



# **Safe Work Australia (Consequential and Transitional Provisions) Act 2008**

**No. 157, 2008**

**An Act to deal with transitional and consequential matters in connection with the *Safe Work Australia Act 2008*, and for related purposes**

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



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**An Act to deal with transitional and consequential matters in connection with the *Safe Work Australia Act 2008*, and for related purposes**

[Assented to 18 December 2008]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Safe Work Australia (Consequential and Transitional Provisions) Act 2008*.

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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.	18 December 2008
2. Schedules 1 to 3	At the same time as section 5 of the <i>Safe Work Australia Act 2008</i> commences.	1 November 2009

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Repeal of the Australian Workplace Safety Standards Act 2005**

### *Australian Workplace Safety Standards Act 2005*

#### **1 The whole of the Act**

Repeal the Act.

## Schedule 2—Consequential amendments

### *Occupational Health and Safety Act 1991*

#### **1 Subsection 70(9) (definition of *advisory standard or code*)**

Repeal the definition, substitute:

*advisory standard or code* means a national standard, or a code of practice, that is declared by Safe Work Australia under item 2 of Schedule 3 to the *Safe Work Australia (Consequential and Transitional Provisions) Act 2008*.

#### **2 Application of item 1**

The amendment made by item 1 of this Schedule does not apply to a standard or code:

- (a) that is taken, because of item 1 of Schedule 3, to be a standard or code declared by Safe Work Australia; and
- (b) that has not been amended since it was first required to be so taken.

### *Occupational Health and Safety (Maritime Industry) Act 1993*

#### **3 Subsection 109(9) (definition of *advisory standard or code*)**

Repeal the definition, substitute:

*advisory standard or code* means a national standard, or a code of practice, that is declared by Safe Work Australia under item 2 of Schedule 3 to the *Safe Work Australia (Consequential and Transitional Provisions) Act 2008*.

#### **4 Application of item 3**

The amendment made by item 3 of this Schedule does not apply to a standard or code:

- (a) that is taken, because of item 1 of Schedule 3, to be a standard or code declared by Safe Work Australia; and
- (b) that has not been amended since it was first required to be so taken.



***Safety, Rehabilitation and Compensation Act 1988***

**5 Paragraph 89E(1)(f)**

Repeal the paragraph, substitute:

(f) the Chief Executive Officer of Safe Work Australia;

**6 Subsection 89E(3)**

Repeal the subsection.

**7 Subsection 89H(2)**

Omit “prescribed staff member within the meaning of section 89E”, substitute “member of the staff of Safe Work Australia referred to in subsection 59(1) of the *Safe Work Australia Act 2008*”.

## Schedule 3—Transitional provisions

### 1 Transfer of national standards and codes of practice

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 Safe Work Australia under item 2 of this Schedule.

### 2 Function and power to declare national standards and codes of practice

- (1) It is a function of Safe Work Australia to declare national standards and codes of practice relating to occupational health and safety matters.
- (2) Safe Work Australia may, by written instrument, declare a national standard or code of practice in relation to an occupational health and safety matter.
- (3) Before declaring a national standard or code of practice, Safe Work Australia must consult in accordance with item 3 of this Schedule.
- (4) As soon as practicable after Safe Work Australia declares a national standard or code of practice, it must publish in the *Gazette*:
  - (a) the title and objective of the standard or code; and
  - (b) information as to how people may obtain a copy of the standard or code.
- (5) Safe Work Australia must, as soon as practicable after declaring a national standard or code of practice, give a copy of the standard or code to the Minister.
- (6) A national standard or code of practice is an instrument of an advisory character and is not a legislative instrument.

Note: Even though national standards and codes of practice are advisory in character, they may be adopted and given legal effect to by a law, or by an award or instrument made under a law.

### 3 Steps preparatory to declaring national standards and codes of practice

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*Gazettal notice*

- (1) Before declaring a national standard or code of practice under item 2 of this Schedule, Safe Work Australia must publish a notice in the *Gazette* inviting people to make comments on the proposed standard or code.
- (2) The notice must:
  - (a) set out the title and objective of the proposed standard or code; and
  - (b) set out information as to how people may obtain a copy of the proposed standard or code; and
  - (c) invite people to make comments on the proposed standard or code; and
  - (d) specify the date by which comments must be received, which must be at least 4 weeks after the notice is published; and
  - (e) specify the address to which those comments must be sent.

*Other invitations for comment*

- (3) In addition to the notice under subitem (1), Safe Work Australia may use other means to invite a person, or people generally, to make comments on the proposed standard or code. The invitation must:
  - (a) specify the date by which comments must be received, which must be at least 4 weeks after the date of the invitation; and
  - (b) specify the address to which those comments must be sent.
- (4) If Safe Work Australia gives an invitation under subitem (3), Safe Work Australia must:
  - (a) notify each person who, before the invitation, has already made comments on the proposed standard or code of that invitation; and
  - (b) give the person the opportunity to revise the person's comments within 4 weeks after the date of the notice.
- (5) However, Safe Work Australia is only required to give one notice to the person in relation to the proposed standard or code.

*Consideration of comments*

- (6) Safe Work Australia must consider any comments made to it and, if it thinks fit, may alter the proposed standard or code.

#### **4 Cessation of function and power to declare national standards and codes of practice**

- (1) In this item:  
*cessation date* means 1 January 2011 or such other earlier or later date that is prescribed by the regulations.
- (2) On and after the cessation date, Safe Work Australia no longer has the functions or powers referred to in items 2 and 3 of this Schedule.
- (3) However, a national standard or code of practice declared by Safe Work Australia under item 2 of this Schedule, that is in force immediately before the cessation date, continues in force on and after the cessation date.

#### **5 First plans of Safe Work Australia**

- (1) Safe Work Australia must prepare the first draft strategic plan mentioned in section 27 of the *Safe Work Australia Act 2008* as soon as practicable after the commencement of that section.
- (2) Safe Work Australia must prepare the first draft operational plan referred to in section 29 of the *Safe Work Australia Act 2008* as soon as practicable after the commencement of that section.

#### **6 Requirement for meetings of Safe Work Australia in the first financial year**

If paragraph 34(2)(b) of the *Safe Work Australia Act 2008* does not commence on the first day of a financial year, that paragraph does not apply in relation to the financial year in which that paragraph commences.

#### **7 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) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:
    - (a) the amendments or repeals made by this Act; or
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(b) the enactment of this Act or the *Safe Work Australia Act 2008*.

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[*Minister's second reading speech made in—  
House of Representatives on 4 September 2008  
Senate on 23 September 2008*]

(160/08)

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