SAFE WORK AUSTRALIA (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS)
BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment and Workplace Relations, the Honourable Julia Gillard MP)
SAFE WORK AUSTRALIA (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2008

OUTLINE

The Safe Work Australia (Consequential and Transitional Provisions) Bill 2008 is part of a package of legislation which implements the Australian Government’s decision to replace the Australian Safety and Compensation Council (ASCC).

The Bill will repeal the Australian Workplace Safety Standards Act 2005 and will deal with consequential and transitional matters arising from that repeal and from the enactment of the Safe Work Australia Act 2008.

FINANCIAL IMPACT STATEMENT

The proposed amendments are budget-neutral.
NOTES ON CLAUSES

Clause 1 – Short title

1. This clause provides for the Bill, when passed, to be cited as the Safe Work Australia (Consequential and Transitional Provisions) Act 2008.

Clause 2 – Commencement

2. This clause specifies when the various provisions of the proposed Act are to commence. Sections 1 to 3 and anything in the Act not covered by the table in clause 2 commence on Royal Assent. Schedules 1 to 3 commence on the same day as section 5 of the Safe Work Australia Act 2008 commences. Section 5 of that Act establishes Safe Work Australia and will commence on Proclamation or, 6 months after the day on which that Act receives the Royal Assent, whichever occurs first.

Clause 3 – Schedule(s)

3. This clause provides that the substantive measures are contained in Schedules to the Bill.
SCHEDULE 1 – MAIN AMENDMENTS

Australian Workplace Safety Standards Act 2005

Item 1 – The whole of the Act

4. This item repeals the Australian Workplace Safety Standards Act 2005. The effect of this repeal is to abolish the framework provided by that Act for the declaration of occupational health and safety (OHS) national standards and codes of practice by the Australian Safety and Compensation Council (ASCC). The ASCC will be replaced by Safe Work Australia (SWA), a body established under the Safe Work Australia Act 2008. SWA’s functions will include the declaration of national standards and codes of practice relating to OHS on an interim basis (see items 2-4 of Schedule 3).
Schedule 2 – Consequential Amendments

SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS


Occupational Health and Safety Act 1991

Item 1 – Subsection 70(9) (definition of advisory standard or code)

6. This item substitutes a new definition of ‘advisory standard or code’ to mean a national standard, or code of practice, that is declared by SWA under item 2 of Schedule 3 to the Safe Work Australia (Consequential and Transitional Provisions) Act 2008. The previous definition referred to a national standard or code of practice that had been declared by the ASCC.

Item 2 – Application of item 1

7. This item makes clear that a pre-existing advisory standard or code, that remains unamended, is not to be taken to be a new advisory standard or code merely because of the change in definition. The effect of this provision is that these advisory standards and codes do not need to be readopted by the Safety, Rehabilitation and Compensation Commission.

Occupational Health and Safety (Maritime Industry) Act 1993

Item 3 – Subsection 109(9) (definition of advisory standard or code)

8. Item 3 is similar to item 1. It substitutes a new definition of ‘advisory standard or code’.

Item 4 – Application of item 3

9. Item 4 is similar to item 2. The effect of this provision is that these advisory standards and codes do not need to be readopted by the Seafarers Safety, Rehabilitation and Compensation Authority.
Safety, Rehabilitation and Compensation Act 1988

Item 5 – Paragraph 89E(1)(f)

10. Section 89E of the Safety, Rehabilitation and Compensation Act 1988 (SRC Act) provides for the constitution of the Safety, Rehabilitation and Compensation Commission (the Commission). Paragraph 89E(1)(f) currently provides for a member who, in the Minister’s opinion, represents the ASCC, to be a member of the Commission. This item substitutes a new paragraph that provides for the Chief Executive Officer of SWA to be a member of the Commission.

Item 6 – Paragraph 89E(3)

11. This item repeals the definition of ‘prescribed staff member’ in subsection 89E(3) of the SRC Act. This provision is otiose following the repeal of the National Occupational Health and Safety Commission Act 1985 (NOHSC Act).

Item 7 – Paragraph 89H(2)

12. This item amends subsection 89H(2) of the SRC Act as a consequence of the amendment made by item 6. The effect of the amendment is to permit a staff member engaged by SWA under the Public Service Act 1999 to be appointed as a deputy of the Chief Executive Officer of SWA as a member of the Commission.
SCHEDULE 3 – TRANSITIONAL PROVISIONS

Item 1 – Transfer of national standards and codes of practice

13. This item provides that a national standard or code of practice that is in force under the Australian Workplace Safety Standards Act 2005 immediately before the commencement of this item, is taken, on and after that commencement, to be a national standard or code of practice declared by SWA under item 2 of this Schedule.


Item 2 – Function and power to declare national standards and codes of practice

15. This item sets out the functions and powers of SWA to declare national standards and codes of practice relating to OHS matters. SWA will perform this function on an interim basis only: see item 4. This item also sets out certain procedural requirements relating to the determination of national standards and codes of practice. These include consultation and publication requirements. Item 3 deals with the consultation process.

16. Sub-item 2(6) also specifies that a national standard or code of practice is of an advisory character only and not a legislative instrument. Separate legislative action by Commonwealth, State and Territory governments is required to implement the standards and codes of practice within their jurisdiction. This provision is merely declaratory of the law and is included to assist readers. It does not amount to an exemption from the Legislative Instruments Act 2003.

Item 3 – Steps preparatory to declaring national standards and codes of practice

17. This item sets out the consultation requirements that must be met before SWA can declare national standards and codes of practice.

18. Sub-item 3(1) requires SWA to publish a notice in the Gazette inviting public comments on a proposed standard or code.

19. Sub-item 3(2) specifies the requirements to be contained within the notice. People must be given at least 4 weeks from the date of the notice in which to provide comment.
20. Sub-items 3(3) to (5) set out an additional mechanism by which SWA may invite further public comment on a proposed standard or code. Where it does so, sub-item 3(4) requires SWA to notify persons who had previously made comments and provide them with an opportunity to revise their comments.

21. Sub-item 3(6) requires SWA to consider any comments made on a proposed standard or code and gives SWA the discretion to alter or revise the proposed standard or code.

Item 4 – Cessation of function and power to declare national standards and codes of practice

22. This item provides that SWA’s function and powers to declare national standards and codes of practice as provided by items 2 and 3 of this Schedule will cease on and from 1 January 2011, unless regulations prescribe an earlier or later date.

23. However, a national standard or code of practice declared by SWA under item 2 of this Schedule that is in force immediately before the cessation date continues in force on and after the cessation date.

Item 5 – First plans of Safe Work Australia

24. Item 5 requires SWA to prepare the first strategic and first operational plan as soon as practicable after the commencement of sections 27 and 29 of the Safe Work Australia Act 2008.

Item 6 – Requirement for meetings of Safe Work Australia in the first financial year

25. Paragraph 34(2)(b) of the Safe Work Australia Act 2008 will require the Chair to convene at least 3 meetings each financial year. Item 6 provides that if the Act does not commence on the first day of a financial year, that requirement will not apply in relation to the first financial year.

Item 7 – Regulations

26. This item enables the Governor-General to make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act. This includes regulations prescribing matters of a transitional nature relating to the amendments or repeals made by this Act or the enactment of this Act or the Safe Work Australia Act 2008.