



New South Wales

Rural Workers Accommodation Amendment Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The *Rural Workers Accommodation Act 1969* (*the Principal Act*) deals with the provision of accommodation for rural workers and certain other connected purposes.

The object of this Bill is to amend the Principal Act to provide for a rural workers accommodation regulatory regime that is consistent with the regulatory regime of the *Occupational Health and Safety Act 2000* (*the OH&S Act*).

The Bill also makes a consequential amendment to the OH&S Act to provide that the Principal Act is no longer *associated occupational health and safety legislation* for the purposes of the OH&S Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendment to the OH&S Act in Schedule 2.

Schedule 1 Amendment of Rural Workers Accommodation Act 1969

Schedule 1 [6] amends the Principal Act to give effect to the Overview outlined above. A number of current sections of the Principal Act and the Schedule to that Act are to be omitted and replaced with proposed Parts 2–6 and proposed Schedule 1.

Proposed Part 2 (Provision of accommodation) contains proposed sections 5–8.

Proposed section 5 provides that a person who has control of rural premises must provide suitable accommodation to a rural worker who works at the rural premises if due to the nature of the work, the rural worker must live for a period exceeding 24 hours at or near the rural premises.

Failure to comply with the provision is an offence that carries a maximum penalty of 250 penalty units (currently \$27,500).

Proposed section 6 provides that the accommodation provided for a rural worker under the Principal Act is, subject to any contrary provision of a Commonwealth or State industrial instrument applicable to the worker, to be provided free of cost to the worker.

Proposed section 7 makes it clear that nothing in the proposed Part gives rise to or affects civil proceedings.

Proposed section 8 provides for a defence for breaches of the Principal Act, or regulations under the Principal Act, that compliance was not reasonably practicable or that the cause of the breach was beyond the control of the person.

Proposed Part 3 (Codes of practice) contains proposed sections 9–15.

This proposed Part deals with the preparation, approval and effect of codes of practice for the purpose of providing practical guidance to persons who have control of rural premises with respect to the type and nature of accommodation that is suitable for rural workers for the purposes of the Principal Act.

Codes of practice are prepared by the WorkCover Authority and, after consultation, may be approved by the Minister administering the Principal Act. A code takes effect on its publication in the Gazette or on a later specified day. A failure to comply with a code is admissible in evidence in proceedings for an offence under the Principal Act or regulations for the purpose of establishing any relevant matter that the prosecution is required to prove in the proceedings.

Proposed Part 4 (Application of Occupational Health and Safety Act 2000) contains proposed sections 16–20.

This proposed Part deals with the relationship between the Principal Act and the OH&S Act. The provisions of this proposed Part deal with the following:

- (a) making it clear that the Principal Act adds to the protection provided by the OH&S Act (the proposed section provides that if a provision of the OH&S Act applies to rural premises to which the Principal Act applies, that provision continues to apply, and must be observed, in addition to the Principal Act),
- (b) providing that the OH&S Act will prevail if there is an inconsistency between the OH&S Act and the Principal Act,
- (c) making it clear that compliance with the Principal Act is not in itself a defence in any proceedings for an offence against the OH&S Act,
- (d) providing that evidence of a relevant contravention of the Principal Act is admissible in any proceedings for an offence against the OH&S Act,
- (e) preventing a person being punished twice in respect of an act or omission that constitutes an offence under both the Principal Act and the OH&S Act.

Proposed Part 5 (Enforcement) contains proposed section 21. This proposed Part provides that certain provisions of the OH&S Act that deal with the enforcement of that Act extend to the Principal Act and any regulations made under it.

Proposed Part 6 (Miscellaneous) contains provisions that deal with the following:

- (a) imposing liability on directors and managers of corporations for breaches of the Principal Act or its regulations by the corporation,
- (b) the making of regulations,
- (c) savings and transitional issues.

Proposed Schedule 1 provides that regulations may be made that contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [4] replaces section 3 (Definitions) of the Principal Act. The new proposed section 3 defines certain terms for the purposes of the Principal Act, including definitions of *rural premises* and *rural worker*.

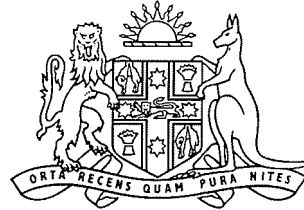
Schedule 1 [1]–[3] and [5] make consequential omissions and amendments.

Schedule 2 Amendment of Occupational Health and Safety Act 2000

Schedule 2 makes the consequential amendment to the OH&S Act referred to in the Overview above.

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Explanatory note



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No. , 2005

A Bill for

An Act to amend the *Rural Workers Accommodation Act 1969* to make further provision for the accommodation of certain rural workers; to amend the *Occupational Health and Safety Act 2000*; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Rural Workers Accommodation Amendment Act 2005</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Rural Workers Accommodation Act 1969 No 34	6
The <i>Rural Workers Accommodation Act 1969</i> is amended as set out in Schedule 1.	7 8
4 Amendment of Occupational Health and Safety Act 2000 No 40	9
The <i>Occupational Health and Safety Act 2000</i> is amended as set out in Schedule 2.	10 11

Schedule 1	Amendment of Rural Workers Accommodation Act 1969	1 2
	(Section 3)	3
[1] Part 1, heading		4
Insert before section 1:		5
Part 1 Preliminary		6
[2] Section 1 Name of Act		7
Omit section 1 (2).		8
[3] Section 2 Repeal		9
Omit section 2 (2) and (3).		10
[4] Section 3		11
Omit the section. Insert instead:		12
3 Definitions		13
In this Act:		14
<i>accommodation</i> means residential accommodation.		15
<i>agricultural or pastoral occupation</i> means work in or in connection with:		16 17
(a) the sowing, raising, or harvesting of crops of grain, fodder, sugar cane, fruit, or any other crop or farm produce whether grown for food or not, or		18 19 20
(b) the management, rearing, grazing or feeding of animals that are being kept or raised for a commercial purpose, or		21 22
(c) shearing or crutching of animals, or		23
(d) scouring, sorting or pressing of wool, or		24
(e) dairying, or		25
(f) any other occupation carried on in connection with, or as ancillary to, an occupation mentioned in paragraph (a), (b), (c), (d) or (e) of this definition.		26 27 28
<i>code of practice</i> means a code of practice in force under Part 3.		29
<i>rural premises</i> means farm, orchard, pastoral holding, or other agricultural or rural holding.		30 31
<i>rural worker</i> means a person who works at rural premises in an agricultural or pastoral occupation.		32 33

	<i>WorkCover</i> means the WorkCover Authority constituted by the <i>Workplace Injury Management and Workers Compensation Act</i> <i>1998</i> .	1 2 3
[5]	Section 4 Construction Omit the section.	4 5
[6]	Parts 2–6 and Schedule 1 Omit sections 5–18 and the Schedule. Insert instead:	6 7
	Part 2 Provision of accommodation	8
	5 Accommodation to be provided for rural worker	9
	A person who has control of rural premises must provide suitable accommodation to a rural worker who works at the rural premises if due to the nature of the work, the rural worker must live for a period exceeding 24 hours at or near the rural premises. Maximum penalty: 250 penalty units.	10 11 12 13 14
	6 Cost of accommodation (cf section 22 of Occupational Health and Safety Act 2000)	15 16
	The accommodation provided for a rural worker is, subject to any contrary provision of a Commonwealth or State industrial instrument applicable to the worker, to be provided free of cost to the worker.	17 18 19 20
	7 Civil liability not affected (cf section 32 of Occupational Health and Safety Act 2000)	21 22
	Nothing in this Part is to be construed:	23
	(a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provision of this Part, or	24 25 26
	(b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.	27 28 29
	8 Defence (cf section 28 of Occupational Health and Safety Act 2000)	30
	It is a defence to any proceedings against a person for an offence against a provision of this Act or the regulations if the person proves that:	31 32 33
	(a) it was not reasonably practicable for the person to comply with the provision, or	34 35

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- (b) the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.

Part 3 Codes of practice

- 9 Purpose of codes** (cf section 40 of Occupational Health and Safety Act 2000)
- The purpose of a code of practice is to provide practical guidance to persons who have control of rural premises with respect to the type and nature of accommodation that is suitable for rural workers for the purposes of this Act.
- 10 WorkCover may prepare draft codes** (cf section 41 of Occupational Health and Safety Act 2000)
- (1) WorkCover may prepare draft codes of practice.
- (2) A code of practice may refer to or incorporate, with or without modification, a document prepared or published by a body specified in the code, as in force at a particular time or from time to time.
- 11 Consultation on draft codes** (cf section 42 of Occupational Health and Safety Act 2000)
- (1) WorkCover is to consult with such organisations or persons as the Minister may direct about a draft code and may consult with such others as WorkCover thinks appropriate.
- (2) WorkCover is to take into consideration any submissions it receives that relate to a draft code before it makes any recommendation to the Minister for its approval.
- 12 Approval of codes by Minister** (cf section 43 of Occupational Health and Safety Act 2000)
- The Minister may, having regard to any recommendation of WorkCover, approve a code of practice.
- 13 Publication, commencement and availability of codes** (cf section 44 of Occupational Health and Safety Act 2000)
- (1) An approved code of practice:
- (a) is to be published in the Gazette, and
- (b) takes effect on the day on which it is so published or, if a later day is specified in the code for that purpose, on the later day so specified.

(2)	The following are to be made available for public inspection without charge at the principal office of WorkCover during normal office hours:	1
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(a)	a copy of each code of practice,	4
(b)	if an approved code of practice has been amended, a copy of the code as so amended,	5
		6
(c)	if an approved code of practice refers to or incorporates any other document prepared or published by a specified body, a copy of each such document.	7
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		9
14	Amendment or revocation of codes (cf section 45 of Occupational Health and Safety Act 2000)	10
		11
	An approved code of practice may be amended or revoked by an instrument prepared, approved and published in accordance with the relevant procedures of this Part with respect to codes of practice.	12
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		14
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15	Use of codes (cf section 46 of Occupational Health and Safety Act 2000)	16
(1)	In any proceedings for an offence against this Act or the regulations:	17
		18
(a)	an approved code of practice that is relevant to any matter which it is necessary for the prosecution to prove to establish the commission of the offence by a person is admissible in evidence in those proceedings, and	19
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(b)	the person's failure at any material time to observe the code is evidence of the matter to be established in those proceedings.	23
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		25
(2)	A person is not liable to any civil or criminal proceedings by reason only that the person has failed to observe an approved code of practice.	26
		27
		28
Part 4	Application of Occupational Health and Safety Act 2000	29
		30
16	Act adds to protection provided by OH&S Act	31
	If a provision of the <i>Occupational Health and Safety Act 2000</i> or the regulations under that Act applies to rural premises to which this Act applies, that provision continues to apply, and must be observed, in addition to this Act or the regulations under this Act.	32
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17	OH&S Act prevails	1
	The provisions of the <i>Occupational Health and Safety Act 2000</i>	2
	and the regulations under that Act prevail, to the extent of any	3
	inconsistency, over the provisions of this Act (other than section	4
	6) and the regulations under this Act.	5
18	Compliance with this Act is no defence to prosecution under OH&S Act	6
	Compliance with this Act or the regulations, or with any	8
	requirement imposed under this Act or the regulations, is not in	9
	itself a defence in any proceedings for an offence against the	10
	<i>Occupational Health and Safety Act 2000</i> or the regulations	11
	under that Act.	12
19	Relationship between duties under this Act and OH&S Act	13
	Evidence of a relevant contravention of this Act or the	14
	regulations is admissible in any proceedings for an offence	15
	against the <i>Occupational Health and Safety Act 2000</i> or the	16
	regulations under that Act.	17
20	No double jeopardy	18
	Where an act or omission constitutes an offence:	19
	(a) under this Act or the regulations, and	20
	(b) under the <i>Occupational Health and Safety Act 2000</i> or the	21
	regulations under that Act,	22
	the offender is not liable to be punished twice in respect of the	23
	offence.	24
Part 5	Enforcement	25
21	Application of Occupational Health and Safety Act 2000	26
	(1) Parts 5, 6 and 7, and sections 136 and 137, of the <i>Occupational</i>	27
	<i>Health and Safety Act 2000</i> (and any regulations under those	28
	provisions) extend to this Act (and its enforcement).	29
	(2) Accordingly, for that purpose a reference in the applied	30
	provisions to that Act or those regulations includes a reference to	31
	this Act and the regulations under this Act.	32
	(3) For the purposes of this section:	33
	(a) premises that are used for accommodation provided for a	34
	rural worker for the purposes of this Act are taken to be a	35
	place of work, and	36

- (b) in relation to such premises, the reference to the occupier of the premises in sections 57 (a) and 80 of the *Occupational Health and Safety Act 2000* is taken to be a reference to the rural worker resident in premises. 1
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- (4) The regulations may make other provisions modifying the applied provisions for the purposes of this section. 5
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Part 6 Miscellaneous 7

22 Offences by corporations—liability of directors and managers 8

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each person concerned in the management of the corporation, is taken to have contravened the same provision unless the director or person satisfies the court that: 9
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 - (a) he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or 14
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 - (b) he or she, being in such a position, used all due diligence to prevent the contravention by the corporation. 17
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- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision. 19
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- (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed. 23
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- (4) In the case of a corporation that is a local council, a member of the council (in his or her capacity as such a member) is not to be regarded as a director or person concerned in the management of the council for the purposes of this section. 27
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23 Regulations 31

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the objects of this Act. 32
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- (2) The regulations may apply, adopt or incorporate any publication as in force at a particular time or from time to time. 37
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- (3) The regulations may create offences punishable by a penalty not exceeding 100 penalty units. 1
2

24 Savings and transitional provisions 3

Schedule 1 has effect. 4

Schedule 1 Savings and transitional provisions 5

(Section 24) 6

1 Regulations 7

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 8
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- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. 12
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- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 14
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(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 17
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(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 20
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Schedule 2	Amendment of Occupational Health and	1
	Safety Act 2000	2
	(Section 4)	3
Section 4 Definitions		4
Omit paragraph (d) from the definition of <i>associated occupational health and</i>		5
<i>safety legislation.</i>		6