

Inter-Governmental Agreement

for

Regulatory and Operational Reform in Occupational Health and Safety

The COMMONWEALTH OF AUSTRALIA
The STATE OF NEW SOUTH WALES
The STATE OF VICTORIA
The STATE OF QUEENSLAND
The STATE OF WESTERN AUSTRALIA
The STATE OF SOUTH AUSTRALIA
The STATE OF TASMANIA
The AUSTRALIAN CAPITAL TERRITORY
The NORTHERN TERRITORY OF AUSTRALIA

Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety

AN AGREEMENT made on the 3rd day of July 2008 between:

The COMMONWEALTH OF AUSTRALIA; and
The STATE OF NEW SOUTH WALES; and
The STATE OF VICTORIA; and
The STATE OF QUEENSLAND; and
The STATE OF WESTERN AUSTRALIA; and
The STATE OF SOUTH AUSTRALIA; and
The STATE OF TASMANIA; and
The AUSTRALIAN CAPITAL TERRITORY; and
The NORTHERN TERRITORY OF AUSTRALIA

RECITALS

- A. The Parties are committed to improving the health and safety of Australian workers.
- B. The Parties recognise that occupational health and safety (OHS) regulation affects every workplace in Australia. All Parties have OHS laws that aim to prevent workplace death, injury and disease. While these laws are based on similar underlying principles there are differences between jurisdictions in the details and application of these laws.
- C. The Parties have agreed to work cooperatively to harmonise OHS legislation. The Parties have endorsed the development of this Agreement to strengthen and formalise jurisdictional commitment in implementing OHS reforms.
- D. The Parties have agreed to the Commonwealth submitting legislation to the Commonwealth Parliament to establish [*ASCC replacement body*] as a replacement to the Australian Safety and Compensation Council (ASCC).
- E. The Parties acknowledge that [*ASCC replacement body*] will also have a workers' compensation role that is not covered by this Agreement.
- F. This Agreement sets out the principles and processes for cooperation between the Parties to progress OHS regulatory and operational reform.

THE PARTIES AGREE AS FOLLOWS –

PART 1 - OBJECTIVES OF THE INTER-GOVERNMENTAL AGREEMENT

- 1.1 The purpose of this Agreement is to formalise cooperation between the Commonwealth, state and territory governments on the harmonisation of OHS legislation and to establish appropriate governance arrangements to support this cooperation.
- 1.2 The Parties agree that OHS harmonisation means national uniformity of the OHS legislative framework (comprised of a model OHS Act, supported by model OHS regulations and model codes of practice) complemented by a nationally consistent approach to compliance policy and enforcement policy.
- 1.3 The Parties to this Agreement affirm their commitment to work cooperatively to achieve harmonisation of OHS laws. Supporting this commitment, all Parties have agreed to:
 - (a) the development by the Commonwealth of legislation to replace the ASCC with a national independent body, [*ASCC replacement body*];
 - (b) the development, monitoring and maintenance of model OHS legislation by [*ASCC replacement body*], including compliance and enforcement provisions; and;
 - (c) the adoption and implementation of model OHS legislation by each jurisdiction, as agreed by WRMC.
- 1.4 The fundamental objective of the reform covered by this Agreement is to produce the optimal model for a national approach to OHS regulation and operation which will:
 - (a) enable the development of uniform, equitable and effective safety standards and protections for all Australian workers;
 - (b) address the compliance and regulatory burdens for employers with operations in more than one jurisdiction;
 - (c) create efficiencies for governments in the provision of OHS regulatory and support services; and
 - (d) achieve significant and continual reductions in the incidence of death, injury and disease in the workplace.

PART 2 – THE WORKPLACE RELATIONS MINISTERS’ COUNCIL

2.1 Role and Functions

2.1.1 The primary role of the Workplace Relations Ministers’ Council (WRMC) in relation to this Agreement is to work cooperatively to harmonise OHS legislation by 2011 or earlier if agreed by COAG and to ensure that the terms of this Agreement are complied with.

2.1.2 The members of WRMC represent the Parties to this Agreement.

2.1.3 In relation to the Commonwealth legislation under which [*ASCC replacement body*] will be established, WRMC will be responsible for:

- (a) making decisions about a model OHS Act, regulations and codes of practice and a consistent compliance and enforcement policy as recommended to it by [*ASCC replacement body*];
- (b) making decisions about any other matters submitted or recommended by [*ASCC replacement body*];
- (c) making decisions about the three year strategic plan and the annual operational plan, including the annual budget of [*ASCC replacement body*];
- (d) providing direction to [*ASCC replacement body*] on policy development; and
- (e) performing any other function conferred on it by this Agreement.

2.1.4 WRMC will perform any other function conferred on it by this Agreement.

2.1.5 For the purposes of this Agreement, WRMC will conduct its affairs in accordance with the processes established by this Agreement.

2.2 Procedural and voting arrangements

2.2.1. When considering matters raised by [*ASCC replacement body*] and/or covered by this Agreement:

- (a) each member of WRMC shall have one vote on a proposed resolution and this vote shall represent the views of each Party to this Agreement;
- (b) where a member of WRMC is unable to be present at a meeting at which a vote is to be taken, that member may:
 - (i) advise the WRMC Chair of the voting intentions of his or her government, in writing prior to the meeting; or

- (ii) by notice in writing to the Chair appoint another person to act as his or her proxy at that meeting and to vote on that resolution in the member's place;
- (c) where WRMC is required to vote on a matter, it may do so:
 - (i) at a meeting of WRMC; or
 - (ii) by a written vote where [*ASCC replacement body*] submits the recommendation to each of the members of WRMC through the WRMC Secretariat and the members provide their vote to the WRMC Secretariat by the deadline agreed by WRMC;
- (d) at a meeting of WRMC, members who do not vote in person or by written vote or by proxy will be counted as having voted to approve a recommendation. Where a vote is conducted without a meeting, a member who does not submit his or her vote by the deadline set, will be counted as having voted to approve the recommendation;
- (e) a vote on a resolution, either at a meeting or out-of-session, will be carried by a two thirds majority of all members of WRMC, unless otherwise stated in this Agreement;
- (f) any changes to the funding arrangements in Part 4 of this Agreement will require the unanimous agreement of WRMC; and
- (g) any variation to this Agreement will require the unanimous agreement of the Parties.

2.2.2 For the purpose of clause 2.2.1 of this Agreement, all Parties to this Agreement will have a single vote on all matters raised by [*ASCC replacement body*] and/or covered by this Agreement, notwithstanding the number of WRMC members representing each Party.

2.3 Reporting Requirements

2.3.1 WRMC will report to the Council of Australian Governments (COAG) in accordance with any requirements established by this Agreement or by COAG guidelines and protocols or at least annually.

PART 3 – ADMINISTRATIVE ARRANGEMENTS FOR [ASCC replacement body]

3.1 Establishment of [ASCC replacement body]

- 3.1.1 [ASCC replacement body] will be established under Commonwealth legislation and will be subject to Commonwealth corporate governance regimes.
- 3.1.2 The Commonwealth will use its best endeavours to have enacted by the Parliament of the Commonwealth the legislation required to establish [ASCC replacement body]. The main features of the proposed legislation are set out in Schedule 1 to this Agreement.
- 3.1.3 In appointing members representing employees and employers the Commonwealth Minister will request the nominating bodies to ensure nominees have practical experience and high level expertise.

3.2 Responsibilities and Functions of [ASCC replacement body]

- 3.2.1 [ASCC replacement body] will be an independent Australian Government agency with the primary responsibility of driving national policy development in respect of OHS and workers' compensation matters.
- 3.2.2 The functions of [ASCC replacement body] in relation to this Agreement will include to:
- (a) develop, monitor, maintain and provide advice to WRMC on model OHS legislation consisting of a model principal act, model regulations and model codes of practice, to be adopted by all jurisdictions;
 - (b) develop a compliance and enforcement policy to ensure nationally consistent regulatory approaches across all jurisdictions;
 - (c) research, develop and recommend national OHS standards as appropriate;
 - (d) provide policy advice to WRMC on initiatives to improve workplace safety;
 - (e) collect and analyse workplace injury and disease data and undertake research in order to inform the development and evaluation of OHS policy;
 - (f) oversee maintenance and further development of the National OHS Strategy 2002-2012;

- (g) monitor key developments both national and international in OHS;
- (h) drive a national communications strategy to raise awareness of health and safety at work; and
- (i) undertake any other functions that are agreed by WRMC.

3.3 Reporting Requirements

- 3.3.1 The Chief Executive of [*ASCC replacement body*] will provide an annual report to Parliament and to the Members of [*ASCC replacement body*] and to WRMC which will include progress of the jurisdictions in implementing OHS reform and any other matters covered by this Agreement.
- 3.3.2 The [*ASCC replacement body*] Members will report to WRMC in accordance with any requirements established by this Agreement or as required by WRMC. This reporting will include a three year strategic plan and annual operational plans, consistent with the strategic plan, for approval by WRMC.

PART 4 – FINANCIAL ARRANGEMENTS FOR [*ASCC replacement body*]

4.1 Funding of [*ASCC replacement body*]

- 4.1.1 The Parties agree to provide funds for the establishment and ongoing maintenance of the [*ASCC replacement body*].
- 4.1.2 The Parties agree to the following funding arrangements:
 - (a) the Parties will each provide a share of the [*ASCC replacement body*] budget based on the following:
 - (i) the Commonwealth will fund 50 per cent of the budget;
 - (ii) the States and Territories will, together, fund 50 per cent of the budget with the contribution of each State and Territory proportional to its population. Proportions will be calculated each year using the most recently published Estimated Resident Population of Australia as published by the Australian Bureau of Statistics in 3101.0 – Australian Demographic Statistics;
 - (b) for 2008-09, the [*ASCC replacement body*] will have an initial budget of \$17 million, pro-rated to the date of establishment of [*ASCC replacement body*], and subject to indexation by the CPI as a minimum each year;

- (c) for 2009-10 and subsequent years, [*ASCC replacement body*] will submit to WRMC, by the end of May of the previous year, an annual operational plan, including the annual budget, consistent with the strategic plan; and
- (d) on each occasion the annual operational plan, including the annual budget will be approved by a two thirds majority vote of WRMC.

PART 5 – OCCUPATIONAL HEALTH AND SAFETY REFORM

5.1 Model OHS Legislation

- 5.1.1 The Parties commit to work cooperatively to harmonise OHS regulation through the adoption and implementation of model OHS legislation.
- 5.1.2 The Parties support the National Review into Model Occupational Health and Safety Laws, announced by the Commonwealth Minister on 4 April 2008.
- 5.1.3 Model OHS legislation will comprise a model principal Act supported by model OHS regulations and model codes of practice. Model OHS legislation will be developed by [*ASCC replacement body*] in accordance with the terms of this Agreement.
- 5.1.4 The development process for model OHS legislation will allow for interested persons to make representations concerning any proposed model legislation. Prior to submitting any proposed model legislation to WRMC, [*ASCC replacement body*] will give due consideration to any representations duly made to it and make such alterations to the proposed legislation as it sees fit.
- 5.1.5 The Parties agree that a national compliance and enforcement policy will be developed to ensure a consistent regulatory approach across all jurisdictions.
- 5.1.6 For the purpose of ensuring that model OHS legislation applies throughout Australia, each Party to this Agreement will, subject to its parliamentary and other law-making processes, take all necessary steps to enact or otherwise give effect to model OHS legislation within its jurisdiction within the timeframes agreed by WRMC.
- 5.1.7 For the purposes of subclause 5.1.1, the adoption and implementation of model OHS legislation requires each jurisdiction to enact or otherwise give effect to their own laws that mirror the model laws as far as possible having regard to the drafting protocols in each jurisdiction.

- 5.1.8 The adoption and implementation of model OHS legislation is not intended to prevent jurisdictions from enacting or otherwise giving effect to additional provisions, provided these do not materially affect the operation of the model legislation, for example, by providing for a consultative mechanism within a jurisdiction.
- 5.1.9 [ASCC replacement body] will make model OHS legislation publicly available on its website when it is agreed by WRMC. [ASCC replacement body] will hold and maintain all original copies of agreed model OHS legislation, including any subsequent amendments.

5.2 Model OHS Act

- 5.2.1 WRMC will consider and respond to the recommendations of the National Review and will subsequently decide on the optimal structure and content of a model OHS Act to be adopted by all jurisdictions.
- 5.2.2 Following its agreement on the optimal structure and content of a model OHS Act, WRMC will request [ASCC replacement body] to develop the proposed model OHS Act in accordance with its decision.
- 5.2.3 As part of its development of the model OHS Act, [ASCC replacement body] will undertake consultation processes to allow for interested persons to make representations concerning the proposed model OHS Act. This will include the development and release of an exposure draft bill and a regulatory impact statement (RIS) in accordance with COAG guidelines, for public consultation. [ASCC replacement body] must consult with the states and territories in developing the RIS.
- 5.2.4 [ASCC replacement body] will submit the proposed model OHS Act to WRMC for consideration and decision.
- 5.2.5 Where WRMC agrees to the proposed model OHS Act by consensus, it becomes the agreed model OHS Act. WRMC will make a public announcement of its decision which will include the commitment of all jurisdictions to fully implement the agreed model OHS Act no later than December 2011.

5.3 Model OHS Regulations

- 5.3.1 Model OHS regulations to support the Act will be developed by [ASCC replacement body] and submitted to WRMC progressively in three stages:
- (a) Stage one will set out an overall framework for a consolidated body of regulations and will incorporate detail on those matters broadly common to all current jurisdictional regulations, as well as recently reviewed national standards material;

- (b) Stage two will include consideration of matters that are broadly included in some, but not all, jurisdictions' regulations, as well as material from national standards currently under review; and
- (c) Stage three will cover those matters identified as requiring considerable policy development and will complete the remainder of the regulations identified in the framework.

5.3.2 As part of its development of model OHS regulations, [*ASCC replacement body*] will undertake consultation processes to allow for interested persons to make representations concerning proposed model OHS regulations. This will include the development and release of an exposure draft bill and a regulatory impact statement (RIS) in accordance with COAG guidelines, for public consultation.

5.3.3 Where WRMC agrees to proposed model OHS regulations by consensus, they become agreed model OHS regulations. WRMC will make a public announcement of its decision which will include the commitment of all jurisdictions to fully implement the agreed model OHS regulations no later than December 2011.

5.4 Model OHS Codes of Practice

5.4.1 Model OHS Codes of Practice will be developed by [*ASCC replacement body*].

5.4.2 As part of its development of model OHS Codes of Practice, [*ASCC replacement body*] will undertake consultation processes to allow for interested persons to make representations concerning proposed model OHS Codes of Practice. Model OHS Codes of Practice will be developed in accordance with COAG guidelines.

5.4.3 [*ASCC replacement body*] will submit proposed model OHS Codes of Practice to WRMC for consideration and decision.

5.4.4 Where WRMC agrees to proposed model OHS Codes of Practice by consensus, they become agreed model OHS Codes of Practice. WRMC will make a public announcement of its decision which will include the commitment of all jurisdictions to fully implement the agreed model OHS Codes of Practice within timeframes established by WRMC.

5.5 Maintenance of Nationally Uniform OHS Legislation

5.5.1 The Parties commit to ensure that their laws and other instruments giving effect to the agreed model OHS legislation will remain nationally uniform over time.

- 5.5.2 Any Party that proposes to amend its legislation or introduce new legislation so as to materially affect the operation of model OHS legislation will submit the proposed amendments or new legislation to WRMC for decision. Each Party agrees that it will not progress implementation of any such amendment or such new legislation unless WRMC has endorsed the proposed amendment or new legislation.
- 5.5.3 Where WRMC approves an amendment to legislation or new legislation that affects the operation of the agreed model OHS legislation, all Parties will (unless otherwise agreed by WRMC) undertake all necessary steps to introduce appropriate changes to their legislation with a view to ensuring that OHS legislation remains nationally consistent.

PART 6 - REVIEW OF ARRANGEMENTS ESTABLISHED BY THIS AGREEMENT

- 6.1 The Parties commit to review the operation of [*ASCC replacement body*] and this Agreement no later than the sixth anniversary of the commencement of the Act establishing [*ASCC replacement body*] or as agreed by WRMC.

PART 7 - OPERATION AND INTERPRETATION OF AGREEMENT

7.1 Commencement of Agreement

- 7.1.1 This Agreement commences when it has been signed by all Parties.

7.2 Provision of Information

- 7.2.1 The Parties agree to provide such information to [*ASCC replacement body*] as is necessary for [*ASCC replacement body*] to undertake its responsibilities and functions as set out in this Agreement and the legislation establishing [*ASCC replacement body*].

7.3 Definitions

7.3.1 In this Agreement, except where a contrary intention appears:

Agreed Reform means a reform relating to OHS as agreed by WRMC, including any amendments to that reform that have been made in accordance with this Agreement;

Agreement means this document, including the schedules, as amended from time to time;

[ASCC replacement body] refers to the agency or organisation that will replace the Australian Safety and Compensation Council;

COAG means the Council of Australian Governments;

Codes of Practice refers to codes of practice supporting the model OHS Act;

Commonwealth means the Commonwealth of Australia;

Commonwealth Minister means the Commonwealth Minister responsible for the operations of [ASCC replacement body] and its enabling legislation;

Compliance policy and enforcement policy mean the arrangements for determining whether the model OHS legislation is being complied with and how breaches are dealt with;

Jurisdiction means the Commonwealth, States and Territories;

Model OHS Act is the principal Act of the model OHS legislation;

Model OHS legislation is legislation, regulations and codes of practice developed by [ASCC replacement body];

OHS means occupational health and safety;

Party means the Commonwealth, a State or a Territory that is a Party to this Agreement;

Regulations refer to regulations supporting the model OHS Act;

State means a State of the Commonwealth of Australia that is a Party to this Agreement;

Territory means a Territory of the Commonwealth of Australia that is a Party to this Agreement;

WRMC means the Workplace Relations Ministers' Council.

7.4 Amendment to the Agreement

7.4.1 This Agreement may be varied from time to time by the unanimous agreement of the Parties.

7.4.2 Any amendment to this Agreement will be made in writing and executed by all Parties, and will include the date on which the amendment will come into force.

7.5 Dispute Resolution

7.5.1 Where a dispute arises under or in relation to this Agreement:

- (a) WRMC will negotiate to resolve the dispute in the first instance; and
- (b) if the negotiations fail, WRMC will refer the dispute to COAG to seek a resolution.

7.6 Publication of the Agreement

7.6.1 The Parties agree that this Agreement is to be made publicly available by the Commonwealth by the following means:

- (a) by tabling in both Houses of the Commonwealth Parliament; and
- (b) by publication on relevant Commonwealth Government websites.

7.6.2 Any future amendments to this Agreement made in accordance with clauses 7.4.1 and 7.4.2 of this Agreement are to be made publicly available in accordance with clause 7.6.1 of this Agreement.

IN WITNESS WHEREOF this Agreement has been executed as at the day and year first written above.

SIGNED by:

The Honourable Kevin Rudd MP)
Prime Minister of the Commonwealth of Australia) _____

The Honourable Morris Iemma MP)
Premier of the State of New South Wales) _____

The Honourable John Brumby MP)
Premier of the State of Victoria) _____

The Honourable Anna Bligh MP)
Premier of the State of Queensland) _____

The Honourable Alan Carpenter MLA)
Premier of the State of Western Australia) _____

The Honourable Michael Rann MP)
Premier of the State of South Australia) _____

The Honourable David Bartlett MP)
Premier of the State of Tasmania) _____

Mr Jon Stanhope MLA)
Chief Minister of the Australian Capital Territory) _____

The Honourable Paul Henderson MLA)
Chief Minister of the Northern Territory of Australia) _____

**Schedule 1 – Matters to be included in Commonwealth Legislation
establishing [ASCC replacement body]**

1. The legislation will establish [ASCC replacement body] as the principal national organisation driving policy development in respect of occupational health and safety (OHS) and workers' compensation matters and subject to Commonwealth corporate governance regimes including:
 - (a) the *Financial Management and Accountability Act 1997*, and
 - (b) the *Public Service Act 1999*
2. [ASCC replacement body] will be constituted by Members who will be accountable to WRMC. [ASCC replacement body] will be assisted by a Chief Executive and staff who will be accountable to the Commonwealth Minister.
3. The legislation will:
 - (a) specify the membership of the [ASCC replacement body] as being:
 - i. an independent chair, nominated by the Commonwealth Minister in consultation with WRMC;
 - ii. a member nominated by the Commonwealth Minister;
 - iii. 8 members, each of whom is nominated by a State or Territory Minister;
 - iv. 2 members representing bodies which, in the Commonwealth Minister's opinion, represent the interests of workers across Australia;
 - v. 2 members representing bodies which, in the Commonwealth Minister's opinion, represent the interests of employers across Australia; and
 - vi. Chief Executive (non voting);
 - (b) provide for Members (other than the Chief Executive) to be part-time and to be formally appointed for up to 3 years by the Commonwealth Minister;
 - (c) provide for the Chair to be part-time, to be remunerated as determined by the Remuneration Tribunal and to be appointed by the Commonwealth Minister after consultation with WRMC;
 - (d) provide for the appointment by the Commonwealth Minister of a Chief Executive with responsibility for the day to day operations of [ASCC replacement body], who is to be the head of [ASCC replacement body] for

the purposes of the *Financial Management and Accountability Act 1997* and the *Public Service Act 1999*, and who is to take into account any recommendations of the [ASCC replacement body] in carrying out the functions of [ASCC replacement body];

- (e) provide for staff of [ASCC replacement body] to be appointed under the *Public Service Act 1999*;
- (f) establish the reporting requirements of [ASCC replacement body] to WRMC;
- (g) establish the functions of [ASCC replacement body];
- (h) establish a Special Account under the *Financial Management and Accountability Act 1997* to ensure that financial contributions of States and Territories are applied in accordance with the intergovernmental agreement;
- (i) establish the convening of and procedures at meetings including that:
 - i. members will meet as directed by the Chair with a minimum of three meetings a year;
 - ii. decisions will be made by a two thirds majority of votes of the voting Members present and voting, but decisions on the model OHS legislation will be made by a two thirds majority of the votes of voting Members present and voting and a majority of the votes of all voting Members who represent the Commonwealth, States and Territories;
 - iii. a quorum will consist of a majority of voting Members, but on deliberations or decisions relating to the model OHS legislation a quorum is not constituted if a majority of all of the voting Members who represent the Commonwealth, States and Territories are not present for the deliberation or decision; and
- (j) provide for the Chair to constitute committees for the purpose of assisting [ASCC replacement body] in the performance of its functions and the exercise of its powers.

