



1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) BILL

1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industrial
Relations, Senator Peter Cook)



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OUTLINE

1. The purpose of this Bill is to provide for the protection of the health and safety of Commonwealth employees at work. It will impose on Commonwealth employers and Commonwealth employees a general duty of care and specific obligations in respect of the protection of health and safety at work which are similar to the obligations currently imposed on employers and employees by legislation which has been enacted by most of the Australian States. The Bill seeks to provide a framework within which Commonwealth employers and Commonwealth employees may co-operate to address health and safety issues in the workplace.
2. This Bill complements the Commonwealth Employees' Rehabilitation and Compensation Act 1988 which gave effect to reforms of the workers' compensation scheme for Commonwealth employees. The package of legislation comprising that Act and this Bill complete the process of bringing about a closer integration of the preventive aspects of occupational health and safety, rehabilitation and compensation.
3. The most significant features of the Bill are the imposition of a general duty of care to protect the health and safety of Commonwealth employees at work on Commonwealth employers (clause 16), manufacturers and suppliers of plant and substances (clauses 18 and 19), and installers of plant (clause 20). A general duty of care is also imposed on employees (clause 21).
4. Part 3 of the Bill, which deals with workplace arrangements, provides for the selection of employee health and safety representatives and the establishment of health and safety committees with employer and employee representation to facilitate co-operation in the protection of the health and safety of Commonwealth employees at work.
5. The Bill makes provision for standards on specific hazards to be included in regulations and for the publication of codes of practice approved by the Minister which provide guidance to employers on how obligations imposed by the Act and regulations may be met. The Bill enables the adoption of NOHSC standards or codes to the extent they are capable of relating to Commonwealth employment.
6. The day-to-day operation of the Act will be the responsibility of the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (the Commission) established by section 68 of the Commonwealth Employees' Rehabilitation and Compensation Act 1988. The Bill provides for an advisory function to be exercised by the Commission. It is intended that the staff of the Commission, independent advisers nominated by the Commission, or staff of State/Territory OHS Inspectorates

contracted under clause 51 of the Bill will be available to provide advice on occupational health and safety matters. The advisory function may be utilised before resorting to the more formal investigating role of the Commission. The Bill also provides for the appointment by the Commission of investigators who will be empowered to take the various actions necessary to secure observance of the Act and regulations.

Financial Impact Statement

7. The cost of implementing the provisions of the Bill will be offset by savings achieved by the Commission through the rehabilitation of long-term compensation claimants under the Commonwealth Employees' Rehabilitation and Compensation Act 1988.
8. The proposals contained in this Bill will necessitate the provisions of additional resources for the Commission to fulfil its functions under the legislation. In addition to 10 staff already transferred from the National Occupational Health and Safety Commission established by section 6 of the National Occupational Health and Safety Commission Act 1985, the Commission will require approximately 5 additional staff during the first two years of operation of the legislation and an additional 10 staff in subsequent years.
9. A salary cost of \$0.4 million will be incurred by year three. Contract staff will be used to supplement permanent staff at an estimated cost of \$0.5 million in the first year, decreasing to \$0.2 million by year three.
10. Additional expenditure will be required for essential operational costs.
11. The total cost during the first three full years of operation is expected to be \$1.1 - \$1.4 million per annum. "Start up" costs of approximately \$0.3 million will be incurred in the six months prior to commencement of the legislation.
12. In addition, individual agencies may incur additional expenditure in implementing the workplace arrangements provided for in the Bill. The net additional cost attributable to this activity cannot be precisely estimated due to the wide range of existing occupational health and safety arrangements currently in place in various Commonwealth agencies and the offsets and savings which will be associated with revised arrangements.
13. Implementation of the provisions of this Bill will result in a safer and more healthy working environment for Commonwealth employees and is expected to reduce the incidence of accidents and injuries for which the Commonwealth would be liable. Implementation of the provisions of the Bill should, therefore, result in reduced Commonwealth expenditure on compensation and associated costs such as unnecessary retraining, lost time and sick leave.

Abbreviations

14. The following abbreviations are used in this Explanatory Memorandum:

- Bill: Occupational Health and Safety
(Commonwealth Employment) Bill 1990
- Commission: The Commission for the Safety,
Rehabilitation and Compensation of
Commonwealth Employees.
- Committee: A health and safety committee
established under clause 34 of the Bill.
- Representative : A health and safety representative
selected in accordance with clause 25 of
the Bill.
- Group: A designated work group established
under clause 24 of the Bill for the
purposes of selecting a health and
safety representative.

NOTES ON CLAUSESPART 1 PRELIMINARYClause 1: Short Title

This clause gives the short title of the Bill.

Clause 2: Commencement

The provisions of the Bill (apart from clauses 1 and 2) are to come into operation on a day or days to be proclaimed. Clauses 1 and 2 commence on the date of Royal Assent. If other provisions have not commenced within the period of six months from the date of Royal Assent, they will commence on the first day after the end of that period.

Clause 3: Objects

The Bill is to be read in the context of its objects which relate to:

- protecting the health and safety of Commonwealth employees at work and others who may be affected by that work;
- the promotion of a healthy and safe working environment;
- the provision of advice on occupational health and safety matters; and
- fostering co-operation between Commonwealth employers and Commonwealth employees in relation to occupational health and safety.

Clause 4: Saving of certain State and Territory laws

This provision provides that State and Territory occupational health and safety laws continue to operate where they are capable of operating concurrently with the Bill.

Clause 5: Interpretation

Significant terms defined in sub clause 5(1) include those described below.

"Commission" means the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees established by section 68 of the Commonwealth Employees' Rehabilitation and Compensation Act 1988.

"Commonwealth authority" defines certain bodies corporate which, by virtue of being included in that definition, also come within the definition of "employer" in clause 5 and which, therefore, come within the operation of Bill. The Minister may declare a body corporate not to be a Commonwealth authority for the purposes of the Bill.

"Commonwealth premises" means premises owned or occupied by the Commonwealth or a Commonwealth authority.

"Contractor" means a natural person, other than an employee of the Commonwealth or of a Commonwealth authority, who performs work on Commonwealth premises in connection with an undertaking being carried on by the Commonwealth or a Commonwealth authority under a contract with the Commonwealth or a Commonwealth authority or with any other person. For the purposes of the Bill an employer will, in respect of those matters over which the employer has control, have obligations in respect of contractors similar to those the employer has in respect of Commonwealth employees. Contractors and employees of contractors will remain subject to the requirements of State occupational health and safety legislation.

"Employer" means the Commonwealth or a Commonwealth authority.

"Government business enterprise" defines a class of Commonwealth authorities by reference to the definition of "Commonwealth authority". A statutory authority coming within that definition will be a Government business enterprise if:

- it is specified in the Schedule to the Bill; or
- it is declared by instrument published in the Gazette to be a Government business enterprise for the purposes of the Bill.

A company, incorporated under a law of the Commonwealth or a State or Territory, in which the Commonwealth or a statutory authority has a controlling interest and which has not been declared not to be a Commonwealth authority for the purposes of the Bill will also come within the definition of Government business enterprise.

A Government business enterprise to which the Bill applies may be prosecuted for failure to comply with the requirements of the Bill.

"Improvement notice" means a notice issued by an investigator under subclause 47(1) requiring an employer to take action necessary to prevent any contravention of the Bill or its associated regulations.

"Involved union" defines a union in relation to particular employees or particular designated work groups. These unions are able to participate in the conduct of a range of matters in the operation of workplace arrangements. By the definition of "registered unions" an involved union must also be registered under the Industrial Relations Act 1988 or declared by the regulations to be a registered union for the purposes of the Bill.

"Prohibition notice" means a notice issued by an inspector under subclause 46(1) to an employer directing the employer to remove an immediate threat to health or safety.

"Reviewing authority" means the Australian Industrial Relations Commission. The Commission will determine appeals arising from the operation of the Bill.

"Workplace" is defined broadly to encompass any Commonwealth premises where an employee or contractor works, but excluding private dwellings.

Subclauses (2) to (7) are further interpretation provisions.

Subclause (5) provides that the contracting of a disease is included in references to an accident for the purposes of the Bill.

Subclause (6) provides that references to contraventions of the Bill or regulations which constitute offences are to include certain offences created by the Crimes Act, namely, aiding and abetting (section 6), accessory after the fact (section 7), attempts (section 7A) and conspiracy (sub-section 86(1)) as offences relating to that contravention.

Subclause (8) provides that declarations by the Minister, that certain employers are to be "Government business enterprises", will be disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

Clause 6: Act not to prejudice national security

Subclause (1) seeks to ensure that Australia's national security is not placed at risk by providing that the Bill does not require any action or omission that would or could reasonably be expected to be prejudicial to national security.

Subclause (2) provides that, after consulting with the Minister, the Director-General of Security may, by notice in writing, declare that specified provisions of the Act do not apply, or apply with such modifications and adaptations as are set out in the notice, to certain premises, persons and to the performance of certain work.

Under subclause (3) the Director-General of Security, in administering the Australian Security Intelligence Organisation and in making a notice under subclause (2), must have regard to the need to promote the objects of the Bill to the greatest extent that is consistent with the maintenance of Australia's national security.

Subclause (4) provides that a notice under subclause (2) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Clause 7: Act not to prejudice Australia's defence

Subclause (1) seeks to ensure that Australia's defence is not placed at risk by providing that the Bill does not require any action or omission that would or could reasonably be expected to be prejudicial to defence.

Subclause (2) provides that, after consulting with the Minister, the Chief of the Defence Force may, by notice in writing, declare that specified provisions of the Act do not apply, or apply with such modifications and adaptations as are set out in the notice, to a specified member or a specified class of members of the Defence Force.

Under subclause (3), the Chief of the Defence Force, in making a notice under subclause (2), must have regard to the need to promote the objects of the Bill to the greatest extent that is consistent with the maintenance of Australia's defence.

Subclause (4) provides that a notice under subclause (2) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

Clause 8: Act not to prejudice certain police operations

Subclause (1) seeks to ensure that no existing or future covert operation or dangerous operation of the Australian Federal Police is placed at risk, by providing that the Bill does not require any action or omission that would or could reasonably be expected to be prejudicial to such operations.

Subclause (2) defines "covert operation", "dangerous operation", "unauthorised person" and "member".

Clause 9: Employees

This clause specifies the persons to be regarded as employees for the purposes of the Bill.

Clause 10: Commonwealth to act through employing authority

Under this provision the Commonwealth is required to act through an employing authority. The term "employing authority" is defined in subclause 5(1). Anything done by an employing authority shall have effect as if it was done by the Commonwealth and anything served on, given or notified to an employing authority shall have effect as if it had been served on, given or notified to the Commonwealth.

Clause 11: Extent to which Act binds the Crown

The Bill is expressed to bind the Crown in right of the Commonwealth. The Commonwealth, Commonwealth authorities other than Government business enterprises and employees of the Commonwealth and of Commonwealth authorities other than Government business enterprises will not be liable to prosecution for offences. Employers other than Government business enterprises will be subject to public inquiries and reporting to Parliament (Part 4 Division 3) and their employees may be liable to disciplinary proceedings applicable under the terms and conditions of their employment for contravention of the Bill and regulations (clause 82) .

Clause 12: Functions conferred on Commission

This clause sets out the functions conferred on the Commission by this Bill. The more important functions include ensuring compliance with the legislation, the provision of advice on occupational health and safety matters affecting employers, employees and contractors, the formulation of occupational health and safety policies and strategies, the accreditation of relevant training courses and the provision of advice to the Minister. These functions are additional to those conferred on the Commission by the Commonwealth Employees' Rehabilitation and Compensation Act 1988.

Subclause 12(2) empowers the Minister to give written directions to the Commission concerning the performance of its functions and the exercise of its powers under the Bill.

Clause 13: Application of Act

The Bill will apply in its entirety in Australia and the external Territories. Except for Part 3 (Workplace Arrangements) and Part 4 (Advice, Investigations and Inquiries), the Bill has extra-territorial operation. Consequently, certain provisions, for example those imposing duties of care, will apply to employers and employees covered by the Bill in respect of their activities outside Australia.

Clause 14: Application of Act to workplaces controlled by contractors

Subclause (1)(a) prevents this Bill, other than section 20, from applying to a workplace while it is controlled by a contractor for construction or maintenance purposes.

Subclause (1)(b) prevents this Bill, other than section 20, from applying to work performed by contractors at a workplace while it is controlled by a contractor for construction or maintenance purposes.

Subclause (1)(c) prevents this Bill, other than Parts 1 and 2 and section 82, from applying to the work performed by Commonwealth employees at a workplace under the control of a contractor, for construction or maintenance purposes, unless the regulations so provide.

Under subclause (2), the presence at the workplace of a Commonwealth employee, who has no right to direct the work of the persons working for the contractor, does not mean that the workplace is not controlled by the contractor.

Clause 15: Application of Act to employees working in non-Commonwealth premises

This provision provides that the Bill, other than Parts 1 and 2 and clause 82, does not apply to an employee who ordinarily performs work at a place which is not a Commonwealth premises, or to that place of work, unless the regulations provide that the Act will apply in such circumstances.

PART 2 - OCCUPATIONAL HEALTH AND SAFETY

Division 1 - General duties relating to occupational health and safety

Clause 16: Duties of employers in relation to their employees etc.

Subclause (1) imposes a general duty of care on employers by requiring an employer to take all reasonably practicable steps to protect the health and safety of employees at work. A penalty is provided should a Government business enterprise breach this duty.

Subclause (2) sets out certain obligations which an employer must meet in order to comply with the general duty imposed by subclause (1). These include requirements that an employer take all reasonably practicable steps to provide and maintain workplaces, plant, systems of work and means of access to and egress from workplaces which are safe and without risks to health; to ensure the safety and health of employees who work with plant and substances; to develop, in consultation with any involved unions, an occupational health and safety policy and, to provide, in appropriate languages, the information, instruction, training and supervision necessary to enable employees to perform their work safely and without risks to their health.

Subclause (3) requires the occupational health and safety policy, referred to in subclause (2), to provide for the making of an agreement setting out mechanisms for continuing consultation between the employer, any involved unions and the employees.

Subclause (4) extends the duties in respect of employees imposed on an employer by subclauses (1) and (2) to contractors of that employer in relation to matters over which the employer has control or would normally be expected to have had control were it not for an agreement to the contrary between the employer and the contractor.

Subclause (5) sets out some specific obligations of employers relating to monitoring health and safety in the workplace, maintaining records and providing medical and first aid services.

Clause 17: Duty of employers in relation to third parties

This clause imposes a duty of care on employers in respect of persons at or near a workplace under an employer's control and who are not the employer's employees or contractors. A penalty applies to a Government business enterprise which breaches this duty.

Clause 18: Duties of manufacturers in relation to plant and substances

Subclauses (1) and (2) require manufacturers of plant or substances which manufacturers ought reasonably expect will be

used by employees at work to take all reasonably practicable steps to ensure that plant is designed and constructed, and that substances are manufactured, so as to be able to be used safely and without risk to the health and safety of employees. Manufacturers are also required to provide employers with information which would allow employees to use plant and substances safely and without risk to health. The manufacturer is required to take action to discover and eliminate or minimise risks to health or safety that may arise from the use of plant or substances. Under subclause 22(3) a manufacturer may, where it is reasonable to do so, rely on research, testing or examination undertaken by other people.

Subclause (3) provides for importers of plant or substances into Australia to be regarded as the manufacturer where the actual manufacturer does not have a place of business in Australia.

Subclause (4) provides that the requirements imposed by clause 18 do not affect the operations of Commonwealth, State or Territory laws imposing obligations on manufacturers in respect of defective goods or the supply of information with goods. Offences are created and penalties provided for breaches of duties imposed by this clause.

Clause 19: Duties of suppliers in relation to plant and substances

Subclause (1) requires suppliers of plant and substances that the supplier ought reasonably expect will be used by employees at work to take all reasonably practicable steps to ensure that at the time of supply the plant or substance is safe and without risk to health if properly used. Suppliers are also required to make available to employers information on the condition of the plant or substance, the risks associated with use of the plant or substance, the means of avoiding those risks and the first aid and medical procedures to be followed if an employee suffers injury when using the substance. A supplier is required to take action to discover and eliminate or minimise risks which might arise from the condition of the plant or substance. Subclause 22(3) provides that the supplier may, where it is reasonable to do so, rely on research, testing or examination undertaken by other people. Failure to comply with this subclause is an offence and a penalty is provided.

Subclause (2) provides that where the acquisition of any plant or substance by an employer is financed by a person (called the "ostensible supplier") whose business is to finance the acquisition or use of goods by others, the duty imposed by subclause (1) is not placed upon the ostensible supplier but upon the person who supplied the goods via the ostensible supplier.

Subclause (3) provides that the requirements imposed in the Bill do not affect the operation of any Commonwealth, State or Territory laws dealing with the sale or supply of goods or the supply of information in relation to goods.

Clause 20: Duties of person erecting or installing plant in a workplace

This clause imposes a duty on persons who erect or install plant in a workplace for the use of employees to ensure that the plant is safe and does not contribute a risk to the health of the employees. It is an offence to breach this subclause and a penalty is provided.

Subclause (2) provides that the requirements in the Bill do not affect the operation of any Commonwealth, State or Territory laws dealing with the erection or installation of goods or the supply of services.

Clause 21: Duties of employees in relation to occupational health and safety

Subclause (1) imposes a duty on employees at work to take all reasonably practical steps to avoid creating or increasing risks to the employee or to other persons at or near the workplace. Employees are required to co-operate with the employer and others to enable them to fulfil the duties imposed on them by the Bill and to comply with the employer's reasonable instructions for the use of health and safety protective equipment supplied by the employer. An employee of a Government business enterprise is liable for a penalty provided by the subclause for failing to comply with this subclause.

Subclause (2) makes clear that the provisions in subclause (1) concerning protective equipment do not prevent an employer and any involved union or health and safety committee agreeing upon the choice and use of protective equipment. Such an agreement must, however, be consistent with the requirements of the legislation. Such agreements already in existence will not be overturned by enactment of the Bill except for any aspect of an agreement that is inconsistent with the Bill.

Subclauses (3) and (4) prohibit an employer from taking action against an employee for failure to use safety equipment provided by the employer, or as directed by the employer, where an agreement concerning the choice or manner of use of that equipment has not been adhered to.

Clause 22: Reliance on information supplied or results of research

Subclause 22(1) provides that an employer or person in control of premises shall be regarded as having taken reasonably practicable steps as required by clauses 16 or 17 in relation to the use of plant or substances if the person ensured as far as is reasonably practicable, that if the use of the plant or substance was in conformity with the information relating to health and safety supplied by the manufacturer or supplier and it was reasonable to rely on that information.

Subclause (2) provides that a person who erects or installs plant shall be regarded as having taken reasonably practicable steps as required by clause 20 if the person ensured, as far as is

reasonably practical, that the erection or installation was in conformity with the information relating to health and safety supplied by the manufacturer or supplier and it was reasonable to rely on that information.

Subclause (3) provides that the duties of manufacturers and suppliers to undertake research, testing and examination of plant or substances as required by clauses 18 or 19 may be fulfilled by relying on the research, testing or examination of the plant or substance by another person where it is reasonable to do so.

Clause 22 does not limit the generality of the requirement imposed by clauses 16 to 20 to take reasonably practical steps. Accordingly, where it would not be reasonable to rely on information provided by, or on research, testing or examination carried out by another person, other steps would have to be taken to satisfy that requirement.

Division 2 - Specific Duties Relating to Occupational Health and Safety

Clause 23: Regulations relating to occupational health and safety

This clause provides for the making of regulations on matters affecting, or likely to affect the occupational health and safety of employees or contractors.

Subclause 23(2) sets out some specific matters on which regulations may be made. Those matters are indicative only and do not preclude the making of regulations in respect of other matters.

PART 3 - WORKPLACE ARRANGEMENTS

Division 1 - Health and safety representatives

Clause 24: Designated work groups

This clause provides for the establishment of "designated work groups" for the purpose of selecting employee health and safety representatives. The composition of each "designated work group" is to be determined through a process of consultation between employers and representatives of the employees. The number of groups and the number of employees in each group, will vary according to such factors as the nature of the employer's undertaking and the geographical distribution of that undertaking.

Subclause (1) provides that a union with members employed by the employer (ie an involved union), or, if there is no such union, an employee, may request the employer to consult about the establishment or variation of designated work groups.

Subclause (2) provides that an employer must, within 14 days of receiving a request, consult with each involved union, or, if

there is no such union, with the employee making the request. An employer may, however, enter into consultations at any time.

Subclause (3) provides that the employer may initiate consultations about the variation of the designated work groups.

Subclause (4) provides that if there is a disagreement about the designated work groups to be established or varied the matter of the disagreement may be referred to the "reviewing authority". When that is done the consultation must be completed in accordance with the decision of reviewing authority. The "reviewing authority" is the Australian Industrial Relations Commission.

Subclauses (5) and (6) require the employer to establish or vary designated work groups in accordance with the outcome of the consultations referred to in subclauses (2) and (3) by notifying the employees in the groups. This is to be done by notifying the employees concerned within 14 days after the completion of consultations.

Subclause (7) requires consultations about the establishment or variation of a designated work group to be directed principally at achieving a grouping of employees that:

- (a) provides the best and most convenient method of representing and safeguarding the employee's occupational health and safety interests; and
- (b) best provides for any health and safety representative selected by a designated work group under clause 21 to be accessible to each employee in that group.

For that purpose paragraphs (e) to (h) set out matters which must be considered by the parties to the consultations.

Subclause (8) requires designated work groups to be established and varied so that, so far as is reasonably practicable, each of an employer's employees is included in a group.

Subclause (9) provides that all of an employer's employees may be included in a single designated work group.

Clause 25: Health and safety representatives

Subclause (1) envisages the selection of a health and safety representative for each designated work group. The powers of health and safety representatives are set out in clause 28.

By subclause (2) only an employee who is a member of a designated work group is eligible for selection as the health and safety representative for that group.

Under subclause (3) selection as a representative can be by the unanimous agreement of the members of the group or by election. If an election is required all employees in the group are entitled to vote (subclause (6)).

Under subclause (4) an election may be conducted by an involved union or, if there is no involved union, by a person authorised by the Commission.

Under subclause (5) an employee may not be a candidate for election if the employee is disqualified under clause 32. A number of grounds for disqualification are set out in that subsection. Only employees nominated by unions may contest elections conducted by unions.

Under subclause (7) an election is not required where there is only one candidate.

Subclauses (8) and (9) provide for the name of an employee selected as a health and safety representative to be notified to the employer and to all the employees in the relevant work group.

Subclause (10) requires an employer to maintain an up-to-date list of health and safety representatives which is to be available for inspection by employees, involved unions and investigators.

Clause 26: Term of office

The term of office of a health and safety representative is 2 years unless some other period was agreed upon during the consultations to establish the relevant designated work group, in which case the term of office is for that period. Representatives are eligible to be selected for further terms.

Clause 27: Training of health and safety representatives

Subclause (1) requires a health and safety representative to undertake training accredited by the Commission.

Subclause (2) requires the employer to allow the representative the necessary time off work without loss of remuneration or other entitlements.

Clause 28: Powers of health and safety representatives

Subclause (1) sets out the powers which a health and safety representative has for the purposes of promoting or ensuring the health and safety at work of employees in a designated work group. Those include the power to inspect the workplace, to request an investigation at the workplace, and to accompany an investigator conducting an investigation at the workplace. Where there is no health and safety committee established under clause 30 of the Bill at the workplace, the representative is empowered to represent the employees in consultations with the employer on measures to ensure the health and safety at work of employees in the designated work group. Where a committee has been established under clause 34 the representative may examine any records of the committee. The representative is also empowered to investigate complaints made by employees in the group, to attend, with the consent of the employee concerned, any interview concerning health and safety at work between the employee and an investigator appointed under clause 40 of the Bill or between the

employee and the employer or the employer's representative, to obtain access to information on occupational health and safety under the employer's control and to issue "provisional improvement notices" in accordance with clause 29.

Subclauses (2) and (3) provide that, subject to the agreement of the employer or the Commission, a representative is entitled to be assisted in the exercise of his or her powers by a consultant.

Subclause (4) provides that an employer who agrees to the provision of assistance to a representative by a consultant does not thereby become liable for any remuneration or other expense incurred in connection with the consultant's activities.

Subclause (5) seeks to protect the privacy of employees by providing that, during an interview between an employee and an investigator, employer or employer's representative, a consultant assisting a health and safety representative may be present only with the consent of the employee.

Subclause (6) seeks to prevent a representative and any consultant assisting a representative from having access to information subject to legal professional privilege or to confidential medical information held by the employer without the consent of the employer or the employee as the case requires. Medical information may also be provided to a representative and a consultant if the information is in a form which precludes identification of the employee to whom it relates.

Subclause (7) provides that a representative is not obliged to exercise any powers conferred by the Bill and protects a representative from any civil liability which might otherwise arise out of the exercise, or the failure to exercise, his or her powers as a representative.

Clause 29: Provisional improvement notices

This clause sets out the processes for the issuing of a provisional improvement notice by a representative.

Subclause (1) provides that a representative who, on reasonable grounds, believes that the Act or regulations are being, or are likely to be contravened, in a manner that affects employees in the group which he or she represents, is required to consult with the supervisor of the work of the group with a view to reaching agreement on rectifying the contravention or preventing the likely contravention.

Subclause (2) provides that where in the health and safety representative's opinion, agreement to rectify or prevent a contravention is not reached in a reasonable time the representative may issue a provisional improvement notice to the person responsible for the contravention.

Subclause (3) makes provision for the issuing of a notice to another person where the person responsible for a contravention is an employer but it is not practicable to issue the notice by

giving it to the employer. The copy of the notice must be given to the employer as soon as practicable.

Subclause (4) provides that a provisional improvement notice must specify the contravention or likely contravention that in the health and safety representative's opinion is occurring or is likely to occur, and the reasons for that opinion.

The notice must also give a period of not less than 7 days commencing on the day after the notice is issued within which action is to be taken to prevent any further contravention or to prevent the likely contravention.

Subclause (5) provides that the notice may specify the action to be taken during the period specified in the notice.

Subclause (6) allows the representative to extend the time, specified in the notice, within which remedial action must be taken.

Subclause (7) requires a health and safety representative to give copies of the notice to specified persons. Where a notice is issued to an employer, the employer must notify affected employees and display a copy of the notice: subclause (12).

Under subclauses (8) and (9) a person who has been issued with a provisional improvement notice, or any other person to whom a copy of the notice has been given under subclause (7), may request the Commission or an investigator to investigate the matter which is subject to the notice, whereupon the operation of the notice is suspended until an investigator determines the matter.

Subclause (10) requires an investigation to be conducted as soon as possible after a request is made. An investigator is required to confirm, vary or cancel the notice and to make such decisions and exercise such powers under Part 4 of the Bill - Advice, Investigations and Inquiries - as he or she considers necessary.

By subclause (11) a notice varied by an investigator has effect as varied and, except to the extent that it imposes additional obligations, is deemed to have always had that effect.

[Note: an appeal may be made against an inspector's decision to confirm or vary a provisional improvement notice: clause 48.]

Under subclause (13) a notice continues in effect until cancelled by an investigator or the health and safety representative or until necessary remedial action is taken.

Subclause (14) requires a person issued with a notice to ensure that, in so far as the notice relates to matters over which that person has control, the notice is complied with. The person must also take all reasonably practicable steps to inform the representative who issued the notice of the action taken to comply with it.

Subclause (15) provides that, for the purposes of clause 48, a notice which is confirmed or varied by an investigator is to be taken to have been issued by the investigator in those terms. This enables an appeal against the notice to be lodged under clause 48.

Clause 30: Duties of employers in relation to health and safety representatives

Subclause (1) imposes upon employers a number of duties intended to ensure that health and safety representatives are able to carry out their functions and exercise their powers under the legislation. Employers are required to:

- consult with representatives on changes at the workplace which may affect the health and safety of employees;
- permit the health and safety representative to make inspections in accordance with paragraph 28(1)(a)(i);
- permit the representative to accompany an investigator during an investigation at the workplace;
- permit the representative to be present at any interview with an employee at which the representative is entitled to be present;
- subject to requirements concerning confidentiality, provide access to any information to which the representative is entitled to have access under paragraphs 28(1)(d)(i) or (ii);
- permit the representative to have such time off work as is necessary in the exercise of his or her powers; and
- provide access to prescribed facilities or to other facilities.

Subclauses (2) and (3) deal with the employer's responsibilities and duties in relation to information of a confidential medical nature or for which the employer is entitled to claim, and does claim, legal professional privilege. These provisions complement the provisions of subclause 28(6) which deals with the right of access to such information by a representative.

Clause 31: Resignation etc of health and safety representative

Subclause (1) sets out the ways in which a person ceases to be a representative, namely, by resignation, by ceasing to be employed in the group, by expiration of term of office, or by disqualification.

Subclause (2) specifies the manner in which a representative may resign.

Subclause (3) specifies the persons who must be notified of the resignation of a representative and by whom that notice must be given.

Subclause (4) requires a person who ceases to be a representative by reason of ceasing to work in the group to notify the members of the group, the employer and any union which nominated the person for election, that the person is no longer the representative of the group.

Clause 32: Disqualification of health and safety representatives

Subclause (1) allows the employer or a union with members in the group to apply to the Commission for the disqualification of the representative on the grounds that: the representative has exercised his or her powers with the intention of causing harm to the employer or to an undertaking of the employer; the representative has used any power unreasonably, capriciously or for a purpose different from that for which the power was conferred; and that a representative has intentionally used or disclosed information acquired from the employer for a purpose not connected with the exercise of the powers of a representative.

Subclause (2) empowers the Commission, if it is satisfied the grounds for disqualification have been established, and after considering the harm caused to the employer, the past record of the representative, the public interest and any other relevant matters, to disqualify a representative from holding such a position for up to five years.

Clause 33: Deputy health and safety representatives

This clause provides that a deputy health and safety representative may be selected for each designated work group for which a health and safety representative has been selected. The selection of a deputy is subject to the same procedures as the selection of a representative. By subclause 3 a deputy may exercise the powers of a representative where the representative ceases to hold the position or is otherwise unable to exercise his or her powers.

Division 2 - Health and Safety Committees

Clause 34: Health and safety committees

Subclause (1) requires an employer to establish a committee at a workplace if not less than 50 employees normally work at the workplace, the employees are included in one or more designated work groups and a representative or an involved union requests the establishment of the committee.

Subclauses (2) and (3) provide that the composition of a committee shall be agreed between the employer and unions with members in the groups to which the committee relates or between the employer and the employees if there are no such unions. If there is no agreement the committee will consist of equal numbers of members representing the employer and members representing employees. An agreement may specify the persons who are to represent the interests of management and provide for the manner

in which the persons who are to represent the interest of the employees are to be chosen.

Subclause (4) provides that an agreement about the manner in which the employee representatives on a committee are to be chosen must not provide for a manner of selection which is inconsistent with any regulation made for the purposes of this clause.

Subclauses (5), (6) and (7): once established, a committee must meet at least once each 3 months. The committee may, subject to any procedure prescribed by the regulations, establish its own operating procedures; however, minutes of meetings must be taken and retained for a minimum period of 3 years.

Subclause (8) preserves the right of employers to establish additional committees on occupational health and safety other than in accordance with this clause.

Clause 35: Functions of health and safety committees

Subclause (1) sets out the functions of committees. These include assisting the employer to develop, implement and review measures to protect the health and safety of employees; facilitating co-operation between the employer and employees and assisting the dissemination of information on health and safety at work.

Subclause (2) provides committees with the power to perform their functions and subclause (3) provides that there is no obligation on committee members to exercise their functions and protects a committee member from any civil liability which might otherwise arise out of a person's participation as a committee member.

Clause 36: Duties of employers in relation to health and safety committees

Subclause (1) requires an employer to provide committees with access to relevant information and [subject to sub-clauses (2) and (3)] to grant such time away from work to committee members as is necessary for them to adequately participate in the work of the committee.

Subclause (2) requires the employer to maintain the confidentiality of medical information relating to an employee unless the employee consents in writing to the information being provided to a committee or the information itself does not identify or enable the identification of the employee concerned.

Subclause (3) allows an employer to withhold from a committee information for which the employer claims legal professional privilege. These provisions are consistent with other provisions of the Bill relating to the release of information to health and safety representatives and consultants.

Division 3 - Emergency procedures**Clause 37: Action by health and safety representatives**

This clause defines the role of a representative where there is reasonable cause to believe that there is an immediate threat to the health or safety of an employee or employees in the group.

Subclause (1) provides that in those circumstances the representative shall inform a supervisor of the employee of the threat. If the representative is unable to contact a supervisor immediately the representative may direct the cessation of the work in question and must inform a supervisor of that direction as soon as practicable.

Subclause (2) provides that a supervisor who is informed of a threat to health and safety must take action to remove the threat.

Subclause (3) provides that if the representative and the supervisor disagree on the need for a cessation of work, or that any action taken by the supervisor is sufficient to remove an immediate threat, the representative or the supervisor may request an investigation of the work that is the subject of the disagreement.

Subclause (4) requires an investigation requested by the representative or the supervisor to be conducted as soon as possible and the investigator is required to make such decisions and exercise such powers under Part IV of the Bill as the investigator considers necessary.

Clause 38: Directions to perform other work

This clause enables an employer to redeploy to other suitable work staff who have been directed by a representative to cease work because of an immediate threat to health or safety. Employees are to be regarded as performing the alternative work under the terms and conditions of their employment. The clause does not apply to a cessation of work that continues after the health and safety representative and the supervisor have agreed that the cessation was not or is no longer necessary, or an investigator has decided that work can resume.

PART 4 - ADVICE, INVESTIGATIONS AND INQUIRIES**Division 1 - Advice****Clause 39: Commission may refer persons seeking advice to experts**

This clause enables the Commission to refer employers, employees or contractors who have requested advice on occupational health and safety matters to persons other than members of the Commission's staff. The provision recognises that in the

exercise of its advisory function it is desirable that the Commission be able to draw on outside expertise.

Division 2 - Investigations

Clause 40: Appointment of investigators

Subclause (1) provides for there to be such investigators as are necessary from time to time.

Subclause (2) provides for the Commission to appoint persons to be investigators, including persons who are not members of the staff of the Commission but who have knowledge of, and experience in, occupational health and safety matters.

Subclause (3) provides that a person ceases to be an investigator if the Commission revokes the appointment or the person resigns.

The Commission is empowered by subclause (4) to publish directions governing the exercise of powers by investigators. Where a person who is not a member of the staff of the Commission is appointed as an investigator the Commission may restrict the powers which may be exercised by the person (subclause (5)). The Commission will therefore be able to appoint non-staff members to undertake a particular investigation and restrict their powers to that investigation.

Subclause (6) requires the Commission to issue investigators with an identity card which must be carried at all times when an investigator is carrying out his or her duties: subclause (7).

Subclause (8) provides that the regulations may regulate the appointment of investigators and prescribe their qualifications.

Clause 41: Investigations

Subclauses (1) and (2) provide for investigations to secure the observance of the legislation and to investigate accidents and dangerous occurrences. Investigators may conduct investigations relating to actual or possible contraventions of the legislation, accidents and dangerous occurrences and undertake investigations to check compliance with statutory requirements.

Subclause (3) allows the Commission to direct any investigator to investigate the occupational health and safety policies and practices of a Department or a Commonwealth authority.

Subclause (4) provides that, before doing so, the Commission must inform the relevant Secretary or chief executive officer of the fact that an investigation is to be conducted and of the subject matter of the investigation.

Subclause (5) gives unions a right to request an investigation of any workplace where a member of the union works.

Clause 42: Power of entry

Subclause (1) empowers an investigator to enter workplaces in connection with an investigation. The investigator may search the premises, inspect, examine, measure or conduct tests of any plant, substance or thing, and take photographs or make sketches of any workplace, plant or substance.

Subclause (2) requires an investigator, on entering a workplace, to take all reasonable steps to notify the person in control of the workplace and any relevant health and safety representative of the purpose of the investigator's presence. If requested, the inspector is to produce the investigator's identity card and a copy of any written direction of the Commission to conduct the investigation. In the case of an investigator who is not a member of the Commission staff, a copy of any restrictions imposed on the powers of the investigator by the Commission is also to be produced. An investigator who fails to produce the documentation required by subclause (2) ceases to be entitled to remain at the workplace: subclause 3.

Clause 43: Power to require assistance and information

Subclause (1) empowers an investigator undertaking an investigation to require specified persons to provide reasonable assistance, to answer questions and to produce documents relevant to the investigation.

Subclauses (2) and (3) create offences and provides penalties for failure, without reasonable excuse, to comply with an investigator's requirements and for knowingly or recklessly providing an investigator with false or misleading information.

Clause 44: Power to take possession of plant, take samples of substances etc

Subclause (1) empowers an investigator to remove any plant, substance, thing or sample from the workplace in order to inspect, examine, take measurements or conduct tests on them. A decision of an investigator to do so is subject to appeal to the Australian Industrial Relations Commission: clause 48).

Subclause (2) requires an investigator to notify the employer, the owner of the plant, thing or substance, and any representative of employees performing work to which the investigation relates of the removal of any item and the reason for its removal. An employer who receives such a notice shall display a copy of it at the workplace: subclause (3).

Subclause (4) requires the investigator to ensure that any inspection, examination, measurement or testing is completed as soon as reasonably practicable after removal of an item from the workplace and that the item is returned as soon as reasonably practicable.

Subclause (5) requires an investigator, to provide a written statement of the results of any inspection, examination, measurement or testing of an item removed from the workplace to

the employer, the owner of any such item, and any representative of employees performing work to which the investigation relates.

Clause 45: Power to order that workplace etc not be disturbed

Subclause (1) empowers an investigator to direct, in writing, to a specified person in charge of a workplace that a workplace or plant, substance, or thing be left undisturbed for a specified period in order to remove an immediate threat to the health or safety of any person, or to allow inspection, examination, measurement or testing. Such directions are renewable under subclause (2) and shall include the reasons for the giving of the direction: subclause (6).

Subclause (3) requires a person to whom a notice is given to display a copy of it in a prominent place at the workplace which is the subject of the direction.

Subclause (4) requires an investigator to notify the owner of the workplace, plant, substance or thing which is not owned by the employer, and which is the subject of a direction under subclause (1) of the giving of the direction and the reasons for it. Such notice must also be given to any health and safety representative for an employee to whose work the direction relates.

Subclause (5) requires an employer who has control over, and whose employees use, the workplace, plant, substance, or thing the subject of a direction to ensure compliance with the direction. If such a direction is not complied with by a Government business enterprise, a penalty for non-compliance is provided.

An appeal against a direction issued under subclause (1) may be lodged with the Australian Industrial Relations Commission: see clause 48.

Clause 46: Power to issue prohibition notices

This clause empowers an investigator, after completing an investigation, to issue an employer with a notice directing that the activity which is posing an immediate threat to the health or safety of employees is not to be engaged in, or is not to be engaged in a particular manner: subclauses (1), (2) and (3).

Subclause (4) requires an employer to comply with the notice. A penalty is provided should a Government business enterprise fail to comply with the notice.

Where an investigator considers that action taken by an employer is inadequate to remove the threat the investigator is required to notify the employer accordingly: subclause (5). A notice issued by an investigator ceases to have effect when the investigator is satisfied that adequate action to remove the threat has been taken and notifies the employer accordingly: subclause (6).

Subclause 8 provides that the notice may specify the action to be taken to remove the threat to which it relates.

An employer who is given a prohibition notice must provide copies to representatives of employees whose work is affected by the notice and display a copy of the notice prominently in the workplace: subclause (9). Where the employer is not also the owner of any workplace, substance or thing to which a prohibition notice relates an investigator is required to give a copy to the owner: subclause (10).

Under clause 48 of the Bill an appeal lies to the Australian Industrial Relations Commission against a decision of the investigator to issue a prohibition notice [sub-paragraph 48(1)(d)]; a decision by an investigator that an employer has not taken adequate action to remove a threat to health and safety which is the subject of a notice [subparagraph 48(1)(e)] and a decision by an investigator that an employer has taken adequate action to remove such a threat [subparagraph 48(2)(b)].

Clause 47: Power to issue improvement notices

This clause empowers an investigator, after conducting an investigation, to issue an improvement notice to a person who, in the opinion of the investigator, is contravening a provision of the Act or regulations, or has contravened such a provision and is likely to do so again.

Subclause (2) provides for the issuing of a notice to another specified person where the person responsible for the contravention is an employer but it is not reasonably practicable to issue the notice by giving it to the employer.

Improvement notices must specify the alleged contravention, or likely contravention, the reasons supporting the allegation and a period in which rectification is to occur: subclause (3). They may specify the remedial action to be taken: subclause (4). Any period specified in the notice may be extended, in writing, by the investigator: subclause (5).

An appeal against the issue of a notice may be lodged with the Australian Industrial Relations Commission: clause 48. The person to whom a notice is issued is required to comply with the notice to the extent that it relates to any matter over which that person has control: subclause (6). An offence is created and a penalty is provided for non-compliance.

By subclause 7, the penalty for a breach of subclause (6) does not apply to a natural person who is not employed by a Government business enterprise, or to a body corporate which is an employer that is not a Government business enterprise.

Subclause (8) requires an employer to whom a notice is issued to give a copy of it to representatives for employees whose work is affected and to display the notice prominently in the workplace.

Subclause (9) lists those persons to whom an investigator must provide copies of a notice.

Clause 48: Appeals

This clause provides for appeals to the reviewing authority against specified decisions of an investigator. The term "reviewing authority" is defined in subclause 4(1) as meaning the Australian Industrial Relations Commission established under section 8 of the Industrial Relations Act 1988.

Subclauses (1) and (2) set out decisions of an investigator which may be appealed and the persons who may appeal. The reviewing authority may confirm, revoke or vary decisions of investigators: subclause 6.

Under subclauses (4) and (5) the lodging of an appeal against a decision to issue an improvement notice or to confirm or vary a provisional improvement notice, suspends the operation of the decision or the notice pending the outcome of the appeal, and subject to any order made by the reviewing authority to the contrary.

Other decisions continue in force when appeals are lodged except to the extent that the reviewing authority makes an order to the contrary: subclause (3).

Subclause (7) provides that where the reviewing authority varies or revokes a decision, or revokes a decision by substituting another decision, the decision has effect and is deemed to have always had effect as varied or revoked.

Where a decision under clause 44 to take possession of an item at a workplace is not affirmed the item is to be returned to the workplace as soon as is reasonably practicable: subclause (8).

Clause 49: Liability of investigators

This clause protects investigators from civil liability arising out of any act done in good faith in connection with the performance of an investigators duties.

Clause 50: Notices not to be tampered with or removed

This clause imposes a penalty for tampering with or removing, without reasonable excuse, notices required to be displayed in workplaces under specified clauses of the Bill.

Clause 51: Arrangements with States for services of State officers

This clause enables arrangements to be made for officers of the Public Service of a State or a Territory to exercise the powers and perform the duties of an investigator. This provision complements the power of the Commission to appoint investigators who are not members of the staff of the Commission under clause 40.

Division 3 - Inquiries and reports

This Division provides for inquiries by the Commission which may lead to the reporting to Parliament of employers who breach the requirements of the legislation.

Clause 52: Application

By clause 52 the Division does not apply to Government business enterprises. These enterprises may be subject to prosecution for breaches of the legislation.

Clause 53: Report of investigation

Subclauses (1) and (2) require investigators to provide the Commission with written reports of investigations giving details of conclusions, recommendations or any other matters required by regulation to be included in the reports.

Subclause (3) requires the Commission to provide a copy of the investigator's report and any comments it may wish to make to the employer, and, if it considers it appropriate, to the responsible Minister in relation to the employer.

Subclause (4) allows the Commission to request an employer to advise the Commission within a specified time of actions taken or proposed as a result of conclusions or recommendations in a report of investigations or in respect of a prohibition or improvement notice issued in relation to work being performed for the employer. Employers must comply with such requests.

Subclause (5) requires an employer who has received a copy of a report under subclause (4) to provide copies of the report and any comments of the Commission to health and safety committees, or, if there is no such committee, to health and safety representatives.

Clause 54: Power to obtain information and documents

After receiving a report from an investigator under subclause 53(1) and before commencing a public inquiry under clause 55, the Commission may require a person who it believes is capable of producing documents or providing information about matters in the report, to produce those documents or provide that information.

Under subclause (2) a penalty is imposed for failure to comply, without reasonable excuse, with a request by the Commission for access to information or documents.

Clause 55: Commission may conduct public inquiry

Subclause (1) provides that the Commission may hold an inquiry into a matter arising out of an investigator's report. Such an inquiry may be held at any time after the Commission has received the investigator's report and before it prepares a report to the Minister under clause 65.

If the Commission is of the opinion that it is in the public interest to do so, the whole or any part of an inquiry may be held in private (subclause (2)), in which case the Commission may inform itself as it sees fit (subclause (3)). Subclauses (4) and (5) deal with procedures of the Commission in conducting a public inquiry. The Commission is not bound by the rules of evidence.

Clause 56: Power to summon witnesses

This clause allows the Commission to summons, by instrument in writing, a person to give evidence and produce documents.

Clause 57: Failure of witness to attend

This clause imposes a penalty for failing, without reasonable excuse, to attend as required by a summons or for failing to appear and report from day to day unless excused or released from further attendance.

Clause 58: Power to administer oath or affirmation

This clause empowers a member of the Commission to administer an oath or affirmation to a witness at an inquiry.

Clause 59: Refusal to be sworn or to answer questions

This clause imposes a penalty for refusing or failing, without reasonable excuse, to be sworn or to make an affirmation or to answer questions or to produce a document required by a summons to be produced.

Clause 60: Protection of members and witnesses

In relation to an inquiry a member of the Commission has the same protection and immunity as a Justice of the High Court. A person appearing as a witness at an inquiry is afforded the same protection and is subject to the same liabilities, in addition to the penalties provided by the Bill, as a witness in proceedings in the High Court.

Clause 61: Contempt of Commission

This clause creates offences covering specified misbehaviour in relation to the Commission, including the doing of any act or thing that would constitute contempt of court if the Commission were a court of record.

Clause 62: Powers of Commission in relation to documents produced

A member of the Commission may inspect, make copies of, or take extracts from, any books or documents produced to an inquiry and retain possession of such a book or document for a reasonable period. While books or documents are retained the Commission must permit a person otherwise entitled to possession of the books or documents to make copies of and take extracts from them.

Clause 63: Allowances to witnesses

A person served with a summons to give evidence or produce documents to a public inquiry is entitled to such allowances for travelling and other expenses as are prescribed in the regulations.

Clause 64: Witness not to be prejudiced in employment

This clause prohibits an employer taking action, or threatening to take action to dismiss or to injure or prejudice an employee in his or her employment because the employee has appeared, or has given evidence at an inquiry or proposes to appear or give evidence at an inquiry. A penalty is imposed for breach of the clause.

Clause 65: Report to be given to Minister in certain circumstances

Subclause (1) applies where the Commission has, under subclause 53(4), requested an employer to provide particulars of any action proposed to be taken as the result of a report of an investigation or of any action taken or proposed to be taken in respect of the issuing of a prohibition or improvement notice. If the employer fails, without reasonable excuse, to provide those particulars within the requested period, or if, in the Commission's opinion, the action taken or proposed to be taken is not adequate or that action still to be taken has not been taken within a reasonable time, the Commission may provide the Minister with a report to that effect.

Subclause (2) requires the Minister, upon receiving such a report, to cause a copy of the report to be laid before each House of the Parliament within 15 sittings days of that House.

Clause 66: Report to be given to Minister of failures to comply with directions etc

Subclause (1) empowers the Commission to provide the Minister with a report on the failure of an employer to comply with directions that a workplace be left undisturbed, or to comply with prohibition or improvement notices.

Subclause (2) requires the Minister, upon receipt of such a report, to cause a copy of the report to be laid before each House of Parliament within 15 sitting days of that House.

Clause 67: Delegation by Commission

Under the Commonwealth Employees' Rehabilitation and Compensation Act 1988 the Commission may delegate all or any of its functions to an officer or employee of the Commonwealth or of a Commonwealth authority. Under clause 67, should the Commission delegate its powers under Division 3, Part 4, of the Bill, the delegate will be able to exercise all the powers of the Commission under Division 3, Part 4.

PART 5 - MISCELLANEOUS**Clause 68: Notification and reporting of accidents and dangerous occurrences**

Subclause (1) requires employers to give to the Commission such notice and such reports concerning dangerous occurrences and accidents resulting in death, serious injury and incapacity as the regulations require.

Subclause (2) specifies matters which may be included in regulations made for the purpose of subclause (1).

Clause 69: Records of accidents and dangerous occurrences to be kept

This clause requires employers to maintain records of the accidents and dangerous occurrences which the employer is required under clause 68 to notify to the Commission. Regulations may be made in relation to the maintenance of the records.

Clause 70: Codes of practice

Subclause (1) empowers the Minister to approve, amend or revoke codes of practice developed by the Commission or any other body for the purpose of providing guidance to employers. Codes of practice are designed to provide practical guidance to employers on how their obligation to protect the health and safety at work of employers may be met. They are not legally binding on employers: see subclause (7).

Subclause (2) provides that a standard or code of practice which has already been declared, or is declared in the future, by the National Occupational Health and Safety Commission must be incorporated in a relevant code of practice prepared by the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees, to the extent that it is capable of relating to Commonwealth employment.

Subclause (3) provides that a code of practice incorporating a document (other than a NOHSC standard or code) prepared by a body other than NOHSC, may incorporate that document as in force at the time the code is approved or as amended from time to time by that body.

Subclause (4) enables a code of practice approved or amended by the Minister to apply generally or to apply only to OHS matters in certain areas or among certain employees.

Subclause (5) requires publication in the Gazette by the Minister of notice of the approval, amendment, or revocation of a code of practice. The Minister is also required to table before each House of Parliament a document setting out the code as approved, or setting out the amendment or revocation of the code.

Subclause (6) requires the Commission to make available for inspection, at offices of the Commission, up to date copies of any documents incorporated in a code of practice by reference.

Subclause (7) makes clear that non-compliance with a code of practice does not in itself make a person liable to any civil or criminal proceedings.

Subclause (8) defines a "NOHSC standard or code" as a national standard or code of practice declared under subsection 38(1) of the National Occupational Health and Safety Commission Act 1985.

Clause 71: Use of codes of practice in proceedings

In proceedings under the Bill approved codes of practice are admissible in evidence for the purpose of proving a matter relevant to an alleged breach of a provision of the Bill or regulations. Where it is established that, in respect of such matter, a relevant code of practice was not observed, that matter is to be taken as proved unless the court is satisfied that the Bill or regulations were complied with other than by observance of the code of practice.

This is consistent with subclause 70(7) which provides that failure to observe an approved code of practice does not by itself render a person liable to any civil or criminal proceedings.

Clause 72: Interference etc with equipment etc

This clause imposes a penalty where a person without reasonable excuse, knowingly and wilfully or recklessly interferes with protective equipment or safety devices provided for the health, safety or welfare of employees or contractors.

Clause 73: Employer not to levy employees etc

This clause prohibits an employer requiring employees to pay for measures taken in accordance with the Bill or regulations to protect their health, safety or welfare at work. A penalty is imposed for a breach of this prohibition by a Government business enterprise.

Clause 74: Certain matters to be included in annual reports

Subclause (1) requires Commonwealth Departments and authorities to include in their annual reports specified information concerning occupational health and safety matters.

Subclause (2) specifies how that information is to be provided by Commonwealth authorities which do not produce annual reports.

Clause 75: Annual report of Commission

Section 90 of the Commonwealth Employees' Rehabilitation and Compensation Act 1988 requires the Commission to prepare an annual report. Clause 75 of the Bill requires the Commission to include in its annual report a report on the operation of this

Bill and regulations during the year and specifies certain matters to be included in the report.

Clause 76: Employer not to dismiss etc employees on certain grounds

Subclause (1) prohibits discriminatory action by an employer against an employee because the employee has, or proposes to, complain about health and safety at work, provide assistance in an investigation or cease work at the direction of a health and safety representative. A penalty is imposed on an employer that is a Government business enterprise.

Subclause (2) provides that where, in proceedings for an offence against subclause (1), all the elements of the offence other than the reason for the employers action are proved, the onus of proving that the action was not taken for that reason rests upon defendant employer.

Clause 77: Institution of prosecutions

The Commission or an investigator may institute proceedings for an offence against the Bill or regulations. If proceedings for an offence have not been commenced within six months of an action or omission which a relevant representative or union considers was an offence, the representative or union may request the Commission to institute proceedings: subclause (2). Where the Commission receives such a request it must, within 3 months, advise the representative or union whether proceedings have or will be instituted or of the reasons why proceedings will not be instituted: subclause (3).

Clause 78: Conduct by directors, servants and agents

By subclauses (1) and (2) the state of mind in relation to particular conduct of a body corporate in proceedings for an offence under the Bill may be established by showing that the relevant conduct was engaged in by a director, servant or agent of the body corporate and that that person had the required state of mind. Similarly, subclause (3) deems the state of mind of a servant or agent of a person other than a body corporate to be the state of mind of that person. Any relevant conduct for the purpose of these provisions must fall within the actual or apparent authority of the person concerned.

Subclauses (2) and (4) deem the conduct of a servant or agent of a person, and, in the case of a body corporate, of a director, to be the conduct of the person or body corporate unless it is established that the person or body corporate took reasonable precautions or exercised due diligence to avoid the conduct.

Under subclause (5) a person, other than a body corporate, whose conviction for an offence is based on such deemed conduct or state of mind is not liable to imprisonment.

Subclause (6) provides that where it is necessary to establish the state of mind of a person in relation to particular conduct, it is sufficient to show that a servant or agent of the person,

acting within apparent or actual authority, had the state of mind.

Clause 79: Act not to give rise to other liabilities etc

This clause preserves the position in relation to civil actions which existed prior to the Bill being enacted. Subject to the provisions of clause 80, nothing in the Bill confers a right of action in any civil proceedings in respect of any contravention of the Bill or regulations or confers a defence or otherwise affects a right of action in any civil proceedings. In respect of criminal liability, the intention of the Bill is that State criminal laws will continue to apply to Commonwealth employees to the extent that those laws are capable of concurrent operation with Bill. Actions for damages against the Commonwealth for occupational injury are regulated by sections 44 and 45 of the Commonwealth Employees' Rehabilitation and Compensation Act 1988.

Clause 80: Effect of contravention of Act etc on contracts of employment etc

This clause establishes that a contravention of the legislation by an employee shall be regarded as contravention of the terms and conditions upon which the person is employed. Such a contravention may, therefore, be a basis for disciplinary action under the employee's terms and conditions of employment.

Subclause (2) provides that a contravention by a person who holds office under an Act other than the Public Service Act 1922 may be taken into consideration in determining whether that person has been guilty of misbehaviour for the purposes of the Act under which he or she holds office.

Subclause (3) renders void any term of a contract of employment which purports to, or which does, exclude, restrict or modify the application of clause 80.

Clause 81: Circumstances preventing compliance with Act may be defence to prosecution

Under this provision, it is to be a defence to a prosecution under the Act that, due to an emergency, it was not reasonably practicable for an employer or other person to do an act or thing required by the Act.

Clause 82: Regulations

Subclause (1) provides a general regulation making power for the purposes of the Bill and specifies a number of specific matters which may be the subject of regulations.

Subclause (2) provides that regulations may exempt a person, on whom a power or function is conferred by a law of the Commonwealth, a State or a Territory, from the application of the Bill if the application of the Bill or regulations would be an impediment to the proper performance of that function or the exercise of that power. Such regulations will remain in force

for five years unless they expire at an earlier time or are repealed: subclause (3).

Schedule

The Schedule lists those Commonwealth authorities which are included within the definition of "Government business enterprises" in clause 5 of the Bill under paragraph (a)(i) of that definition.