



# **Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006**

**No. 111, 2006**

**An Act to amend the *Occupational Health and  
Safety (Commonwealth Employment) Act 1991*, 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. 111, 2006**

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**An Act to amend the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, and for related purposes**

[Assented to 23 October 2006]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006*.

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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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	23 October 2006
2. Schedule 1	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	15 March 2007 (see F2007L00525)
3. Schedule 2	The 28th day after the day on which this Act receives the Royal Assent.	20 November 2006

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

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Occupational Health and Safety (Commonwealth Employment) Act 1991**

### **Part 1—Amendments**

#### **1 Subsection 5(1)**

Insert:

*association* means an association of employees, a principal purpose of which is the protection and promotion of the employees' interests in matters concerning their employment.

#### **2 Subsection 5(1)**

Insert:

*employee representative* means:

- (a) in relation to an employee of an employer—a registered organisation of employees, or an association, of which the employee is a member, being an employee who is qualified to be such a member by virtue of the work the employee performs as an employee of the employer; or
- (b) in relation to a designated work group—a registered organisation of employees, or an association, of which an employee included in the group is a member, being an employee who is qualified to be such a member by virtue of the work the employee performs as an employee included in the group.

#### **3 Subsection 5(1)**

Insert:

*health and safety management arrangements* means the health and safety management arrangements referred to in paragraph 16(2)(d).

#### **4 Subsection 5(1) (definition of *involved union*)**

Repeal the definition.

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**5 Subsection 5(1)**

Insert:

*registered organisation* means:

- (a) an organisation within the meaning of Schedule 1B to the *Workplace Relations Act 1996*; or
- (b) a body that is declared by the regulations to be a registered organisation for the purposes of this Act.

**6 Subsection 5(1) (definition of *registered union*)**

Repeal the definition.

**7 At the end of paragraph 12(1)(b)**

Add “(including the matters that should be covered by health and safety management arrangements)”.

**8 At the end of subsection 12(1)**

Add:

- ; (h) to issue any directions that the Commission considers to be appropriate to employers on the conduct of elections under section 25A for health and safety representatives.

**9 Paragraph 16(2)(d)**

Repeal the paragraph, substitute:

- (d) to develop, in consultation with the employees of the employer, written health and safety management arrangements that will:
  - (i) enable effective cooperation between the employer and the employees in promoting and developing measures to ensure the employees’ health, safety and welfare at work; and
  - (ii) provide adequate mechanisms for informing the employees about the arrangements; and
  - (iii) provide adequate mechanisms for reviewing the effectiveness of the arrangements; and
  - (iv) provide adequate mechanisms for the variation of the arrangements in consultation with the employees; and
  - (v) provide for a dispute resolution mechanism to deal with disputes arising in the course of consultations held

under this Act (other than section 24) between the employer and the employees; and

- (vi) in the case of an employer who is required under section 34 to establish a health and safety committee—provide for the manner in which the health and safety committee is to be constituted and to operate; and

Note: The establishment of health and safety committees is dealt with in section 34.

## **10 After subsection 16(2)**

Insert:

- (2A) An instrument setting out health and safety arrangements developed under subsection (1) is not a legislative instrument.

## **11 Subsection 16(3)**

Repeal the subsection, substitute:

- (3) Without limiting the matters that may be covered by health and safety management arrangements developed by an employer as mentioned in paragraph (2)(d), such arrangements may provide for the following:
  - (a) a written occupational health and safety policy in respect of the employer and the employees of the employer;
  - (b) arrangements relating to risk management;
  - (c) the making of agreements between the employer, the employees of the employer and their employee representatives in relation to:
    - (i) continuing consultation, between the employer, the employees of the employer and their employee representatives on occupational health and safety matters; and
    - (ii) such other matters (if any) as are agreed between the employer, the employees of the employer and their employee representatives;
  - (d) training in relation to occupational health and safety.

## **12 After section 16**

Insert:

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**16A Development of health and safety management arrangements**

- (1) In developing or varying health and safety management arrangements, an employer must have regard to any advice of the Commission on the matter (whether the advice has been given to that employer, or to employers generally).
- (2) An employee of an employer who is holding consultations to develop or vary health and safety management arrangements may be represented in the consultations by one of the following if the employee so requests:
  - (a) another employee of the employer;
  - (b) an employee representative in relation to the employee.
- (3) To avoid doubt, if an employee of an employer is represented under subsection (2), this does not prevent the employee, an employee mentioned in paragraph (2)(a) or any other employee of the employer from being involved in the consultations.

**16B Certificate evidencing employee representative's entitlement to be involved in consultations**

- (1) If the Chief Executive Officer of Comcare is satisfied, on application by an employee representative, that an employee in relation to the employee representative has requested:
  - (a) that the employee representative represent the employee in consultations held by an employer in the course of developing or varying health and safety management arrangements; and
  - (b) that the identity of the employee not be revealed;the Chief Executive Officer may issue a certificate to the effect that the employee representative is entitled to represent the employee in such consultations.
- (2) The application must be in the prescribed form.
- (3) The certificate must not identify any of the employees concerned. However, it must identify the employee representative, the employer and the proposed consultations.
- (4) An employee representative in relation to whom a certificate has been issued must not reveal the identity of an employee whom the

employee representative is authorised by the certificate to represent.

- (5) The certificate ceases to have effect at the earlier of:
  - (a) the time when the Chief Executive Officer of Comcare considers that each of the employees who requested to be represented by the employee representative in consultations identified by the certificate has requested that the certificate cease to have effect; and
  - (b) the end of the 12 month period that started when the certificate was issued.
- (6) If a certificate ceases to have effect under paragraph (5)(a), the Chief Executive Officer of Comcare must notify the employee representative, and the employer, in writing.
- (7) A notification under subsection (6) is not a legislative instrument.
- (8) A certificate is, for all purposes of this Act, prima facie evidence of the matters stated in it.
- (9) The Chief Executive Officer of Comcare may delegate to the Deputy Chief Executive Officer of Comcare his or her power under subsection (1). The delegation must be in writing.
- (10) Nothing in this section implies that an employee representative in respect of whom a certificate has not been issued cannot represent employees in consultations with the employer of those employees.

### **13 Subsection 20(1)**

Repeal the subsection (including the note), substitute:

- (1) A person who erects or installs any plant in a workplace for the use of employees at work must take all reasonably practicable steps to ensure that the plant is not erected or installed in such a manner that:
  - (a) the plant is unsafe for, or constitutes a risk to the health of, employees at the workplace where the plant is erected or installed; or
  - (b) the process of erection or installation is unsafe for, or constitutes a risk to the health of, employees at the workplace where the plant is erected or installed.

Note: A person who breaches subsection (1) may be subject to civil action or a criminal prosecution (see Schedule 2).

**14 Paragraph 21(2)(a)**

Repeal the paragraph, substitute:

- (a) agreed on between the employer and employees (or their representatives under paragraph 16A(2)(a) or (b)) of the employer; or

**15 Subsections 24(1) to (3)**

Repeal the subsections, substitute:

- (1) An employee may request his or her employer to:
    - (a) establish designated work groups in respect of employees of the employer; or
    - (b) vary designated work groups that have already been established.
  - (1A) An employee representative in respect of an employee of an employer may, if requested by the employee, request the employer to:
    - (a) establish designated work groups in respect of employees of the employer; or
    - (b) vary designated work groups that have already been established.
  - (2) The employer must, within 14 days after receiving a request under subsection (1) or (1A), enter into consultations to establish or vary (as the case requires) designated work groups with:
    - (a) the employer's employees; and
    - (b) if an employee of the employer requests that the employer enter into consultations with an employee representative in relation to the employee—that employee representative.
  - (3) If an employer believes that designated work groups should be varied, the employer may at any time enter into consultations about the variation with:
    - (a) the health and safety representative of each designated work group proposed to be varied; and
    - (b) if an employee in a designated work group proposed to be varied requests that the employer also enter into such
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consultations with an employee representative in relation to the designated work group—that employee representative.

## **16 After section 24**

Insert:

### **24A Consultations on designated work groups are health and safety management arrangement consultations**

For the purposes of this Act, consultations under section 24 are taken to be consultations to develop health and safety management arrangements. However, for the purposes of developing health and safety management arrangements as described in paragraph 16(2)(d), it is not sufficient for an employer merely to hold consultations under section 24.

### **24B List of designated work groups**

- (1) An employer must:
  - (a) prepare and keep up to date a written list of all designated work groups comprising employees performing work for the employer; and
  - (b) ensure that the list is available for inspection by investigators and the employees at all reasonable times.
- (2) The list must describe the categories of employees included in each designated work group.
- (3) The list is not a legislative instrument.

## **17 Subsections 25(4) to (10)**

Repeal the subsections, substitute:

- (4) If a person is selected as the health and safety representative for a designated work group under paragraph (3)(a), the person must, by written notice, inform the employer of the employees in the group of this fact as soon as practicable after the selection is made.
- (5) A notice under subsection (4) is not a legislative instrument.

Note: The heading to section 25 is replaced by the heading “**Selection of health and safety representatives**”.

## **18 After section 25**

Insert:

### **25A Election of health and safety representatives**

- (1) If:
    - (a) there is a vacancy in the office of health and safety representative for a designated work group; and
    - (b) within a reasonable time after the vacancy occurs, a person has not been selected under paragraph 25(3)(a);the employer of the employees in the designated work group must invite nominations from all employees in the group for election as the health and safety representative of the group.
  - (2) If the office of health and safety representative is vacant and the employer has not invited nominations within a further reasonable time that is no later than 6 months after the vacancy occurred, the Commission may direct the employer in writing to do so.
  - (3) A direction by the Commission under subsection (2) is not a legislative instrument.
  - (4) If there is more than one candidate for election at the close of the nomination period, the employer must conduct, or arrange for the conduct of, an election at the employer's expense.
  - (5) An election conducted or arranged to be conducted under subsection (4) must be conducted in accordance with regulations made for the purposes of this subsection if this is requested by the lesser of:
    - (a) 100 employees normally in the designated work group; or
    - (b) a majority of the employees normally in the designated work group.
  - (6) If there is only one candidate for election at the close of the nomination period, that person is taken to have been elected.
  - (7) A person cannot be a candidate in the election if he or she is disqualified under section 32.
  - (8) All the employees in the designated work group are entitled to vote in the election.
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- (9) An employer conducting or arranging for the conduct of an election under this section must comply with any relevant directions issued by the Commission.

### **25B List of health and safety representatives**

- (1) An employer must:
- (a) prepare and keep up to date a written list of all the health and safety representatives of designated work groups comprising employees performing work for the employer; and
  - (b) ensure that the list is available for inspection by investigators and the employees at all reasonable times.
- (2) The list is not a legislative instrument.

### **25C Employees must be notified of selection etc. of health and safety representative**

- (1) The employer of employees in a designated work group must, by written instrument:
- (a) notify those employees of a vacancy in the office of health and safety representative for the designated work group within a reasonable time after the vacancy arises; and
  - (b) notify those employees of the name of any person selected (whether under paragraph 25(3)(a) or 25(3)(b)) as health and safety representative for the designated work group within a reasonable time after the selection is made.
- (2) A notification under subsection (1) is not a legislative instrument.

## **19 Section 26**

Repeal the section, substitute:

## **26 Term of office**

- (1) A health and safety representative for a designated work group holds office for the period specified in the health and safety management arrangements applying to the employees in the designated work group, but is eligible to be selected for further terms of office.

(2) If a period is not specified in health and safety management arrangements applying to the designated work group, the term of office is 2 years.

(3) This section is subject to sections 26A and 31.

## **26A Casual vacancy**

If a person (the *retiring representative*) ceases to hold office as a health and safety representative before the end of the person's term of office, the person selected to fill the vacancy holds office:

- (a) if the vacancy occurred more than 6 months before the retiring representative's term of office ended—for the remainder of the retiring representative's term; and
- (b) if the vacancy occurred within the period of 6 months before the retiring representative's term of office ended—for the remainder of the retiring representative's term and for the next term of office.

## **20 Subsection 29(8)**

Omit "the Commission", substitute "Comcare".

## **21 After paragraph 31(1)(b)**

Insert:

- (ba) the designated work group is varied under subsection 24(6) and the variation results in a change to the membership of the group; or

## **22 Subsections 31(2) to (4)**

Repeal the subsections, substitute:

- (2) A person may resign as the health and safety representative for a designated work group by notice in writing delivered to the employer of the employees in the group.
- (3) If a person resigns as the health and safety representative for a designated work group, the person must notify the employees included in the group of the resignation.

## **23 Subsection 32(1)**

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Omit “or by an involved union”, substitute “or, at the request of an employee in the designated work group, by an employee representative”.

## **24 After subsection 33(2)**

Insert:

(2A) If an election for a deputy health and safety representative is to be held, the employer of the employees in the designated work group must invite nominations for the election from all the employees in the designated work group.

(2B) Subsections 25A(3) to (8) apply to the election.

Note: Subsections 25A(1) and (2) do not apply in relation to deputy health and safety representatives because the selection of a deputy is optional, not required, for each designated work group.

(2C) The following provisions apply to a deputy health and safety representative in the same way as they apply to a health and safety representative:

- (a) section 31 (resignation etc. of health and safety representative);
- (b) section 32 (disqualification of health and safety representatives).

## **25 Section 34**

Repeal the section, substitute:

## **34 Health and safety committees**

- (1) An employer must, by written instrument, establish a health and safety committee in respect of the employer’s employees if the number of the employer’s employees is normally not less than 50.
  - (2) An employer must also, by written instrument, establish a health and safety committee in respect of the employer’s employees in a particular workplace if:
    - (a) the number of the employer’s employees in the workplace is normally not less than 50; and
    - (b) either:
      - (i) a health and safety representative of a designated work group comprising employees performing work for the
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employer in the workplace gives a written request to the employer asking the employer to establish such a committee; or

- (ii) a majority of the employees in the workplace give a written request to the employer asking the employer to establish such a committee.

- (3) Subject to subsection (4), a health and safety committee established under subsection (1) or (2) is to be constituted and to operate in accordance with the health and safety management arrangements applying to the employer's employees.

Note: Subparagraph 16(2)(d)(vi) requires health and safety management arrangements to provide for the manner in which the health and safety committee is to be constituted and to operate.

- (4) The number of members of a health and safety committee chosen by the employer to represent the interests of the employer must not exceed the number of members chosen by the employees to represent the interests of the employees.
- (5) Nothing in this section prevents an employer from establishing, in consultation with its employees or any other persons, by written instrument:
- (a) subcommittees of a health and safety committee; or
  - (b) committees concerned with occupational health and safety in relation to undertakings carried on by the employer; or
  - (c) other committees concerned, in whole or in part, with occupational health and safety.
- (6) An instrument establishing a health and safety committee under subsection (1) or (2), or a subcommittee or other committee under subsection (5), is not a legislative instrument.

## **26 Subsection 37(3)**

Omit "the Commission", substitute "Comcare".

## **27 Section 39**

Repeal the section, substitute:

### **38A Comcare may advise employers etc.**

Comcare may advise employers, employees or contractors, either on its own initiative or on request, on occupational health and safety matters affecting those employers, employees or contractors.

### **39 Referral of persons seeking advice to experts**

If:

- (a) Comcare has been requested to advise an employer, employee or contractor about an occupational health and safety matter; and
- (b) Comcare considers that a person other than a member of the staff of, or a consultant to, Comcare has special knowledge or experience relevant to the request;

Comcare may refer the employer, employee or contractor to the person.

### **28 Subsection 41(2)**

Omit “The Commission”, substitute “Comcare or the Commission”.

### **29 Subsection 41(2)**

Omit all the words after “must”, substitute:

conduct an investigation accordingly, unless:

- (d) in the case of a direction given by Comcare—Comcare or the Commission revokes the direction; or
- (e) in the case of a direction given by the Commission—the Commission revokes the direction.

### **30 Subsection 41(3)**

Omit “The Commission”, substitute “Comcare or the Commission”.

### **31 Subsection 41(3)**

Omit all the words after “must”, substitute:

conduct an investigation accordingly, unless:

- (a) in the case of a direction given by Comcare—Comcare or the Commission revokes the direction; or
- (b) in the case of a direction given by the Commission—the Commission revokes the direction.

**32 Subsection 41(4)**

Omit “Before giving a direction under subsection (3), the Commission”, substitute “Before Comcare or the Commission gives a direction under subsection (3), the body about to give the direction”.

**33 Subsection 41(5)**

Repeal the subsection, substitute:

- (5) An employee representative in relation to an employee may, if requested by the employee, make a request to Comcare or to the Commission that an investigation be conducted at a workplace at which the employee performs work for an employer.

**34 At the end of section 43**

Add:

- (3) If a person gives an investigator documents or copies of documents under subsection (1), the investigator must return them to the person as soon as practicable after:
- (a) they are no longer needed in connection with the conduct of the investigation; and
  - (b) either:
    - (i) a decision is made by the investigator not to use the documents or copies in evidence for proceedings for an offence against this Act or the regulations; or
    - (ii) the documents or copies have been used in such proceedings.

**35 Subsection 47(7)**

Repeal the subsection.

**36 Paragraph 48(1)(k)**

Repeal the paragraph.

**37 Before paragraph 48(1)(m)**

Insert:

- (l) an employee representative in relation to the designated work group that includes an employee affected by the decision who has requested the employee representative to make the appeal; or
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### **38 Paragraph 48(1)(m)**

Repeal the paragraph, substitute:

- (m) if there is no such designated work group and an employee affected by the decision has requested an employee representative in relation to the employee to make the appeal—that employee representative; or

### **39 Paragraphs 48(2)(d) and (e)**

Repeal the paragraphs, substitute:

- (d) if an employee affected by the decision has requested an employee representative in relation to the designated work group to make the appeal—that employee representative; or
- (e) if there is no such designated work group and an employee affected by the decision has requested an employee representative in relation to the employee to make the appeal—that employee representative.

### **40 Section 50**

Repeal the section, substitute:

### **50 Notices not to be tampered with or removed**

A person must not:

- (a) tamper with any notice, or copy of a notice, that has been displayed under subsection 44(3), 45(3), 45(8), 46(9), 46(12), 47(8) or 47(11) while that notice is so displayed; or
- (b) remove any notice, or copy of a notice, that has been so displayed:
  - (i) in the case of a notice displayed under subsection 44(3)—until the plant or thing to which the notice relates is returned to the workplace from which it was removed; or
  - (ii) in the case of a notice displayed under subsection 45(3), 45(8), 46(9), 46(12), 47(8) or 47(11)—before the notice, or direction to which the notice relates, as the case requires, has expired or been revoked or a new notice issued following the variation of the notice or direction.

Note: A person who breaches section 50 may be subject to a criminal prosecution (see Schedule 2).

**41 Paragraphs 67C(a) and (c)**

Omit “*Commonwealth Employees’ Rehabilitation and Compensation Act 1988*”, substitute “*Safety, Rehabilitation and Compensation Act 1988*”.

**42 Subsection 68(1)**

Omit “, and such a report concerning,”.

Note: The heading to section 68 is altered by omitting “**and reporting**”.

**43 Subsection 68(2)**

Repeal the subsection, substitute:

- (2) Without limiting the provision that may be made by regulations made for the purposes of this section, the regulations (not being regulations made for the purpose of paragraph (1)(b)) may include provisions relating to:
- (a) the time within which notice of an accident or dangerous occurrence must be given; and
  - (b) the manner in which the notice must be given; and
  - (c) the form of the notice.

**44 Subsection 70(7)**

Omit “the offices of the Commission”, substitute “each of the offices of Comcare”.

**45 Paragraph 74(1)(c)**

Repeal the paragraph, substitute:

- (c) the health and safety management arrangements of the Entity or authority;

**46 Paragraph 74(1)(d)**

Omit “measures”, substitute “initiatives”.

**47 After paragraph 74(1)(d)**

Insert:

- (da) health and safety outcomes (including the impact on injury rates of employees and contractors of the Entity or authority) achieved as a result of initiatives mentioned under paragraph (d) or previous initiatives;
-

#### **48 Paragraph 74(1)(f)**

Repeal the paragraph, substitute:

- (f) any investigations conducted during the year that relate to undertakings carried on by the employer, including details of all notices given to the employer under section 29, 46 or 47 during the year;

#### **49 Paragraph 74(1)(g)**

Repeal the paragraph, substitute:

- (g) such other matters as are required by guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.

#### **50 Subsections 77(1) and (2)**

Repeal the subsections, substitute:

- (1) Proceedings for a breach of this Act or the regulations may be instituted by Comcare or by an investigator.
- (2) A health and safety representative for a designated work group may request Comcare to institute proceedings for a breach of this Act or the regulations in relation to the occurrence of an act or omission if:
  - (a) a period of 6 months has elapsed since the act or omission occurred; and
  - (b) the health and safety representative considers that the occurrence of the act or omission constitutes a breach of this Act or the regulations; and
  - (c) proceedings in respect of the breach have not been instituted.
- (2A) An employee representative in relation to a designated work group may request Comcare to institute proceedings for a breach of this Act or the regulations in relation to the occurrence of an act or omission if:
  - (a) a period of 6 months has elapsed since the act or omission occurred; and
  - (b) the employee representative considers that the occurrence of the act or omission constitutes a breach of this Act or the regulations; and

- (c) proceedings in respect of the breach have not been instituted;  
and
- (d) an employee included in the group requests the employee representative to request Comcare to institute the proceedings.

(2B) A request under subsection (2) or (2A) must be in writing.

**51 Subsection 77(3)**

After “subsection (2)”, insert “or (2A)”.

**52 Subsection 77(3)**

Omit “involved union”, substitute “employee representative”.

**53 Paragraph 82(1)(c)**

Omit “25”, substitute “25A”.

**54 Paragraphs 82(1)(d) and (e)**

Repeal the paragraphs.

**55 Schedule 1**

Repeal the Schedule, substitute:

**Schedule 1—Government business enterprises**

Note: See section 5 (definition of *Government business enterprise*).

Australian Industry Development Corporation  
Australian Government Solicitor  
Australian Postal Corporation  
Defence Housing Authority

## **Part 2—Transitional, application and saving provisions**

### **Division 1—Provisions relating to health and safety management arrangements**

#### **56 Definitions**

In this Part:

*commencement* means the time at which item 9 of this Schedule commences.

*OHS (CE) Act* means the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

#### **57 Health and safety management arrangements**

- (1) This item applies for the period of 18 months after commencement.
- (2) An employer is not to be taken to breach subsection 16(1) of the OHS (CE) Act as in force after commencement by reason only of the employer having failed to develop health and safety management arrangements under paragraph 16(2)(d) of that Act.

#### **58 Occupational health and safety policies**

- (1) The amendment made by item 9 of this Schedule is not to be taken to affect the operation, after commencement, of an occupational health and safety policy that:
  - (a) was developed under paragraph 16(2)(d) of the OHS (CE) Act as in force before commencement; and
  - (b) applied to employees of an employer immediately before commencement.
- (2) However, the policy ceases to apply to the employees once health and safety management arrangements have been developed by the employer under paragraph 16(2)(d) of the OHS (CE) Act as in force after commencement, unless those arrangements provide for the policy to continue to apply.

#### **59 Agreements between employers and involved unions**

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- (1) The amendment made by item 11 of this Schedule is not to be taken to affect the operation, after commencement, of an agreement of the kind referred to in subsection 16(3) of the OHS (CE) Act as in force immediately before commencement.
- (2) However, the agreement ceases to have effect if the occupational health and safety policy under which it is made ceases to apply.
- (3) The amendment made by item 14 of this Schedule is not to be taken to affect the operation, after commencement, of an agreement of the kind referred to in paragraph 21(2)(a) of the OHS (CE) Act as in force immediately before commencement.

## **Division 2—Provisions relating to designated work groups and health and safety representatives**

### **60 Definitions**

In this Part:

*commencement* means the time at which item 15 of this Schedule commences.

*OHS (CE) Act* means the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

### **61 Designated work groups**

A designated work group in existence immediately before commencement continues in existence after commencement as if it had been established under section 24 of the OHS (CE) Act as in force after commencement.

### **62 Consultations**

- (1) This item applies for the period of 3 months after commencement.
- (2) If consultations under section 24 of the OHS (CE) Act had begun but had not been completed before commencement, the consultations are to be completed as if the amendment made by item 15 of this Schedule had not been made.

### **63 Health and safety representative**

A person who was the health and safety representative for a designated work group immediately before commencement continues to hold office after commencement subject to the OHS (CE) Act as in force after commencement.

#### **64 Elections**

- (1) This item applies for the period of 3 months after commencement.
- (2) If, immediately before commencement, an election for a health and safety representative was being conducted but had not been completed, the election is to be completed as if the amendments made by this Schedule had not been made.

#### **65 Applications under section 32**

If an application under section 32 of the OHS (CE) Act had been made but not determined before commencement, the application is to be determined as though the amendment made by item 23 of this Schedule had not been made.

#### **66 Health and safety committees**

- (1) If a health and safety committee was in existence immediately before commencement, it continues in existence after commencement as if the amendments made by items 25 and 54 of this Schedule had not been made.
- (2) A committee continued in existence under subitem (1) continues in existence until the earlier of the following times:
  - (a) the time of the replacement of the committee by a committee established under section 34 of the OHS (CE) Act as in force after commencement;
  - (b) the end of the period of 6 months after commencement.
- (3) An employer is not to be taken to breach section 34 of the OHS (CE) Act, as amended by item 25 of this Schedule, in respect of the employer's employees if a committee continues in existence under this section in respect of those employees.

## **Schedule 2—Consequential amendments of other Acts**

### ***Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001***

#### **1 Subsection 2(3)**

Repeal the subsection.

#### **2 Schedule 1 (Act heading after item 88)**

Repeal the heading.

#### **3 Items 89 to 132 of Schedule 1**

Repeal the items.

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*[Minister's second reading speech made in—  
House of Representatives on 23 June 2005  
Senate on 5 September 2005]*

(100/05)

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