers licensed to self-insure under the SRC Act should be able to elect to be covered by the Australian Government's OHS(CE) Act scheme.

5. While the Government agreed with the Commission's recommendation, it considered that OHS(CE) Act coverage for SRC Act licensees should be mandatory given the obvious benefits flowing from a single, integrated workers' compensation and occupational health and safety scheme.

6. The Government's view was that until the States had achieved national consistency in occupational health and safety regulation, SRC Act licensees operating in more than one jurisdiction should not be subject to the complexities and costs involved in complying with myriad different requirements. For the employees of these licensees, there would be benefits in consistency as well.

7. In addition, as would-be licensees voluntarily make applications to join the Commonwealth workers' compensation scheme, they are free to consider whether they are prepared to accept mandatory OHS(CE) Act coverage as a result of their licensee status.

8. The Bill will consequently provide coverage under the Commonwealth OHS(CE) Act for all corporations, Commonwealth authorities and government business enterprises (GBEs) licensed to self-insure their workers' compensation liabilities under Part VIII of the SRC Act.

9. It was the Productivity Commission's view that the integration of workers' compensation and occupational health and safety schemes would promote better coordination between these schemes and provide for improved data monitoring, feedback and reform.

10. Similarly, the Australian Government considers that the Bill will lead to improved workers' compensation and occupational health and safety outcomes for employers and employees. As indicated above, for multi-state SRC Act licensees in particular, the Bill will remove a significant impediment to business profitability and efficiency, namely, the costs of administering and complying with as many as eight separate and different State and Territory occupational health and safety requirements. Furthermore, with the integration of the Commonwealth's workers' compensation and occupational health and safety regimes, employees will no longer be treated differently merely on the basis of their geographical location.

11. Employees will have the opportunity to acquire a better understanding of their occupational health and safety rights and obligations because these will remain the same, regardless of where they work. Amendments proposed in the Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2005 will also provide employees with expanded opportunities for direct involvement in the design and supervision of the occupational health and safety programs in their workplaces. These changes will promote a closer partnership between employees and employers in the improvement of safety outcomes in their workplaces.

12. As a result of amendments made by the Government to the OHS(CE) Act in September 2004, the Commonwealth's integrated scheme includes a strong civil and criminal enforcement regime. Penalties have been increased to bring them into line with community standards. Licensees, GBEs, manufacturers, suppliers and all employees, including Commonwealth government employees, can be subject to criminal prosecution in certain circumstances. All Commonwealth employers can be subject to civil proceedings and significant financial penalties as well as other remedies such as injunctions, remedial orders and enforceable undertakings. The Commonwealth scheme's innovative and comprehensive approach gives Comcare the flexibility needed for effective enforcement.

13. As noted in the Regulation Impact Statement in the Explanatory Memorandum to the Bill, all Commonwealth authorities and licensed private sector corporations supported the

extension of coverage under the OHS(CE) Act for corporations which are licensed to self-insure.

14. At present, five licensees will benefit from the coverage amendments. The amendments will also enable the Commonwealth occupational health and safety scheme to continue to apply to Telstra post-privatisation, provided that it chooses to remain in the Commonwealth workers' compensation scheme.

OHS fees and validation of contributions

15. Before enactment of the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2002* (the SRCOLA Act), regulatory contributions were payable separately under the SRC Act and OHS(CE) Act. The SRCOLA Act rationalised these arrangements by placing provisions for regulatory contributions for both Acts in the SRC Act alone.

16. The SRC Act consequently requires Commonwealth departments, agencies and other prescribed bodies (entities); Commonwealth authorities; and self-insured licensees to pay a regulatory contribution each financial year for the Safety, Rehabilitation and Compensation Commission's (SRCC) and Comcare's costs in administering the OHS(CE) Act and SRC Act.

17. Entities and Commonwealth authorities pay a regulatory contribution as part of their workers' compensation premium under section 97D of the SRC Act. Licensees pay a regulatory contribution in their licence fee under Part VIII of the SRC Act.

18. An inadvertent consequence of the SRCOLA Act amendments has been that, because the Acts contain different definitions of "Commonwealth authority", a body which is a Commonwealth authority under the OHS(CE) Act but not under the SRC Act, can no longer be charged a regulatory contribution. The Bill addresses this anomaly by providing a legal basis in the SRC Act under which these bodies must pay the required regulatory contribution for occupational health and safety services (such as advice and assistance) provided by the SRCC and Comcare. (It should be noted that the amendment does not apply to Commonwealth authorities that are self-insured licensees because provision is already made in the SRC Act whereby they can validly be charged licence fees that include regulatory contributions.)¹

19. In addition to providing a legal basis for payment of a regulatory contribution by the Commonwealth authorities referred to in the previous paragraph, the Bill will validate payments made for regulatory services provided in the 2002-2003 financial year.

20. Finally, prior to the SRCOLA Act amendments, the SRC Act provided for several classes of self-insurance licences based on whether the applicant was a Commonwealth authority or eligible corporation² and whether the licence would include responsibility for claims management. The SRCOLA Act repealed the licensing provisions and introduced a new Part VIII into the SRC Act providing for one generic licence under which an applicant could accept liability for claims and/or claims management.

¹ See section 104A of the SRC Act.

² Section 99 of the SRC Act provides that an 'eligible corporation' means a corporation that is declared by the Minister to be an eligible corporation under section 100. Section 100 provides for the Minister in certain circumstances to declare a corporation that is a former Commonwealth authority (or about to be) or in competition with a Commonwealth authority or a former Commonwealth authority to be eligible to be granted a (self-insurance) licence.

21. Transitional provisions in the SRCOLA Act retained the old fee arrangements for a number of licensees for the duration of their licenses. The Bill will validate fees inadvertently paid at the revised rate for the 2002-2003 financial year.
22. Commentary on consequential amendments in the Bill is included in the next section.

DETAILS OF THE AMENDMENTS

23. Schedule 1 of the Bill contains the amendments dealing with extending the coverage of the OHS(CE) Act to corporations and Commonwealth authorities licensed under the SRC Act. Schedule 2 of the Bill contains the amendments dealing with occupational health and safety regulatory contributions payable under the SRC Act. The amendments are, in the main, quite technical and only the main features are summarised in this submission. The committee is referred to the Explanatory Memorandum for a more detailed discussion of the amendments.
24. In general, Part 1 of Schedule 1 amends definitions in the OHS(CE) Act so that the Act extends to non-Commonwealth licensees, their employees/contractors, and workplaces. It also ensures that all Commonwealth authorities will be covered by the OHS(CE) Act.
25. Currently the OHS(CE) Act covers employers and employees of the Commonwealth and some Commonwealth authorities only. The amendments proposed by the Bill will extend coverage to licensees under the SRC Act. Items 1 and 2 amend the long and short titles of the OHS(CE) Act to reflect the new coverage proposed by the Bill. The new short title of the Act will be the *Occupational Health and Safety Act 1991*. Item 3 amends the objects clause to reflect the new coverage proposed by the Bill.
26. The effect of section 11 of the OHS(CE) Act is that while the Commonwealth and Commonwealth authorities are not subject to criminal prosecution or liable to pay fines and penalties, their employees, GBEs and their employees can be prosecuted and may be liable to pay fines and penalties. Item 27 makes consequential changes to terminology in paragraphs 11 (4)(a) and (b) without altering the meaning of the provisions. Non-Commonwealth licensees and their employees can be prosecuted under the OHS(CE) Act and may incur fines and penalties.
27. Item 28 amends paragraph 12(1)(c) of the OHS(CE) Act to empower the SRCC to collect, interpret and report occupational health and safety information in relation to non-Commonwealth licensee employees.
28. Items 33-35 extend Comcare's investigative powers under the OHS(CE) Act to non-Commonwealth licensees.
29. Item 36 exempts non-Commonwealth licensees from Division 3 of Part 4 of the OHS(CE) Act. Division 3 of Part 4 establishes a regime for public inquiries into alleged breaches of the OHS(CE) Act that may lead to breaches being reported to the Parliament. This is not an appropriate sanction for occupational health and safety breaches by non-Commonwealth licensees as they are not required to account to the Parliament for their actions and are subject to the full range of sanctions and penalties—civil and criminal—under the OHS(CE) Act.
30. Item 40 contains transitional provisions in relation to the payment of a licence fee under the SRC Act in respect of the administration of the OHS(CE) Act by a non-Commonwealth licensee. At present, the SRC Act only allows a licensee to be charged a licence fee on commencement of a licence or on 1 July each year. In the event that the Bill commences on a day other than 1 July, this provision will enable Comcare to charge

non-Commonwealth licensees that may have already paid a licence fee in relation to workers' compensation, a fee in relation to occupational health and safety regulation for the remainder of the relevant licence period.

31. Part 2 of Schedule 1 makes a number of consequential amendments to the SRC Act and the *Social Security Act 1991* to reflect the new short title of the OHS(CE) Act.

32. The Schedule 2 amendments address an unintended consequence of the SRCOLA Act.

33. The SRCOLA Act rationalised funding arrangements so that regulatory contributions in relation to the administration of both the SRC Act and the OHS(CE) Act were payable only under the SRC Act. However, as both Acts contained slightly different definitions of "Commonwealth authority", a Commonwealth authority subject to the OHS(CE) Act could only be charged a fee in relation to the administration of that Act if it was also covered by the SRC Act. The amendments in Part 1 of Schedule 2 enable Comcare to charge all Commonwealth authorities an occupational health and safety contribution for the administration of the OHS(CE) Act. The Part 2 amendments validate payments purported to have been made under the SRC Act by some licensees and Commonwealth authorities for occupational health and safety contributions in the 2002-2003 financial year.