

1992

THE PARLIAMENT OF THE COMMONWEALTH  
OF AUSTRALIA

SENATE

PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources, the Hon  
Alan Griffiths, MP)



**PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 1992**OUTLINE

1. The purpose of this Bill is to amend the Petroleum (Submerged Lands) Act 1967 to protect the health and safety of employees working in the offshore petroleum industry in activities covered by that Act. It will impose on employers and 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 and the Northern Territory. The Bill seeks to provide a framework within which employers and employees may co-operate to address health and safety issues in the workplace.
2. This Bill complements State and Northern Territory occupational health and safety legislation which currently apply to petroleum industry employees in most adjacent areas where the Petroleum (Submerged Lands) Act 1967 applies. The Bill will only apply occupational health and safety provisions to those adjacent areas where State or Northern Territory occupational health and safety legislation does not currently apply. At the time this Bill is presented to Parliament the relevant areas are the Queensland and Western Australian Adjacent Areas.
3. The most significant features of the Bill are the imposition of a general duty of care to protect the health and safety of offshore petroleum industry employees at work on employers (clause 4 of the Schedule), manufacturers and suppliers of plant and substances (clauses 6 and 7 of the Schedule), and installers of plant (clause 8 of the Schedule). A general duty of care is also imposed on employees (clause 9 of the Schedule).
4. The Bill (Schedule 7, Part 3), 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 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 Designated Authority for the relevant adjacent area which provide guidance to employers on how obligations imposed by the Bill and regulations may be met.
6. The administration of the Schedule will be the responsibility of the Designated Authority for the relevant adjacent area.

Financial Impact Statement

7. The amendments will have no impact on Government expenditure and will have no staffing implications for the Department of Primary Industries and Energy.

Abbreviations

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

Bill:	Petroleum (Submerged Lands) Amendment Bill 1992
Committee:	A health and safety committee established under <u>clause 23</u> of the Schedule
Designated Authority:	The Designated Authority defined in section 14 of the <u>Petroleum (Submerged Lands) Act 1967</u>
Group:	A designated work group established under <u>clause 12</u> of the Schedule for the purposes of selecting a health and safety representative
Principal Act:	the <u>Petroleum (Submerged Lands) Act 1967</u>
Representative :	A health and safety representative selected in accordance with <u>clause 13</u> of the Schedule
Schedule	Schedule 7, Petroleum (Submerged Lands) Amendment Bill 1992

## NOTES ON CLAUSES

### PART 1 PRELIMINARY

#### Clause 1: Short title

This clause provides for the short title of the legislation.

#### 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: Definitions relating to occupational health and safety

Clause 3 provides that expressions defined in Schedule 7 have the meanings as defined in Part 1 of that schedule.

#### Clause 4: Work Practices

Clause 4 amends section 97 of the Principal Act so as to remove occupational health and safety matters from the ambit of that section. Occupational health and safety matters will be covered either by the provisions contained in Schedule 7 or by State or Northern Territory legislation through section 9 of the Principal Act.

#### Clause 5: Application of occupational health and safety laws

This clause requires that the safety, health and welfare of persons engaged in operations relevant to the Principal Act are protected. The Bill will apply occupational health and safety matters to petroleum activities in relevant adjacent areas offshore Australia and its external Territories except for those adjacent areas where State or Northern Territory legislation apply by virtue of section 9 of the Principal Act - subclause (2).

Subclause (3) provides that Schedule 7 applies to the Territory of Ashmore and Cartier Islands Adjacent Area as if it were part of the Northern Territory Adjacent Area.

#### Clause 6: Schedule - Occupational health and safety

This clause amends the Principal Act to include Schedule 7 - Occupational health and safety.

## SCHEDULE 7 OCCUPATIONAL HEALTH AND SAFETY

### PART 1 PRELIMINARY

#### Clause 1: Objects

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

- protecting the health and safety of offshore petroleum industry 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 offshore petroleum industry employers and their employees in relation to occupational health and safety.

#### Clause 2: Definitions

Significant terms defined in clause 2 include those described below.

"Designated Authority" means the Designated Authority defined in section 14 of the Principal Act .

"Employer" means any employer who employs persons for purposes related to petroleum activities in an adjacent area. These activities include all activities to which Part III of the Principal Act applies.

"Improvement notice" means a notice issued by an investigator under subclause 36(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, under State legislation 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 35(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 Designated Authority will determine appeals arising from the operation of the Bill.

Clause 3: Functions conferred on Designated Authority

This clause sets out the functions conferred on the Designated Authority 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; and, the accreditation of relevant training courses.

## **PART 2 - OCCUPATIONAL HEALTH AND SAFETY**

### **Division I - General duties relating to occupational health and safety**

#### **Clause 4: 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 an employer 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 reasonable 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 5: 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 an employer who breaches this duty.

#### **Clause 6: 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 reasonable 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 (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 this clause 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 7: 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 reasonable 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 10(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 Schedule 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 8: 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.

Clause (2) provides that the requirements in the Schedule 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 9: Duties of employees in relation to occupational health and safety

Subclause (1) imposes a duty on employees at work to take all reasonable 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 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 Schedule.

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 10: Reliance on information supplied or results of research

Subclause 10 (1) provides that an employer or person in control of premises shall be regarded as having taken reasonable steps as required by clauses 4 or 5 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 reasonable steps as required by clause 8 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 6 and 7 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 10 does not limit the generality of the requirement imposed by clauses 4 to 8 to take reasonable 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 11: 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 (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 12: 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 also be determined flexibly by a process of consultation between employers and representatives of the employees and 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 the 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 13 to be accessible to each employee in that group.

For that purpose subclause (8) sets out matters which must be considered by the parties to the consultations.

Subclause (9) requires designated work groups to be established and varied so that, so far as is reasonably practicable, each employee is included in a group.

Subclause (10) provides that all of an employer's employees may be included in a single designated work group.

#### Clause 13: 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 16.

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 Designated Authority.

Under subclause (5) an employee may not be a candidate for election if the employee is disqualified under clause 21. A number of grounds for disqualification are set out in that subclause. 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 14: 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 15: Training of health and safety representatives

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

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

#### Clause 16: 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 19 of the Schedule 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 23 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 29 of the Schedule 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 17.

Subclauses (2) and (3) provide that, subject to the agreement of the employer or the Designated Authority, 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 Schedule 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 17: 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 Schedule 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 18(5).

Clause 18: Effect of provisional improvement notices

Under subclauses (1) and (2) 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 clause (17), may request the Designated Authority 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 (3) 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 Schedule - Advice, and Investigations - as he or she considers necessary.

By subclause (4) 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 37.]

Under subclause (6) a notice continues in effect until cancelled by an investigator or the health and safety representative or until necessary remedial action is taken.

Subclause (7) 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 reasonable steps to inform the representative who issued the notice of the action taken to comply with it.

Subclause (8) provides that, for the purposes of clause 37, 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 36.

Clause 19: 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 16(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;

- be subject to requirements concerning confidentiality;
- provide access to any information to which the representative is entitled to have access under paragraphs 16(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 16(6) which deals with the right of access to such information by a representative.

#### Clause 20: 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 21: Disqualification of health and safety representatives

Subclause (1) allows the employer or a union with members in the group to apply to the Designated Authority 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 Designated Authority, if he or she 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 22: 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 23: 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 24: 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 25: 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 subclauses (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 Schedule relating to the release of information to health and safety representatives and consultants.

**Division 3 - Emergency procedures****Clause 26: 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 4 of the Schedule as the investigator considers necessary.

Clause 27: 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 AND INVESTIGATIONS**

### **Division 1 - Advice**

#### **Clause 28: Designated Authority may refer persons seeking advice to experts**

This clause enables the Designated Authority to refer employers, employees or contractors who have requested advice on occupational health and safety matters to other persons who have relevant expertise.

### **Division 2 - Investigations**

#### **Clause 29: Investigators**

Subclause (1) provides for inspectors appointed under section 125 of the Principal Act to be appointed also as investigators as for the purposes of this Schedule.

The Designated Authority is empowered by subclause (2) to give written directions governing the exercise of powers by an investigator. These directions may restrict the powers that may be exercised by that investigator (subclause (3)).

#### **Clause 30: Investigations**

Subclauses (1) and (2) provide for investigations to secure the observance of the legislation and to investigate accidents and dangerous occurrences. All investigators may conduct investigations relating to actual or possible contraventions of the legislation, accidents and dangerous occurrences.

Subclause (3) gives unions a right to request an investigation of any workplace where a member of the union works.

#### **Clause 31: 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 authority and a copy of any written direction of the Designated Authority to conduct the investigation. An investigator who fails to produce the documentation required by subclause (2) ceases to be entitled to remain at the workplace: subclause 3.

#### **Clause 32: 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 33: 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 37.

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 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 34: Power to direct 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 an employer, 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 37.

Clause 35: 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 an employer 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 37 of the Schedule an appeal lies to the Australian Industrial Relations Commission against a decision of the investigator to issue a prohibition notice [sub-paragraph 37(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 37(1)(e)] and a decision by an investigator that an employer has taken adequate action to remove such a threat [subparagraph 37(2)(b)].

Clause 36: 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 37. 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.

Subclause (7) 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 (8) lists those persons to whom an investigator must provide copies of a notice.

### Clause 37: Appeals

This clause provides for appeals to the reviewing authority against specified decisions of an investigator. The term "reviewing authority" is defined in clause 2 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 33 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 38: 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 investigator's duties.

### Clause 39: 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.

### **Division 3 - Reports on investigations**

This Division provides for reports of investigations to be given to the Designated Authority.

#### **Clause 40: Report of investigation**

Subclauses (1) and (2) require investigators to provide the Designated Authority 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 Designated Authority to provide a copy of the investigator's report and any comments it may wish to make to the employer.

Subclause (4) allows the Designated Authority to request an employer to advise the Designated Authority 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 Designated Authority to health and safety committees, or, if there is no such committee, to health and safety representatives.

### **PART 5 - MISCELLANEOUS**

#### **Clause 41: Notifying and reporting accidents and dangerous occurrences**

Subclause (1) requires employers to give to the Designated Authority 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 42: 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 41 to notify to the Designated Authority. Regulations may be made in relation to the maintenance of the records.

#### **Clause 43: Codes of practice**

Subclause (1) provides for the making of regulations prescribing codes of practice affecting, or likely to affect the occupational health and safety of employees or contractors. Codes of practice are designed to provide practical guidance to employers on how their obligation to protect the health and safety of employees may be met. They are not legally binding on employers.

Subclause (2) makes clear that non-compliance with a code of practice does not in itself make a person liable to any civil or criminal proceedings.

Clause 44: Use of codes of practice in proceedings

In proceedings under the Schedule 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 Schedule or regulations. Where it is established that, in respect of such a matter, a relevant code of practice was not observed, that matter is to be taken as proved unless the court is satisfied that the Schedule or regulations were complied with other than by observance.

This is consistent with subclause 43(2) 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 45: 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 46: Employer not to levy employees etc

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

Clause 47: Annual occupational health and safety report

Subclauses (1) and (2) of the Schedule requires the Designated Authority to prepare a report on the operation of the matters contained in this Schedule during the year and specifies certain matters to be included in the report. Subclause (3) requires that the Designated Authority provide the Joint Authority with a copy of the report.

Clause 48: 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 who breaches this provision.

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 employer's action are proved, the onus of proving that the action was not taken for that reason rests upon the defendant employer.

#### Clause 49: Institution of Prosecutions

The Designated Authority or an investigator may institute proceedings for an offence against the Schedule or regulations. If proceedings for an offence have not been commenced within six months of an action or commission which a relevant representative or union considers was an offence, the representative or union may request the Designated Authority to institute proceedings: subclause (2). Where the Designated Authority 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 50: Conduct of 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 Schedule may be established by showing that the relevant conduct was engaged in by a director, servant or agent of the body corporate and 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) an individual 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 51: 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. Nothing in the Bill confers a right of action in any civil proceedings in respect of any contravention of the Schedule 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 Schedule is that State or Northern Territory criminal laws will continue to apply to employees to the extent that those laws are capable of concurrent operation with the Schedule. Actions for damages against employers for occupational injury are regulated by State or Northern Territory legislation.

Clause 52: Circumstances preventing compliance with Schedule may be defence to prosecution

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

Clause 53: Regulations -general

Subclause (1) provides for the making of regulations relevant to the Schedule 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 Schedule 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).











