

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

OCCUPATIONAL HEALTH AND SAFETY
(MARITIME INDUSTRY) BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and
Communications, Senator the Hon. Bob Collins)



Printed by Authority by the Commonwealth Government Printer

OCCUPATIONAL HEALTH AND SAFETY

(MARITIME INDUSTRY) BILL 1993

OUTLINE

The purpose of this Bill is to provide a modern regime for the health and safety of persons working on ships and offshore industry mobile units. Hitherto, regulation of health and safety for seafarers has been solely through the prescriptive requirements of the *Navigation Act 1912* and its associated marine orders.

This Bill adopts a different approach, being structured around the general duties of care concept and the co-regulation approach (widely known as the Robens' principles) adopted in the *Occupational Health and Safety (Commonwealth Employment) Act 1991* and the *Petroleum (Submerged Lands) Amendment Act 1992*.

A similar approach has been adopted in the occupational health and safety legislation enacted by all the States and Territories.

Essentially, the Bill seeks to provide a framework within which operators and maritime industry employees may co-operate to address health and safety matters on board ships and offshore industry mobile units.

This Bill complements the *Seafarers Rehabilitation and Compensation Act 1992* which reformed the workers compensation system for seafarers.

The package of legislation comprising that Act and this Bill completes the process of bringing about a closer integration of occupational health, safety, rehabilitation and compensation within the maritime industry.

Like the *Seafarers Rehabilitation and Compensation Act 1992*, the coverage of the proposed occupational health and safety legislation is aligned with Part II of the *Navigation Act 1912*. This includes offshore industry vessels and trading ships declared under subsections 8A(2) and 8AA(2) respectively of the *Navigation Act 1912*.

However, recognising the existing Federal/State occupational health and safety arrangements applying to the offshore petroleum and gas sector through the *Petroleum (Submerged Lands) Act 1967*, the Bill only covers offshore industry mobile units when in transit between two States, between a State and a Territory, or between Australia and an overseas country, ie at such times as these units are not operational and therefore not covered by the *Petroleum (Submerged Lands) Act 1967*.

Part 1 of the Bill includes clauses setting out the Bill's objectives and the functions conferred on the Seafarers Safety, Rehabilitation and Compensation Authority. The Authority was established under section 103 of the *Seafarers Rehabilitation and Compensation Act 1992*.

The most significant feature of the Bill is the codification of the common law duty of care for the protection of health and safety at work. Part 2 of the Bill sets out these duties in respect of operators, employees, contractors, manufacturers and suppliers.

Part 3 of the Bill, which deals with workplace arrangements, provides for the establishment of designated work groups, health and safety representatives and health and safety committees. These arrangements facilitate shipboard cooperation in the protection of the health and safety of seafarers.

Part 4 of the Bill deals with the role of the Inspectorate (Australian Maritime Safety Authority). The Inspectorate will, among other things, be responsible for ensuring there is compliance with the requirements of the new legislation.

Part 5 of the Bill concerns miscellaneous matters. Included in this Part are requirements for the reporting of accidents and dangerous occurrences, provisions relating to the development and use of codes of practice, and general provisions concerning regulations.

FINANCIAL IMPACT STATEMENT

The financial impact of the Occupational Health and Safety (Maritime Industry) Bill 1993 has two elements:

- . the costs to maritime industry operators in implementing the new arrangements; and
- . the costs associated with the operations of the Inspectorate.

As the latter costs will be fully cost-recovered from the industry, the proposed legislation will have no financial impact on the Government.

Costs to maritime industry operators

The new legislation is not expected to lead to significantly increased costs to maritime industry operators.

In terms of the general requirement for ships to have equipment and facilities which are healthy and safe, Australian ships already meet the high standards imposed through the Navigation Act 1912. These standards are based on international safety and labour conventions. Therefore, on most ships the operation of the Bill is not expected to lead to significant changes to equipment or facilities.

However, there will be costs associated with the provision of formal occupational health and safety training to all employees, and meeting the more advanced training requirements for health and safety representatives.

The maritime industry is developing training in a cost effective way by adopting an industry-wide approach to the development of training programs, coordinated through the industry-based National Maritime Industry Training Council. Furthermore, the intention is that, where practicable, a significant element of the training will be undertaken during off-duty periods at sea through the use of appropriate techniques such as audio-visual and interactive computer-based programs.

The maritime industry has not provided an estimate of the training costs or of any other costs associated with the implementation of the new scheme.

Inspectorate costs

There will be two main elements to the Inspectorate's functions:

- . ensuring industry parties are complying with the legislation requirements to establish appropriate arrangements to protect the health and safety of employees at work; and
- . conducting spot checks, responding to requests for investigations, conducting investigations into significant accidents and dangerous situations and taking such action as is required to ensure deficiencies are rectified.

The first element will be achieved primarily through safety audits on ships and units. These audits will monitor compliance with the provisions in the Bill relating to workplace arrangements and the requirements for the operator to provide relevant information and training. The intention is that safety audits would generally be conducted in association with one of the surveys required under the Navigation Act 1912.

The Australian Maritime Safety Authority charges appropriate fees for surveys required under the Navigation Act 1912.

As there should be only a marginal increase in the time required for a safety audit to be conducted, there is no provision in the Bill for charging operators an additional fee for this service.

The Inspectorate's costs relating to the second element will be recovered from the shipping industry as a whole through the existing Marine Navigation (Regulatory Functions) Levy.

However, if, during a policing inspection or specific investigation conducted under the proposed scheme, significant health and safety deficiencies were found which were also deficiencies against the *Navigation Act 1912*, the Inspectorate could charge the operator for any further visit or visits necessary for an inspector to supervise deficiency rectification in relation to that Act.

Such a charge would be applied under the relevant provisions of the *Australian Maritime Safety Authority Act 1990* and the *Navigation Act 1912*.

Conclusion

The costs associated with the implementation of the proposed legislation are not expected to impose an onerous burden on the shipping industry. Moreover, resultant improvements in health and safety at sea should lead to a reduction in lost time through injury and direct savings in workers rehabilitation and compensation costs.

TABLE OF PROVISIONS

Clause

PART 1 - PRELIMINARY

Division 1 - Short title and commencement

Short title	1
Commencement	2

Division 2 - Objects and definitions

Objects	3
Interpretation	4

Division 3 - Miscellaneous preliminary provisions

Extent of Act	5
Application of Act	6
This Act not to affect the <i>Navigation Act 1912</i>	7
Application of Act to prescribed ships or prescribed units controlled by contractors	8

Division 4 - Additional functions conferred on Seafarers
Safety, Rehabilitation and Compensation Authority and
Ministerial directions

Functions conferred on the Authority	9
Directions by Minister	10

PART 2 - OCCUPATIONAL HEALTH AND SAFETY

Division 1 - General duties relating to occupational health and safety

Duties of operators in relation to their employees	11
Consultative processes for developing health and safety policy	12
Duties of operators in relation to contractors	13
Duties of operators in relation to third parties	14
Duties of manufacturers in relation to plant	15
Duties of manufacturers in relation to substances	16
Importers of plant and substances	17
Sections 15, 16 and 17 not to affect the operation of the <i>Trade Practices Act 1974</i> or certain other laws	18
Duties of suppliers in relation to plant and substances	19
Financiers not to be treated as suppliers	20
Neither section 19 nor 20 affect the operation of the <i>Trade Practices Act 1974</i> or certain other laws	21
Duties of persons erecting or installing plant in a workplace	22
Duties of persons repairing or maintaining plant in a workplace	23
Duties of persons constructing, modifying or repairing a structure on a prescribed ship or prescribed unit	24
Duties of persons engaged in loading or unloading a prescribed ship or prescribed unit	25
Sections 22, 23, 24 and 25 not to affect the operation of the <i>Trade Practices Act 1974</i> or certain other laws	26

Duties of employees in relation to occupational health and safety	27
Reliance on information supplied - plant and substances	28
Reliance on information supplied - erection or installation of plant	29
Reliance on information supplied - repair or maintenance of plant	30
Reliance on information supplied - construction, modification or repair of structure	31
Reliance on results of research	32

Division 2 - Specific duties relating to occupational health and safety

Regulations relating to occupational health and safety	33
--	----

PART 3 - WORKPLACE ARRANGEMENTS

Division 1 - Designated work groups

Request to establish or vary designated work groups	34
Operator to enter into consultations to establish or vary designated work groups	35
Variation of designated work groups	36
Reference of disagreement to reviewing authority	37
Operator to establish designated work groups in accordance with consultations	38
Operator to vary designated work groups in accordance with consultations	39
Consultation procedures	40

Division 2 - Health and safety representatives

Selection of health and safety representatives	41
Conduct of elections of health and safety representatives	42
Candidates for election as health and safety representatives	43
Right to vote in health and safety representative election	44
Person in command to maintain list of health and safety representatives	45
Term of office	46
Training of health and safety representatives	47
Powers of health and safety representatives in respect of a workplace	48
Power of health and safety representatives to investigate complaints	49
Power of health and safety representatives to be present at certain interviews	50
Power of health and safety representatives to obtain access to information	51
Power of health and safety representatives to issue provisional improvement notices	52
Powers of health and safety representatives to be exercised for the purposes of promoting or ensuring health and safety	53
Consultant to health and safety representative	54
Access to confidential information	55
Liability of health and safety representative	56

Division 3 - Provisional improvement notices

Consultations in relation to rectifying contraventions or preventing contraventions of this Act	57
Issuing of provisional improvement notice	58

Effect of provisional improvement notice	59
Employees to be notified of issuing of provisional improvement notice	60
Person in command's obligations	61
Operation of section 98 for the purposes of section 100	62
Duty of operators to consult with health and safety representatives on implementation of changes at workplace	63
Duties of operators to allow health and safety representatives access to a workplace and to consult with representatives on workplace health and safety measures	64
Duty of operators to allow health and safety representatives to be present at certain interviews	65
Duty of operators to provide health and safety representatives access to certain information	66
Duty of operators to allow health and safety representatives to take time off	67
Duty of operators to provide health and safety representatives access to certain facilities	68
Access to confidential medical information	69
Access to information in relation to which an operator claims legal professional privilege	70
Resignation etc. of health and safety representatives	71
Disqualification of health and safety representatives	72

Division 4 - Health and safety committees

Health and safety committees	73
Functions of health and safety committees	74
Powers of health and safety committees	75
Liability of health and safety committee members	76

Duties of operators in relation to health and safety committees	77
Access to confidential medical information	78
Access to information in relation to which an operator claims legal professional privilege	79

Division 5 - Emergency procedures

Action by health and safety representatives	80
Directions to perform other work	81

PART 4 - ADVICE AND INVESTIGATIONS

Division 1 - The Inspectorate

Functions of the Inspectorate	82
-------------------------------	----

Division 2 - Advice

Inspectorate may refer persons seeking advice to experts	83
--	----

Division 3 - Investigations

Appointment of inspectors	84
Identification cards	85
Directions by Inspectorate	86
Investigations	87
Investigation report	88
Power of entry etc.	89
Power to require assistance and information	90
Power to take possession of plant, take samples of substances etc.	91

Power to direct that workplace etc. not be disturbed	92
Power to issue prohibition notices	93
Inspector to inform person in command if action by operator is inadequate	94
When prohibition notice stops having effect	95
Person in command to distribute copies of prohibition notice	96
Inspector to give copy of prohibition notice to owner of a workplace, plant, substance or thing	97
Power to issue improvement notices	98
Distribution of copies of improvement notices	99
Appeals	100
Implementation of decision under appeal	101
Powers of reviewing authority	102
Duty of inspector in relation to a decision under section 91 to take possession of plant, a substance or a thing that is not affirmed	103
Liability of inspectors	104
Notices not to be tampered with or removed	105
Arrangements with States or Territories for services of State or Territory officers	106

PART 5 - MISCELLANEOUS

Notifying and reporting accidents and dangerous occurrences	107
Records of accidents and dangerous occurrences to be kept	108
Codes of practice	109
Use of codes of practice in proceedings	110
Interference etc. with equipment etc.	111

Recrediting of recreation leave	112
Operator not to levy employees etc.	113
Annual occupational health and safety report	114
Operator not to dismiss etc. employees on certain grounds	115
Beginning prosecutions	116
Conduct of directors, servants and agents	117
Act not to give rise to other liabilities etc.	118
Circumstances preventing compliance with Act may be defence to prosecution	119
Regulations - general	120

NOTES ON CLAUSES

PART 1 PRELIMINARY

Division 1 - Short title and commencement

Clause 1: Short Title

This clause gives the short title of the Bill.

Clause 2: Commencement

This clause provides for the date of commencement of the clauses of the Bill.

Clauses 1 and 2 will come into operation on the day on which the Bill receives the Royal Assent. The remaining provisions will come into operation on a day or days to be fixed by Proclamation.

However, if there are any provisions which have not commenced within the period of six months after the Royal Assent, those provisions will commence on the day following that period.

Division 2 - Objects and definitions

Clause 3: Objects

The objects of the Bill are to:

- . secure the health, safety, and welfare of employees working in the maritime industry;
- . protect other persons from risks to health and safety arising from the work activities of maritime industry employees;
- . ensure that expert advice on health and safety matters is available to operators, employees and contractors;
- . promote a healthy and safe working environment; and
- . foster a cooperative consultative relationship between operators and employees on the occupational health, safety and welfare of employees at work.

Clause 4: Interpretation

Significant terms defined in this clause include the following:

"articles of agreement" has the same meaning as in the *Navigation Act 1912*.

"Authority" means the Seafarers Safety, Rehabilitation and Compensation Authority.

"contractor" means a natural person, other than an employee, who performs work on a prescribed ship or unit under contract for the operator. For the purposes of the Bill, an operator owes the same duty of care to contractors as to employees.

Note: This definition limits the term "contractor" to a person working on the ship (not being an employee) under a contract with the operator. It does not include a person who enters into a contract with the operator for other purposes eg a holder of an exploration permit who contracts the operator of a drilling unit to drill the seabed would not be a contractor within the meaning of the Bill.

"designated work group" means a group of employees established or varied in accordance with Division 1 of Part 3 of the Bill.

"employee" means a person employed by the operator on a prescribed ship or unit, including a seafarer employed under articles of agreement (the normal employment contract for seafarers on a ship).

"Inspectorate" means the Australian Maritime Safety Authority established by the *Australian Maritime Safety Authority Act 1990*.

"involved union" means a registered union with coverage of one or more of the employees in a designated work group because of the work performed by that employee or those employees.

"operator", in relation to an employee, means the owner of a prescribed ship or unit, if the owner has the management or control of the ship or unit and employs the employees.

If a person other than the owner has the management or control of the ship or unit and employs the employees, then it is that person who is deemed to be the operator.

"operator", in relation to a contractor, means the owner of a prescribed ship or unit, if the owner has the management or control of the ship or unit and is a party to the contract under which the contractor works on the ship or unit.

If a person other than the owner has the management or control of the ship or unit and is a party to the contract under which the contractor works on the ship or unit, then it is that person who is deemed to be the operator.

"person in command" means the person responsible, as agent for the operator, for the operation of the ship or unit.

"prescribed ship" means a ship to which Part II of the *Navigation Act 1912* applies, ie an Australian owned or operated ship engaged in trade or commerce with overseas countries, between the States or between a State and a Territory.

The term "prescribed ship" also includes an offshore industry vessel or a ship engaged in trade or commerce within a State or Territory, if a declaration has been made in respect of the vessel or ship under subsection 8A(2) or 8AA(2) of the *Navigation Act 1912*.

Excluded from the definition of "prescribed ship" are non-commercial Commonwealth and State/Territory Government owned or operated ships (eg Royal Australian Navy ships and Government survey or navigational aid ships). However, if such a Government ship were operated with a merchant navy crew supplied under arrangements made with a commercial operator, then the ship is a "prescribed ship".

Also excluded from the definition of a "prescribed ship" is a ship while engaged in activities relating to seabed exploration or exploitation operations to which the *Petroleum (Submerged Lands) Act 1967* applies. However, when not engaged in such activities, eg when transiting from one operational location to another, such a ship would be a "prescribed ship".

Note: The *Petroleum (Submerged Lands) Act 1967* provides that ships engaged in activities related to seabed exploration or exploitation are covered by the laws of the adjacent State or Territory. In those States where the State occupational health and safety legislation does not extend seaward, such ships are covered by the occupational health and safety provisions contained in Schedule 7 of the *Petroleum (Submerged Lands) Act 1967*.

"prescribed unit" means an offshore industry mobile unit, as described in the *Navigation Act 1912*, being a unit, such as a drilling rig or construction barge, which is not self propelled and is under tow (on an interstate or overseas voyage). (Offshore industry mobile units which are self-propelled are included in the definition of "prescribed ship".)

Note: When engaged in activities related to seabed exploration or exploitation, non-propelled units are covered by the *Petroleum (Submerged Lands) Act 1967* occupational health and safety arrangements, as described in the note under the definition of "prescribed ship". However, when under tow from an operational location in one State to an operational location in another State (or when on a delivery voyage to or from an overseas destination), the arrangements under the *Petroleum (Submerged Lands) Act 1967* would not apply. Therefore, provision is made for non-propelled units under tow to be covered under the Bill.

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

"workplace" means anywhere on board a prescribed ship or unit where an employee or contractor works, or any place on board to which an employee or contractor has access and which is under the control of the operator.

Division 3 - Miscellaneous preliminary provisions

Clause 5: Extent of Act

The Bill will extend to all places outside Australia, including the external Territories.

Clause 6: Application of Act

This clause sets out the constitutional basis for the coverage of the Bill.

The Bill will apply to:

- . operators;
- . employees;
- . contractors and other persons;
- . manufacturers, suppliers and importers of plant and substances;

connected with a prescribed ship or unit that is engaged in trade or commerce:

- . between Australia and places outside Australia;
- . between the States; or
- . within a Territory, between a State and a Territory or between two Territories.

The clause also provides for coverage of operators, employees, contractors and other persons, and manufacturers, suppliers and importers of plant and substances, connected with offshore industry vessels or ships engaged in trade or commerce within a State or Territory, if a declaration under subsection 8A(2) or 8AA(2) of the Navigation Act 1912 has been made.

The clause also provides the constitutional basis of the Bill under the corporations power. It also limits the application of the Act with respect to State banking or State insurance which does not extend beyond the limits of the State concerned.

Clause 7: This Act not to affect the Navigation Act 1912

The Navigation Act 1912 and its subsidiary legislation (marine orders) contain a number of prescriptive requirements relating to the health, safety and welfare of seafarers and other persons on ships.

Most of these requirements are derived from provisions in international safety conventions and international labour conventions to which Australia is a signatory.

Both the Bill and the Navigation Act 1912 reflect common law duties of care and there is nothing in the Bill that is inherently inconsistent with the Navigation Act 1912, or vice versa.

This clause has the effect that the provisions of the Bill do not impede or implicitly repeal any provisions of the Navigation Act 1912. The clause is included to ensure that a person taking any action to meet a requirement of the Bill does so in a manner that is consistent with any relevant provisions of the Navigation Act 1912 and its marine orders.

Note: The designated Inspectorate (Australian Maritime Safety Authority) also administers the Navigation Act 1912.

Clause 8: Application of Act to prescribed ships or prescribed units controlled by contractors

With the exception of clauses 22, 23, 24, 25 and 26 (which are concerned with the duties of care of persons other than operators and employees), the Bill does not apply to a ship or unit, or the activities carried out on board by a contractor, while the ship or unit is under the control of a contractor for construction or repair purposes.

If employees of the operator remain on board during such construction or repair, only Part 1 (Preliminary), Part 2 (Occupational Health and Safety) and clause 120 apply to work performed by those employees. However, the regulations may provide for the application of other parts of the Bill to employees.

Subclause (2) provides that a ship or unit is only taken to be controlled by a contractor if the operator has handed over control to the contractor.

Note: This clause would not apply to the usual dry dock or repair situation, where the operator retains overall control of the ship or unit and the person in command is in a position to issue instructions to the contractor on a day to day basis. In such circumstances, the operator, not the contractor, is taken to be in control, and the Bill would apply in total.

Division 4 - Additional functions conferred on the Seafarers Safety, Rehabilitation and Compensation Authority and Ministerial Directions

Clause 9: Functions conferred on the Authority

This clause confers functions on the Authority in addition to those conferred by the *Seafarers Rehabilitation and Compensation Act 1992*. The additional functions are:

- . to ensure that the Bill and regulations are complied with;
- . to advise operators, employees and contractors on occupational health and safety matters;
- . to collect, interpret and report information relating to occupational health and safety;
- . to formulate occupational health and safety policies and strategies;
- . to accredit relevant training courses;

- . to liaise with other occupational health and safety bodies;
- . to provide advice to the Minister on the most effective means of achieving the objects of the Bill, on the making of regulations and on the approval of codes of practice.

Clause 10: Directions by Minister

This clause provides that the Minister may give written directions to the Authority on the performance of its functions and the exercise of its powers. The Authority must comply with the Minister's directions.

PART 2 - OCCUPATIONAL HEALTH AND SAFETY

Division 1 - General duties relating to occupational health and safety

Clause 11: Duties of operators in relation to their employees

Subclause (1) confirms the operator's common law duty of care to take all reasonable steps to protect the health and safety of employees at work.

This is a penalty provision making the operator liable for any breach.

Subclauses (3), (4), (5) and (6) require that all reasonable steps must be taken to:

- . provide a working environment that is safe for employees and is without risk to their health, including the provision of adequate facilities for the employees' welfare at work;
- . ensure that the workplace and its means of access are safe;
- . ensure that the use, handling, storage and transport of plant and substances are safe; and
- . provide information, training and supervision on occupational health and safety.

Subclause (6) also enables the operator to provide information, instruction and training on a ship or unit.

Subclause (7) requires operators to monitor their employees' health and safety, to maintain appropriate records and provide first aid services.

Clause 12: Consultative processes for developing health and safety policy

Subclause (1) obliges the operator to take all reasonable steps to develop a policy relating to the occupational health and safety of employees.

This is a penalty provision making the operator liable for any breach.

Subclause (2) requires the policy to be developed in consultation with involved unions and any other appropriate persons.

Subclauses (3) and (4) require the policy must enable the operator and employees to cooperate effectively in promoting and developing health, safety and welfare measures at work. The policy must also provide adequate mechanisms for reviewing the effectiveness of those measures and for continuing consultations between the operator, employees and the unions.

Clause 13: Duties of operators in relation to contractors

Subclauses (1) and (2) provide that if an operator has control over an activity of a contractor, there is the same duty of care as that owed to the operator's own employees under clause 11. Accordingly, the operator is obliged to take all reasonable steps to protect the health and safety of contractors. This is a codification of the duty of care required by the common law.

Subclause (3) provides these duties continue to apply to matters over which the operator would normally have control, even if there is an agreement made between the operator and contractor expressly excluding control over those matters.

This is a penalty provision making the operator liable for any breach.

Clause 14: Duties of operators in relation to third parties.

The operator is obliged to take all reasonable steps to ensure that third parties at or near the workplace are not exposed to any risk to their health and safety from the operator's undertaking. This is a codification of the duty of care required by the common law.

This is a penalty provision making the operator liable for any breach.

Clause 15: Duties of manufacturers in relation to plant

If a manufacturer expects plant to be used by employees, there is an obligation on the manufacturer to take reasonable steps to ensure that the plant is designed and constructed so that, when properly used, it is safe and constitutes no risk to the health of employees. This is a codification of the duty of care required by the common law.

Subclause (3) requires the manufacturer to take all reasonable steps to conduct research and testing to identify and minimise any risk to the health and safety of employees that may be caused by the use of the plant.

Subclause (4) requires the manufacturer to make adequate information available to the operator on the intended use of the plant, its design and construction and conditions required for its safe use.

This is a penalty provision making the manufacturer liable for any breach.

Clause 16: Duties of manufacturers in relation to substances

If a manufacturer expects a substance to be used or handled by employees, there is an obligation to take reasonable steps to ensure that it is manufactured so that when properly used it is safe and constitutes no risk to the health of employee. This is a codification of the duty of care required by the common law.

Subclause (3) requires the manufacturer to take all reasonable steps to conduct research and testing to identify and minimise any risk to the health and safety of employees that may be caused by the use of the substance.

Subclause (4) requires the manufacturer to make adequate information available to the operator on the intended use of the substance, its composition, the conditions required for its safe use, and the first aid and medical procedures required if it causes injury.

This is a penalty provision making the manufacturer liable for any breach.

Clause 17: Importers of plant and substances

If plant or a substance is imported by a person other than the manufacturer, and the manufacturer has no place of business in Australia, the importer is deemed to be the manufacturer for the purposes of clauses 15 and 16.

Clause 18: Sections 15, 16 and 17 not to affect the operation of the Trade Practices Act 1974 or certain other laws

Clauses 15, 16 and 17 do not affect the operation of the Trade Practices Act 1974 or any Commonwealth or State laws on manufacturers' liability. The provision saves all other laws on product liability.

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

If a supplier expects plant or a substance to be used by employees, there is an obligation to take reasonable steps to ensure that it is in such a condition that when properly used it is safe and constitutes no risk to the health of employees. This is a codification of the duty of care required by the common law.

Subclause (3) requires the supplier to take all reasonable steps to conduct research and testing to identify and minimise any risk to the health and safety of employees arising from the use of the plant or substance.

Subclause (4) requires the supplier to make adequate information available to the operator on the condition of the plant or substance, any risk to health and safety that might arise if it is not properly used, any precautions necessary to eliminate that risk and, in the case of a substance, the first aid and medical procedures required if it causes injury.

This is a penalty provision making the supplier liable for any breach.

Clause 20: Financiers not to be treated as suppliers

This clause draws a distinction between a person who actually supplies goods and the person who provides the finance for the purchase of the goods, the latter person being the legal owner under arrangements such as hire purchase.

If a person carrying on the business of providing finance has acquired an interest in plant or a substance after advancing the funds to a third party for its purchase, the third party is deemed to be the supplier for the purposes of clause 19.

Clause 21: Neither section 19 nor 20 affect the operation of the Trade Practices Act 1974 or certain other laws

Clauses 19 and 20 do not affect the operation of the Trade Practices Act 1974 or any Commonwealth or State laws on the obligations of suppliers. The provision saves all other laws on product liability.

Clause 22: Duties of persons erecting or installing plant in a workplace

A person erecting or installing plant is obliged to take all reasonable steps to ensure that it is erected so as to be safe for employees and constitutes no risk to their health. This is a codification of the common law.

This is a penalty provision making the person erecting or installing plant liable for any breach.

Clause 23: Duties of persons repairing or maintaining plant in a workplace

A person repairing or maintaining plant is obliged to take all reasonable steps to ensure that it is repaired or maintained so as to be safe for employees and constitutes no risk to their health. This is a codification of the common law.

This is a penalty provision making the person repairing or maintaining plant liable for any breach.

Clause 24: Duties of persons constructing, modifying or repairing a structure on a prescribed ship or prescribed unit

A person constructing, modifying or repairing a structure on a prescribed ship or unit is obliged to take all reasonable steps to ensure that it is erected, modified or repaired so as to be safe for employees and constitutes no risk to their health. This is a codification of the common law.

This is a penalty provision making a person constructing, modifying or repairing a structure liable for any breach.

Clause 25: Duties of persons engaged in loading or unloading a prescribed ship or prescribed unit

A person loading or unloading a prescribed ship or unit is obliged to take all reasonable steps to ensure that the loading or unloading is safe for employees and constitutes no risk to their health. This is a codification of the common law.

This is a penalty provision making a person loading or unloading a ship or unit liable for any breach.

Clause 26: Sections 22, 23, 24 and 25 not to affect the operation of the Trade Practices Act 1974 or certain other laws

Clauses 22, 23, 24 and 25 do not affect the operation of the Trade Practices Act 1974 or any other Commonwealth or State laws on the subject.

This clause saves the existing law on the duty of care required of persons performing the work covered by the specified clauses.

Clause 27: Duties of employees in relation to occupational health and safety

This clause imposes an obligation on an employee to take all reasonable steps not to create a risk or increase an existing risk (whether by doing something or failing to do something) to the employee's own health or safety, or to the health or safety of other employees or other persons at or near where the employee is working.

Subclause (3) requires the employee to cooperate with the operator and any other appropriate person to enable them to fulfil their duties under the Bill.

Subclause (4) requires the employee to use any protective equipment supplied by the operator in a safe and proper manner, and in accordance with any instructions given by the operator consistent with the safe and proper use of the equipment.

This is a penalty provision making the employee liable for any breach.

Subclause (5) provides that the operator and an involved union, or a health and safety committee, may agree on the selection or manner of use of protective equipment.

Clause 28: Reliance on information supplied - plant and substances

Clauses 11, 13, and 14 require the operator to take all reasonable steps to protect the health and safety of employees, contractors and third parties.

This clause provides that the operator is regarded as taking reasonable steps as required by clause 11, 13 or 14 in relation to the use of plant or a substance if the operator has ensured, so far as practicable, that the plant or substance has been used in accordance with the information supplied by the manufacturer or the supplier of the plant or substance, and provided it was reasonable to rely upon that information.

Clause 29: Reliance on information supplied - erection or installation of plant

Clause 22 requires a person erecting or installing plant in a workplace to take all reasonable steps to ensure the plant is not erected or installed so as to be unsafe for employees or risk their health.

This clause provides that the person is regarded as having taken reasonable steps as required by clause 22 if the person ensured, so far as practicable, that the erection or installation was in conformity with the relevant information supplied by the manufacturer or supplier of the plant to ensure the health and safety of persons using the plant, and provided it was reasonable to rely on that information.

Clause 30: Reliance on information supplied - repair or maintenance of plant

Clause 23 requires a person repairing or maintaining any plant in a workplace to take all reasonable steps to ensure the plant is not repaired or maintained in such a way as to be unsafe for employees or risk their health.

This clause provides that the person is regarded as having taken reasonable steps as required by clause 23 if the person ensured, so far as practicable, that the repair or maintenance was in conformity with the relevant information supplied by the manufacturer or supplier of the plant to ensure the health and safety of persons using the plant, and provided it was reasonable to rely on that information.

Clause 31: Reliance on information supplied -
construction, modification or repair of a structure

Clause 24 requires a person constructing, modifying or repairing a structure on a prescribed ship or unit to take all reasonable steps to ensure the structure is not constructed, modified or repaired in such a way as to be unsafe for employees or risk their health.

This clause provides that the person is regarded as having taken reasonable steps as required by clause 24 if the person ensured, so far as practicable, that the construction, modification or repair was in conformity with the relevant information supplied by the manufacturer or supplier of the material or parts used in the construction, modification or repair to ensure the health and safety of persons using the structure, and provided it was reasonable to rely on that information

Clause 32: Reliance on results of research

This clause provides that if manufacturers and suppliers are required to take all reasonable steps to conduct research, testing and examination of plant or substances under clauses 15, 16 or 19, that duty is deemed to be satisfied if the research, testing or examination has already been carried out by or on behalf of someone else and provided it was reasonable to rely upon that research, testing or examination.

Division 2 - Specific duties relating to occupational
health and safety

Clause 33: 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 operators or contractors.

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

PART 3 - WORKPLACE ARRANGEMENTS

Division 1 - Designated work groups

Clause 34: Request to establish or vary designated work groups

This clause provides that an involved union or, in the absence of a union, an employee, may request an operator to enter into consultations to establish or vary designated work groups.

Clause 35: Operator to enter into consultations to establish or vary designated work groups

This clause obliges the operator to begin consultations with the union or employee, concerning the establishment or variation of designated work groups. These consultations must begin within 14 days of the request by the union or an employee under clause 34.

Clause 36: Variation of designated work groups

This clause enables the operator to initiate consultations with involved unions or health and safety representatives about the variation of the designated work groups.

Clause 37: Reference of disagreement to reviewing authority

This clause sets out the process to be followed in the event of a disagreement between operators and employees about the establishment or variation of designated work groups.

Subclause (1) provides that if, in the course of the consultations initiated under clause 35 or 36, there is a disagreement about the establishment or variation of a designated work group, the disagreement may be referred to the reviewing authority by any of the participating parties.

Subclause (2) provides that the parties must complete their consultations in accordance with the reviewing authority's resolution of the matter.

Clause 38: Operator to establish designated work groups in accordance with consultations

This clause requires the operator to establish the agreed designated work groups, by notifying the employees concerned within 14 days of the completion of consultations under clause 35.

Clause 39: Operator to vary designated work groups in accordance with consultations

This clause requires the operator to vary the agreed work groups, by notifying the employees concerned, within 14 days of the completion of consultations under clause 35 or 36.

Clause 40: Consultation procedures

Subclause (1) requires consultations on the establishment or variation of work groups to focus on forming groupings which best serve the health and safety needs of employees, as well as the need for the health and safety representative for the group to be accessible to each employee within the group.

Subclause (2) sets out the matters to be considered during consultations. These include the number of employees, the nature of the work, the areas where each type of work is performed, the nature of any risks to health or safety in the workplace and the watchkeeping arrangements on the prescribed ship or unit.

Under subclause (3) each employee must, as far as practicable, be included in a designated work group.

Subclause (4) provides that all employees on a prescribed ship or unit may be included in a single work group.

Division 2 - Health and safety representatives

Clause 41: Selection of health and safety representatives

Subclause (1) provides for a health and safety representative to be selected for each designated work group.

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

Under subclause (3) selection as a representative can be by the unanimous agreement of the members of the group or by election.

Clause 42: Conduct of elections of health and safety representatives

Under this clause, an election may be conducted by an involved union or, if there is more than one involved union, by the union agreed to by all the unions.

If there is no involved union, the election may be conducted by a person authorised by the Authority to conduct such elections.

Clause 43: Candidates for election as health and safety representatives

Under this clause, an employee in the designated work group may be a candidate unless disqualified under clause 72. If an involved union is conducting the election, the candidate must have been nominated by an involved union in relation to the group.

Clause 44: Right to vote in health and safety representative election

Under subclause (1), all members of a designated work group are entitled to vote in an election for the health and safety representative of the group.

Under subclause (2), if there is only one candidate that person is taken to have been elected.

Subclause (3) requires that the name of the selected health and safety representative must be provided to the person in command as soon as practicable.

Subclause (4) requires the person in command to then display a notice of the selection in a prominent place in such workplaces as will enable all the employees in the relevant work group to be notified of the name of the person selected as the group's health and safety representative.

Clause 45: Person in command to maintain list of health and safety representatives

This clause requires the person in command to maintain an up-to-date list of health and safety representatives and ensure the list is available for inspection by employees, involved unions and inspectors.

Clause 46: Term of office

Subject to the provisions relating to the resignation or dismissal of a health and safety representative, the term of office of a representative begins upon selection and ends when the person ceases to serve on the prescribed ship or unit.

Provision is made for the parties to the consultations held under clauses 35 or 36 to agree to the representative serving a succession of periods of service on a ship. Such an arrangement would enable the representative to take periods of leave from the ship or unit without having to undergo a formal selection process every time he or she returned from leave.

Subclause (2) limits the term of office of a health and safety representative to a maximum of two years

Subclause (3) enables representatives to be re-selected for further terms.

Clause 47: Training of health and safety representatives

Subclause (1) requires a health and safety representative to undertake a training course accredited by the Authority and provides that such a course may be provided on a prescribed ship or unit.

Subclause (2) requires the operator to allow the representative such time off work as is necessary for training, without loss of wages or other entitlements.

Clause 48: Powers of health and safety representatives in respect of a workplace

Subclause (1) sets out the powers of the health and safety representative in respect of a workplace used by employees in the designated work group.

The representative has the power to:

- . inspect the workplace if there has been in the immediate past an accident or dangerous occurrence, or if there is an immediate threat of an accident or dangerous occurrence;
- . inspect the workplace if the representative has given the operator reasonable notice;
- . ask the Inspectorate or an inspector to conduct an investigation at the workplace, and to accompany the inspector conducting the investigation;

- . represent the work group in consultations with the person in command about health and safety matters, if no health and safety committee exists; and
- . examine the records of a committee if one has been established (under clause 73).

Subclause (2) provides that a representative who asks for an investigation to be conducted must notify the person in command of the request.

Clause 49: Power of health and safety representatives to investigate complaints

This clause gives a health and safety representative the power to investigate complaints on health and safety matters made by employees in the designated work group.

Clause 50: Power of health and safety representatives to be present at certain interviews

Under this clause, a health and safety representative may, with the relevant employee's consent, attend an interview about health and safety at work between the employee and an inspector or between the employee and the operator, person in command, or any other person representing the operator.

Clause 51: Power of health and safety representatives to obtain access to information

This clause enables a health and safety representative to obtain access to information under the operator's control relating to risks to the health and safety of any employees. The representative may also obtain access to information under the operator's control relating to the health and safety of any of the employees. This is subject to clause 55, which precludes access to information covered by legal professional privilege and limits access to confidential personal information.

Clause 52: Power of health and safety representatives to issue provisional improvement notices

This clause gives the health and safety representative the power to issue provisional improvement notices in accordance with clause 58.

Clause 53: Powers of health and safety representatives to be exercised for the purposes of promoting or ensuring health and safety

This clause limits the exercise of the powers of a health and safety representative to matters promoting or ensuring occupational health and safety at work for the employees in the representative's designated work group.

Clause 54: Consultant to health and safety representative

This clause sets out the circumstances in which a health and safety representative may be assisted by a consultant.

Subclause (2) provides that a representative may only be assisted by a consultant at a workplace, or provide a consultant with information given to the representative under clause 51, if the operator has agreed in writing.

Subclause (3) provides that the operator is not liable for any fees or other expenses incurred in connection with the consultant's activities.

Subclause (4) provides that, during an interview described in clause 50, a consultant may assist the representative at the interview only with the consent of the employee concerned.

Clause 55: Access to confidential information

This clause prevents a health and safety representative, and a consultant assisting a representative, from gaining access to information which the operator is entitled to claim, and does claim, legal professional privilege.

The clause also protects the confidentiality of personal medical information held by the operator. Neither the health and safety representative nor the consultant may have access to confidential medical information concerning a present or past employee without the written approval of the person concerned. However, the information may be released if it is in a form that neither identifies the person nor enables the person's identity to be discovered.

Clause 56: Liability of health and safety representative

This clause states that there is no obligation on a health and safety representative to exercise a power conferred on the representative. The clause also protects the representative from any civil liability because of the failure to exercise a power provided under the Bill, or for the way the representative exercised such a power.

Division 3 - Provisional improvement notices

Clause 57: Consultations in relation to rectifying contraventions or preventing contraventions of this Act

Subclause (1) provides that, for the purpose of reaching agreement on rectifying a contravention or preventing a contravention affecting members of a designated work group, the health and safety representative for the group must consult the supervisor of the work, with the objective of rectifying the situation.

Subclause (2) provides that the representative must consult the person in command if the representative and the supervisor cannot agree on the manner for rectifying or preventing the contravention.

Clause 58: Issuing of provisional improvement notice

Subclause (1) provides that the health and safety representative may issue a provisional improvement notice to the person in command if the representative is satisfied that agreement to rectify a contravention, or likely contravention, is not reached within a reasonable time.

Subclause (2) provides that a provisional improvement notice must specify the contravention that the representative believes is occurring or is likely to occur and the reasons. The notice must stipulate a period, not less than 7 days, for the necessary remedial action to be taken.

Under subclause 3, the notice may specify action to be taken by the person in command during the period of the notice.

Subclause (4) allows the representative to extend the time specified in the notice for remedial action to be taken.

Subclause (5) requires that, if the notice given to the person in command under subclause (1) relates to a workplace, plant, substance or thing owned by a person other than the operator, or if the notice relates to a contravention by a contractor, the person in command must give a copy of the notice to the person or contractor concerned.

Clause 59: Effect of provisional improvement notice

Under subclause (1), the person in command given a provisional improvement notice under subclause 58(1), or a person who has been given a copy of a notice under subclause 58(5), may request the Inspectorate or an inspector to investigate the matter. This request must be made within 7 days of the issue of the notice.

Subclause (2) provides that once a request has been made, the operation of the notice is suspended until an inspector determines the matter .

Subclause (3) requires an investigation to be conducted as soon as possible after the request. The inspector must then confirm, vary or cancel the notice and make such decisions and exercise such powers under Part 4 of the Bill as the inspector considers necessary.

Subclause (4) provides that if an inspector varies a provisional improvement notice, the notice takes effect as varied, and is deemed to have always had that effect. However, if the variation imposes additional obligations on the operator, those obligations only take effect from the date the notice is varied.

Clause 60: Employees to be notified of issuing of provisional improvement notice

Subclause (1) requires the person in command to ensure that all employees affected by a provisional improvement notice are informed and that a copy of the notice is displayed at or near the workplace concerned.

Under subclause (2) the notice continues in effect until cancelled by an inspector or by the health and safety representative who issued the notice, or until the necessary remedial action is taken.

Clause 61: Person in command's obligations

This clause requires the person in command to ensure the notice is complied with, in as far as it relates to matters within his or her control. The person in command must also take all reasonable steps to inform the health and safety representative who issued the notice of the action taken to comply with it.

Clause 62: Operation of section 98 for the purposes of section 100

This clause has the effect that, if an inspector, using the power under subclause 59(3), confirms or varies a provisional improvement notice, the notice is deemed to be a notice issued under clause 98 (ie an improvement notice issued by an inspector). This enables a person affected by the notice to appeal against the inspector's decision, under clause 100.

Clause 63: Duty of operators to consult with health and safety representatives on implementation of changes at workplace

This clause provides that the operator must, if requested by the health and safety representative for a designated work group, consult with the representative on any changes at the workplace which may affect the health and safety at work of employees.

Clause 64: Duties of operators to allow health and safety representatives access to a workplace and to consult with health and safety representatives on workplace health and safety measures

This clause imposes an obligation on an operator to permit a health and safety representative to exercise his or her power to make inspections under paragraph 48(1)(a). The operator must also permit the representative to accompany an inspector during an investigation at a workplace.

Additionally, if there is no health and safety committee, the operator must consult with the health and safety representative, if requested to do so, about measures relating to the health and safety at work of employees.

Clause 65: Duty of operators to allow health and safety representatives to be present at certain interviews

This clause requires the operator to allow the health and safety representative to be present at any interview with an employee at which the representative is entitled to be present under clause 50.

Clause 66: Duty of operators to provide health and safety representatives access to certain information

This clause requires an operator to provide access to any information to which the health and safety representative is entitled under clause 51.

This is subject to the operator not being permitted to release confidential medical information except in accordance with clause 69. This is also subject to the operator not being obliged to release information in respect of which the operator claims legal professional privilege under clause 70.

Clause 67: Duty of operators to allow health and safety representatives to take time off

This clause requires an operator to allow a health and safety representative the necessary time off work to exercise his or her powers, without loss of wages or other entitlements.

Clause 68: Duty of operators to provide health and safety representatives access to certain facilities

This clause requires an operator to provide the health and safety representative with access to such facilities as are prescribed in regulations, or are necessary to enable the representative to exercise his or her powers.

Clause 69: Access to confidential medical information

This clause protects the confidentiality of medical information held by the operator in relation to present or past employees.

The operator must not permit a health and safety representative access to confidential medical information relating to a present or past employee without the written approval of the person concerned. However, the information may be released if it is in a form that neither identifies the person nor enables the person's identity to be discovered.

Clause 70: Access to information in relation to which an operator claims legal professional privilege

Under this clause, the operator may refuse to disclose to a health and safety representative information for which the operator may claim, and does claim, legal professional privilege.

This clause and clause 69 complement the provisions of clause 55, which limits the right of access to such information by a health and safety representative.

Clause 71: Resignation etc of health and safety representatives

Subclause (1) sets out the ways in which a person may cease to be a health and safety representative, namely, by resignation, by ceasing employment within the designated work group, by expiration of the term of office or by disqualification.

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

Subclause (3) provides that the person in command must, when given a notice of resignation, display a copy of the notice prominently in the workplace.

Clause 72: Disqualification of health and safety representatives

This clause specifies the circumstances in which a health and safety representative may be disqualified.

Subclause (1) allows the operator or an involved union to apply to the Authority for the disqualification of the representative on the grounds that:

- . the representative has exercised a power provided under subclause 48(1), or any other provision of the Bill, with the intention of causing harm to the operator or to the operator's undertaking;
- . the representative has exercised such a power unreasonably, capriciously or for a purpose different from that for which the power was conferred; or
- . the representative has intentionally used or disclosed information acquired from the operator for a purpose not connected with the exercise of the powers of a representative.

Subclause (2) empowers the Authority, if it is satisfied the grounds for disqualification have been established, to disqualify a representative from holding such a position for up to five years. In considering the appropriate action to take, the Authority must consider the harm caused to the operator, the past record of the representative, the public interest and any other relevant matters.

Division 4 - Health and safety committees

Clause 73: Health and safety committees

Under subclause (1), if there is more than one designated work group, the operator must establish a health and safety committee if requested to do so by a health and safety representative or an involved union.

Subclauses (2) and (3) deal with the composition of a committee. The person in command, being the operator's representative, is required to be a member. The other committee members may comprise either the health and safety representative for each designated work group or such other persons as agreed between the operator and the involved unions.

Subclauses (4), (5), (6), (7) and (8) set out a number of requirements for health and safety committees. The committee must meet at least once every 3 months and minutes must be taken of meetings and kept for at least 3 years.

On ships where there is a shipboard management committee, there is a requirement for the minutes of a ship's health and safety committee meeting to be tabled at the next shipboard management committee meeting.

Subclause (9) preserves the right of an operator, in consultation with registered unions or other persons, to establish committees concerned with occupational health and safety in relation to the operator's business undertakings.

Clause 74: Functions of health and safety committees

This clause sets out the functions of a health and safety committee. These functions include:

- . assisting the operator to develop, implement and review measures to protect the health and safety of employees;
- . facilitating cooperation between the operator and employees; and
- . assisting the operator to disseminate information on health and safety matters.

Clause 75: Powers of health and safety committees

This clause provides a health and safety committee with the power to do all things necessary or convenient in order to perform its functions.

Clause 76: Liability of health and safety committee members

This clause provides that, because a member of a health and safety committee is allowed to perform functions conferred on the committee, there is no obligation on the member to exercise that right. The clause also protects the member from any civil liability because of the failure to do an act, or for doing an act in a particular way.

Clause 77: Duties of operators in relation to health and safety committees

This clause requires an operator to provide the health and safety committee access to relevant information on risks to health and safety at a workplace controlled by the operator, or from the activities of the operator (subject to clauses 78 and 79).

Committee members are to be granted time off work without loss of wages or other entitlements to enable them to participate adequately in the work of the committee.

Clause 78: Access to confidential medical information

This clause protects the confidentiality of medical information held by the operator in relation to present or past employees.

The operator must not permit a health and safety representative access to confidential medical information relating to a present or past employee without the written approval of the person concerned. However, the information may be released if it is in a form that neither identifies the person nor enables the person's identity to be discovered.

Clause 79: Access to information in relation to which an operator claims legal professional privilege

Under this clause, the operator may refuse to disclose to the health and safety committee information for which the operator may claim, and does claim, legal professional privilege.

Division 5 - Emergency procedures

Clause 80: Action by health and safety representatives

This clause defines the role of a health and safety representative if there is reasonable cause for the representative to believe that an immediate threat to health or safety exists.

Subclause (1) requires the representative to inform a supervisor of the threat. If the representative is unable to contact a supervisor immediately, the representative may direct the employee or employees to stop, in a safe manner, performing the work in question. The representative must then 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. Such action may include directing the employee or employees to stop, in a safe manner, performing the work in question.

Subclause (3) provides that if the representative and the supervisor disagree on whether the supervisor's action has removed the threat, or that the representative's order for work to cease was justified, the representative must inform the person in command of the threat to health or safety.

Subclause (4) provides that if the person in command and the representative disagree on whether the threat has been removed or that a cessation of work was justified, the person in command or the representative may ask the Inspectorate or an inspector to conduct an investigation of the work that is subject to the disagreement.

Subclause (5) requires the resulting investigation must be conducted as soon as possible, and for the inspector to make such decisions and exercise such powers under Part 4 as the inspector considers necessary.

Clause 81: Directions to perform other work

This clause enables the person in command to redeploy to other suitable work, any employee who has been directed by a health and safety representative to stop work because of an immediate threat to health or safety.

The clause does not apply to a work stoppage that continues after the health and safety representative has agreed with the supervisor or person in command that the work the employee was previously doing can safely resume, or after an inspector has decided that the work can safely resume.

PART 4 - ADVICE AND INVESTIGATIONS

Division 1 - The Inspectorate

Clause 82: Functions of the Inspectorate

This clause gives the Inspectorate the following functions:

- . to ensure that obligations and regulations under the Bill are complied with;
- . to provide advice to any or all involved parties on relevant occupational health and safety matters; and
- . to provide the Authority with information upon request.

Division 2 - Advice

Clause 83: ~~Inspectorate may refer persons seeking advice to experts~~

This clause enables the Inspectorate to refer operators, employees or contractors seeking advice on occupational health and safety matters to a person with the relevant expertise.

Division 3 - Investigations

Clause 84: Appointment of Inspectors

This clause enables the Inspectorate to appoint as inspectors staff members who have undergone occupational health and safety training.

Clause 85: Identification cards

Subclauses (1) and (2) requires the Inspectorate to issue identity cards to inspectors and for inspectors to carry their cards when on duty.

Subclause (3) provides that an identity card must be surrendered immediately a person ceases to be an inspector.

A penalty is provided for a breach of this requirement.

Clause 86: Directions by Inspectorate

Under this clause the Inspectorate may give written directions to inspectors on how their powers are to be exercised.

Clause 87: Investigations

Subclauses (1) and (2) sets out the circumstances under which an inspector may conduct an investigation, or be directed by the Inspectorate to conduct an investigation.

Investigations may be made to ensure the observance of the legislation and to investigate possible contraventions, accidents or dangerous occurrences.

Subclause (3) allows an involved union to request an investigation of a workplace if a union member works there.

Clause 88: Investigation report

This clause requires an inspector who issues written advice on an occupational health and safety matter, either in the course of an investigation or in response to a request for such advice, to make available a copy of the advice to any interested party.

Clause 89: Power of entry etc

Subclause (1) empowers an inspector, to the extent that it is reasonably necessary in connection with an investigation, to stop and detain a prescribed ship or unit, or board a ship or unit and enter a workplace at any reasonable time.

The inspector may also search a workplace and inspect, examine, measure or conduct tests, take photographs or make sketches.

Subclause (2) requires an inspector, on boarding a prescribed ship or unit, to notify the person in command and any relevant health and safety representative of the purpose of the visit, and to produce the relevant documentation on request.

Subclause (3) provides that an inspector has no right to remain in a workplace if unable to produce an identity card and any other relevant documents.

Clause 90: Power to require assistance and information

Subclause (1) empowers an inspector conducting an investigation to require an operator, occupier, employee or contractor to provide reasonable assistance, answer questions and produce documents relevant to the investigation.

Subclauses (2) and (3) create offences and provide penalties if a person, without reasonable excuse fails to comply with an inspector's requirements or provides false or misleading information.

Note: A reasonable excuse for failing to provide information could include the avoidance of self-incrimination.

Clause 91: Power to take possession of plant, take samples of substances etc

Subclause (1) empowers an inspector to remove any plant, substance, thing or sample from the workplace in order to inspect, examine, take measurements or conduct tests.

Subclause (2) requires an inspector to give written notice of the removal of any item from the workplace and the reason for its removal to the person in command, the owner of the plant, thing or substance (if not the operator), and any relevant health and safety representative, .

Subclause (3) requires that, on receipt of such a notice, the person in command must display a copy of it prominently at the workplace.

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

Subclause (5) requires an inspector to provide a written statement of the results of any inspection, examination, measurement or testing of an item from the workplace to the persons notified under subclause (2).

Clause 92: Power to direct that workplace etc not be disturbed

Subclause (1) empowers an inspector to give a written direction to the person in command that a workplace, 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 an inspection, examination, measurement or testing to take place.

Subclause (2) requires the inspector's reasons to be included in the direction.

Such a direction is renewable under subclause (3).

Subclause (4) requires the person in command to display the inspector's notice prominently in the workplace subject to the direction.

Subclause (5) requires that, if the owner of the workplace, plant, substance or thing which is the subject of a direction is someone other than the operator, the inspector must notify the owner concerned, giving reasons for the direction. A copy of the notice must also be given to any relevant health and safety representative.

Subclause (6) requires the operator to ensure the inspector's direction is complied with to the extent that it relates to a matter under the operator's control.

A penalty is provided for breaches of this requirement.

Clause 93: Power to issue prohibition notices

This clause empowers an inspector, after completing an investigation, to issue the operator with a written prohibition notice, directing that the activity which is posing an immediate threat to the health or safety of employees is not to be undertaken, or is not to be undertaken in a specified manner, (subclauses (1), (2) and (3)).

Subclause (4) provides that the notice may specify the action to be taken to remove the threat to health or safety.

Subclause (5) requires the operator to ensure the notice is complied with to the extent that it relates to a matter under the operator's control.

A penalty is provided for a breach of this requirement.

Clause 94: Inspector to inform person in command if action by operator is inadequate

If an inspector considers that the action taken by an operator in response to a prohibition notice is inadequate, the inspector is required to notify the person in command accordingly (subclause (1)).

Subclause (2) provides that an inspector, in making a decision under subclause (1) may exercise such powers of an inspector conducting an investigation as the inspector thinks are necessary for the purposes of making the decision.

Clause 95: When prohibition notice stops having effect

A prohibition notice ceases to have effect when the inspector is satisfied that adequate action to remove the threat has been taken and the inspector notifies the person in command accordingly.

Clause 96: Person in command to distribute copies of prohibition notice

A person in command who is given a prohibition notice must provide copies to each of the health and safety representatives for work groups affected by the notice and display a copy prominently in the affected workplace.

Clause 97: Inspector to give copy of prohibition notice to owner of a workplace, plant, substance or thing

If the owner of any workplace, substance or thing to which a prohibition notice relates is someone other than the operator, the inspector must give a copy of the prohibition notice to that owner.

Clause 98: Power to issue improvement notices

Subclause (1) empowers an inspector, after conducting an investigation, to issue an improvement notice to the person in command, if the inspector considers a person is contravening a provision of the Bill or regulations, or has contravened such a provision and is likely to do so again.

An improvement notice must specify the alleged contravention, or likely contravention, the reasons supporting the allegation and a period in which the rectification is to occur (subclause (2)).

The notice may also specify the remedial action to be taken (subclause (3)).

Any period specified in the notice may be extended, in writing, by the inspector (subclause (4)).

The person in command must comply with the notice in any matters over which he or she has control (subclause (5)).

A penalty is provided for non-compliance with this provision.

Clause 99: Distribution of copies of improvement notices

Subclause (1) requires the person in command to give a copy of the improvement notice to the health and safety representatives for work groups affected by the notice and display a copy prominently in the affected workplace.

Subclause (2) requires the inspector to provide a copy of the improvement notice to the owner of the workplace, plant, substance or thing, if it is owned by a person other than the operator.

Clause 100: Appeals

This clause provides for persons affected by the decisions of an inspector to appeal to the reviewing authority.

Subclause (1) sets out the decisions of an inspector which are subject to appeal, including the confirmation or variation of a provisional improvement notice, the taking possession of plant or substances and the issue of a prohibition notice or improvement notice.

Subclauses (2) and (3) specify who has the right to appeal in respect of a decision by an inspector.

Clause 101: Implementation of decision under appeal

Under subclause (1) the lodging of an appeal against a decision does not affect the operation of the decision, unless the reviewing authority makes an order to the contrary.

However, subclause (2) provides that if the appeal is against a decision to issue an improvement notice, the operation of the decision is suspended pending the outcome of the appeal, unless the reviewing authority makes an order to the contrary.

Under subclause (3), if the decision appealed against is that of an inspector to confirm or vary a provisional improvement notice whose operation has already been suspended pending the investigation of the matter, the notice is to be further suspended pending determination of the appeal, subject to any order made by the reviewing authority to the contrary.

Clause 102: Powers of reviewing authority

Under subclause (1) the reviewing authority may confirm, revoke or vary a decision of an inspector.

Subclause (2) provides that, if the reviewing authority varies or revokes a decision, or substitutes another decision, the decision has effect, and is deemed to have always had effect, as varied, revoked or substituted.

Clause 103: Duty of inspector in relation to a decision under section 91 to take possession of plant, a substance or a thing that is not affirmed

This clause provides that if a decision under clause 91 to take possession of an item at a workplace is not affirmed, the item is to be returned to the workplace as soon as practicable.

Clause 104: Liability of inspectors

This clause protects inspectors acting in good faith from any civil liability that might otherwise arise out of any act performed by an inspector in connection with an investigation, or the exercise of the inspector's powers in relation to an investigation.

Clause 105: 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 the specified provisions of the Bill.

A penalty is provided for breaches of this provision.

Clause 106: Arrangements with States or Territories for services of State or Territory officers

Subclauses (1) and (2) enable the Governor-General to make arrangements for officers of the Public Service of a State or Territory to exercise the powers and perform the duties of an inspector.

Subclause (3) enables such arrangements also to be made in accordance with section 78 of the *Public Service Act 1922*.

PART 5 - MISCELLANEOUS

Clause 107: Notifying and reporting accidents and dangerous occurrences

Subclause (1) requires an operator, in accordance with the regulations, to notify the Inspectorate and provide a report about any accident arising from the conduct of the operators undertaking that results in death or serious injury to a person, or causes a person to be incapacitated from work for a prescribed period.

Notification and a report is similarly required in respect of a dangerous occurrence.

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

Clause 108: Records of accidents and dangerous occurrences to be kept

This clause requires an operator to maintain records of the accidents and dangerous occurrences which the operator is required to notify the Inspectorate under clause 107.

Subclause (2) provides that regulations may be made in relation to the content of the records and the period that records must be retained.

Clause 109: Codes of practice

Subclause (1) provides for the Minister to approve, and subsequently to amend or revoke, codes of practice prepared by the Authority for the purpose of providing practical guidance to operators.

Subclause (2) requires the Authority to incorporate into a code of practice any National Occupational Health and Safety Commission (NOHSC) standard or code, declared under subsection 38(1) of the *National Occupational Health and Safety Commission Act 1985*, which the Authority thinks is appropriate to the maritime industry.

In the case of a relevant NOHSC standard or code already declared, the Authority must incorporate it in a code of practice as soon as practicable after the commencement of the Bill. In the case of a relevant NOHSC standard or code declared after the Bill commences, the Authority must incorporate it as soon as practicable after the standard or code is declared.

However, the Authority is only required to incorporate in a code of practice so much of the NOHSC standard or code as is applicable to the maritime industry, and only to the extent that the standard or code has not been incorporated in regulations.

Note: In determining whether a NOHSC standard or code is appropriate for the maritime industry, the Authority would need to take into consideration the extent to which the standard or code is consistent with standards or codes adopted, either under the Bill or the Navigation Act 1912, in compliance with international safety conventions or international labour conventions.

Subclause (3) states that, if a code of practice incorporates a document prepared by a body other than NOHSC, the code may incorporate the document either as it stands at the time of approval or as updated from time to time by the body concerned.

Subclause (4) enables the Minister to approve or amend a code of practice to apply generally, or to occupational health and safety matters in a specific area, or among specified employees.

Subclause (5) requires an approval, amendment or revocation of a code of practice by the Minister to be published in the Gazette. The Minister is also required, within 15 sitting days of publication, to lay before each House of Parliament a copy of the code of practice together with any incorporated document or, if applicable, the amendment or revocation of the code of practice.

Subclause (6) provides that the code of practice is a disallowable instrument under the *Acts Interpretation Act 1901*.

Under subclause (7), the Inspectorate is required to keep and make available for inspection copies of all documents incorporated into codes of practice.

Subclause (8) provides that a person is not liable for criminal or civil proceedings for failing to comply with a code of practice.

Clause 110: Use of codes of practice in proceedings

This clause states that in any proceedings for an offence under the Bill relating to a code of practice, the code of practice is admissible as evidence.

Paragraph (b) provides that a matter is to be taken as proved if it can be shown that a provision of a code of practice was relevant and there was a failure to comply with the provision. However, there is provision for the court to decide that the person concerned complied with the relevant provision of the Bill or regulations by a means other than that specified by the code of practice.

Clause 111: Interference etc with equipment etc

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

Clause 112: Recrediting of recreation leave

This clause provides for an employee to be recredited with recreation leave if the employee is required to attend an occupational health and safety training course while on recreation leave.

Clause 113: Operator not to levy employees etc

This clause prohibits an operator from requiring employees to pay for measures taken to protect their health, safety or welfare at work.

A penalty is provided for a breach of this provision.

Clause 114: Annual occupational health and safety report

This clause requires the Authority to prepare, as soon as practicable after the end of each financial year, an annual report, including a report on the operation of the Bill and its regulations.

Subclause (2) specifies other matters to be included in the report.

Clause 115: Operator not to dismiss etc employees on certain grounds

Subclause (1) prohibits discriminatory action by an operator against an employee because the employee has, or proposes to:

- . complain about health, safety or welfare of employees at work
- . provide assistance in an investigation or

- . stop work at the direction of a health and safety representative.

A penalty is provided for a breach of this provision.

Subclause (2) provides that the onus lies on the operator to show that the action taken was not discriminatory, if all the other relevant facts and circumstances are proved.

Clause 116: Beginning prosecutions

Subclause (1) provides the Inspectorate or an inspector may institute proceedings for an offence against the Bill or regulations.

If proceedings for an offence have not been commenced within 6 months of an action or omission which a relevant health and safety representative or involved union considers was an offence, the representative or union may request the Inspectorate to institute such proceedings (subclause (2)).

If the Inspectorate receives such a request it must, within 3 months, advise the representative or union whether proceedings have been or will be instituted, or of the reasons for not proceeding (subclause(3)).

Clause 117: Conduct of directors, servants and agents

Subclause (1) provides for the proof of the state of mind of a director, servant or agent of a body corporate. The state of mind of a such a person acting within the scope of his or her duties is deemed to be that of the body corporate.

Subclause (2) states that any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of actual or apparent authority is deemed to be the conduct of the body corporate, unless reasonable precautions were taken and due diligence exercised to prevent such conduct.

Subclause (3) provides for the state of mind of an individual to be proved by showing that the conduct was engaged in by a servant or agent of the individual within the scope of actual or apparent authority, and the servant or agent had the state of mind.

Subclause (4) states that any conduct engaged in on behalf of an individual by a servant or agent of an individual within the scope of actual or apparent authority is deemed to be that of the individual, unless it can be shown that reasonable precautions were taken and due diligence exercised to prevent such conduct.

Subclause (5) states that an individual convicted for an offence based on deemed conduct or state of mind under subclauses (3) or (4), is not liable to imprisonment for that offence.

Subclause (6) defines a person's state of mind for the purposes of subclauses (1) or (3) to include knowledge, intention, opinion, belief or purpose, together with the supporting rationale.

Subclause (7) provides that this clause has effect for any proceedings instituted for an offence against the Bill or regulations.

Clause 118: Act not to give rise to other liabilities etc

The Bill does not in itself confer any right of action or provide a defence in any civil proceeding. Any civil action would have to be based on the common law or other appropriate legislation.

Clause 119: Circumstances preventing compliance with Act may be defence to prosecution

Under this provision, it is to be a defence to a prosecution under the Bill to prove it was not practicable to comply because of an emergency at the time.

Clause 120: Regulations

Subclause (1) provides for the making of regulations prescribing:

- . procedures for the election of health and safety representatives;
- . procedures for the selection of members of health and safety committees;
- . procedures for meetings of health and safety committees;
- . manner of service of notices; and
- . forms for use under the Bill and regulations;

Subclause (2) provides that regulations may exempt a person on whom a duty, power or function is conferred by a law of the Commonwealth, State or Territory, from the application of the Bill, if the application of the Bill or regulation would prevent the proper exercise of that power.

Subclause (3) states that the regulations made under subclause (2) are to remain in force for no more than 5 years, but further regulations may be made on the same subject.

Subclause(4) confirms that any reference to the Bill includes any regulations made under the Bill.

