

1989

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**OCCUPATIONAL HEALTH AND SAFETY BILL 1989**

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of the Minister for  
Industry, Employment and Education  
Mr Paul Whalan**

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OCCUPATIONAL HEALTH AND SAFETY BILL 1989

OUTLINE

1. The new Act follows similar legislation protecting workers and others, enacted in each of the Australian States.
2. The new Act will apply to employers, self-employed, occupiers, and employees and also to manufacturers, installers, suppliers, and repairers of items used in A.C.T. workplaces.
3. Employers and others in workplaces have a duty at common law to protect workers and others from hazards associated with their workplaces and system of work. The new legislation translates this same common law duty into a statutory duty under an Act and also requires employers to introduce new workplace health and safety arrangements to assist in making workplaces safe and healthy.
4. The duties under the new legislation applying to employers can be broadly divided into three headings. These are:-
  - a. To ensure that the workplace and its equipment are safe and without risks to health.
  - b. To ensure that the system of work used is safe and without risks to health.
  - c. To implement special workplace arrangements required under the legislation including:-
    - (i) Developing and issuing a workplace health & safety policy.
    - (ii) Forming designated workgroups with health and safety representatives and Deputies where there are more than 10 employees.
    - (iii) Establishing workplace employer-employee co-operative arrangements to ensure the employees' health, safety and welfare at work.
5. These first two duties of care are already imposed on employers under the common law. They are qualified duties of care in the sense that an employer must take reasonable steps to protect the health, safety and welfare of employees and to avoid exposing other people to health and safety risks arising from their industry. Employers are only liable for accidents which reasonable care could have prevented or foreseen. The last mentioned duty (4c above) will be new to many employers in the A.C.T. but will be familiar to employers operating in other States, particularly Victoria and South Australia, where similar arrangements apply.
6. A designated work group (usually referred to as a "DWG") is a group of an employer's employees who the employer, or in some cases the Registrar (a Registrar established under the legislation), declares under the legislation to be an identifiable group of

workers. In general they will be a group of employees who can be, or are already, naturally grouped together by reference to some common unifying feature. This common feature may have to do with the particular work they perform, their location, or distinctions made by the organisational structure of their employer (eg. Factory vs front office staff).

7. The legislation gives affected employers the task of dividing their workforce into designated work groups and provides some factors which employers must take into account when making this decision. There is a requirement under the legislation for employers to consult with their employees and any unions representing their employees before deciding. There is provision for employees and involved unions to have the Registrar review the decision. Employers having 10 or less employees will not be required to form designated work groups or have workplace health and safety representatives.

8. In general the task of dividing a workforce into designated work groups should not present any significant problems for most employers. In most work situations employees tend already to be grouped by some unifying factor and the employer's task will amount to formalising these existing divisions and ensuring that no employee is left unallocated. On large construction sites employers and subcontractors will be able by special arrangements to form a single designated work group to cover all workers.

9. Once the designated work groups have been formed the employer is required to notify the employees of their formation and of which one the employee has been allocated. Each designated work group may then select an OH&S Representative and Deputy health and safety representative by normal meeting procedure. Deputies will stand in for the representatives when they are absent. Every member of the designated work group is eligible to vote and stand for office but Representatives must be members of the designated work group which elects them. Provision will exist for the Registrar to repeat the election on request of an employer or 25% of the employees in the designated work group.

10. Health and safety representatives represent the workers of their designated work group in day to day hazard issues which may arise. They will receive training (to be prescribed by regulations) in their role at the employer's expense. The Representative has no special legal duty to detect hazards or to act in respect of them. Employers cannot therefore rely on a Representative to make the workplace or system of work safe and healthy. This is a responsibility that rests with the employer.

11. Where Representatives find a hazard in the workplace then they may negotiate with the employer for the elimination of the hazard. If those negotiations do not resolve the problem then the Representative can issue a provisional improvement notice (PIN) to the employer requiring that the hazard be remedied. Health and safety representatives only have power to stop work in cases where there is no supervisor present and there exists an immediate danger to employee health and safety.

12. Where a health and safety representative issues a provisional improvement notice to an employer, the employer is required to carry out action to remove or remedy the hazard in accordance with the PIN and within the time frame specified. Where the employer disagrees with the PIN or disputes its terms then the employer may request that an OH&S inspector from the Registrar's office attend and review the PIN. The inspector then reviews the PIN and confirms, varies, or revokes it. Either party may then ask the Registrar to review the inspector's decision and/or appeal to an appeal body.

13. It is envisaged that health and safety representatives will generally provide support to management in its OH&S role by encouraging fellow workers to view positively measures introduced for their own health and safety.

14. Employers with 10 or less employees are exempted under the legislation from the obligation to form designated work groups and this means their employees would not select health and safety representatives. Such employers may informally form designated work groups if they consider that appropriate to their business.

15. Employers must develop co-operative arrangements with their employees whereby the employee can bring perceived hazards to the attention of the employer for action. Employees in workplaces without a health and safety representative can ask an inspector to examine a perceived workplace hazard if they wish. The inspector will then take any necessary action to require the hazard to be remedied.

16. To ensure health and safety in the workplace the employer and the employees need to work constructively together. The legislation places the onus on the employer as the controller of the workplace to achieve this level of mutual cooperation.

17. Every employer will need to establish mechanisms for consulting with workers about health and safety issues. For employers having few employees this consultation mechanism may take the form of an occasional discussion with their employees. Larger employers may find it appropriate to establish more formal consultative arrangements involving committees with both management representatives and employee representatives.

18. Regulations under the Act will provide for the formation of an health and safety committee in some situations. Those Regulations will be prepared after the Minister has received advice from the tripartite Occupational Health and Safety Council (see below) so that they properly reflect the views of employer and employee organisations.

19. Health and safety committees will be consultative bodies for employers and will not wield power to implement their recommendations. Employers will have discretion to implement or not implement their recommendations.

20. The legislation make provision for regulations to be made for health and safety representatives, Deputy health and safety representatives, and health and safety committee members (both employee and management) to have training prescribed for them. However this does not mean that all these categories will necessarily have training prescribed for them. The Executive will determine training requirements when advice from the A.C.T. Occupational Health and Safety Council has been considered.

21. It is expected that there will be training requirements for health and safety representatives and that some special provision would need to be made in the case of employers with few employees so that the cost of any training provided is not excessive to the small scale employer.

22. The A.C.T. Occupational Health and Safety Council will be a tripartite body to be established to provide advice to the Minister. In particular it will review the operation of the Scheme and advise on changes. It will also make recommendations to the Minister on matters such as training and on codes of practice. The Minister and executive are required to give the Council an opportunity to provide advice on training or codes before he/she can exercise powers under the Act to determine them.

23. Membership of the Council will be by Ministerial appointment. There will be nine members. Three members will represent the Government. Three people will represent employees: it is anticipated that these people will be selected from nominations submitted by the TLC. Three people will represent employers: it is probable that at least one of these people may be selected from nominations submitted by CONFACT and possible that another will be selected from nominations submitted by employer organisations representing the building and construction industry.

24. Appointees will not merely represent their particular nominating organisation but have a wider mandate to represent all employers or employees as the case may be.

25. The A.C.T. Occupational Health and Safety Council will have power to recommend to the Minister that certain codes of practice be adopted for the A.C.T. Where the Minister accepts the advice the code will be adopted by being enacted into legislation or by being gazetted under the new legislation. Gazettal of a code under the new legislation will mean that employers are obliged either to follow its provisions or to adopt something of equal or better efficacy than the code set.

#### NOTES ON CLAUSES

**Clause 1 : Short Title**

This clause cites the short title of the Act.

**Clause 2 : Commencement**

This clause provides that clause 1 of the Act commences on notification of the Act in the Gazette but other clauses of the Act may be commenced on dates fixed by the Minister.

**Clause 3 : Objects**

This clause provides a statement of the various objects which the Act is intended to achieve. The objects are concerned with workplace and occupational health and safety and with improving consultative arrangements between workplace parties.

**Clause 4 : Position of Crown**

This clause provides that the Act binds the Crown but also provides that the Crown is not subject to prosecution under the Act.

**Clause 5 : Interpretation**

This clause contains interpretations of various words and terms used in the Act. Of particular significance are the following definitions:

"associated law" - which is defined to mean specific legislation listed in the definition being legislation closely related to this legislation by reason of its similar industrial safety and health objectives.

"employee" - means a natural person employed under a contract of service.

"employer" - means a person who employs a natural person under a contract of service.

"involved union" - is defined to require that both the relevant employee (or in the case of a designated work group one of the employees of the designated work group) is a member of that union.

Subclause 5(2) clarifies the circumstances when an employee is to be taken to be at work.

Subclause 5(3) ensures that employees are not regarded as employees of an employer when they are at a workplace other than when they are working in the capacity of employees of the employer.

**Clause 6 : Voluntary workers etc.**

This clause gives the Minister power to declare that certain classes of workers are to be regarded as employees under the legislation. The clause enables people who are not employees to be regarded as employees and is intended to be used to cover people such as volunteer workers in hospitals.

**Clause 7 : Exemptions**

This clause allows the Minister to exempt classes of employers, employees, and workplaces from provisions of the legislation. It is not expected that many exemptions will be granted. The clause could be used, if necessary, to ensure that such necessary activities as lawful detention and armed protection of payrolls are not prohibited.

**Clause 8 : Service of documents etc. on employers**

This clause simplifies the service of documents and other requirements under the legislation by providing that they may be served or done with the person apparently in charge of the activity as representative of the employer.

**OCCUPATIONAL HEALTH AND SAFETY COUNCIL**

**Clause 9 : Establishment**

This clause establishes the Occupational Health and Safety Council (hereafter referred to as "Council").

**Clause 10 : Functions**

This clause outlines the functions of the Council. Generally the Council has the function of inquiring into and advising the Minister on matters relating to occupational health and safety. There is scope for the other functions to be prescribed.

Subclause 10(2) expressly contemplates that the Council will advise the Minister about future legislative changes to the scheme, about approved codes of practice, about approved training under the legislation, and about promotion of the scheme.

**Clause 11 : Powers**

This clause gives the Council power to perform its functions.

**Clause 12 : Annual report**

The Council is required under this clause to furnish an annual report to the Minister.

**Clause 13 : Membership**

This clause covers membership of the Council. There are to be 9 members. 3 members are to be chosen from peak bodies representing employees. 3 members are to be chosen from peak employer organisations. The remaining 3 members are to be appointed by the Minister.

Subclause 13(2) provides that Council may operate with positions vacant.

**Clause 14 : Terms of Appointment**

This clause provides for the part-time nature of the Council members and specifies a 3 year appointment period subject to such terms and conditions as the Minister specifies.

**Clause 15 : Age Limit**

This clause ensures that members are not more than 65 years of age.

**Clause 16 : Chairperson and Deputy Chairperson**

This clause provides that the Chairperson and deputy are appointed by the Minister.

**Clause 17 : Remuneration and allowances**

This clause provides for members of Council to be paid such remuneration and allowances as is prescribed by regulations unless remuneration is determined by the Commonwealth Remuneration Tribunal.

**Clause 18 : Leave of absence**

This clause permits the Minister to grant Council members, the Chairperson, and the Deputy leave of absence.

**Clause 19 : Disclosure of interest**

This clause requires members of Council to disclose interests and regulates behaviour where an interest has been disclosed.

**Clause 20 & 21 : Resignation & Termination of appointment**

These clauses provide for resignations of members and for their removal from office. Removal may be affected in the usual circumstances and where the Minister considers that the member no longer represents the interests of employers/employees as the case may be.



**Clause 22 : Acting members**

This clause provides for the appointment of people to act for members during vacancies. Acting members are not permitted to act for more than 12 months.

Subclause 22(2) & (3) require a similar consultative process to that of the employee/employer representative members for appointments of the acting members to act for them.

Subclause 22(4) provides that certain irregularities in the appointment of an acting member or the circumstances of their acting are not to invalidate their actions.

**Clause 23 : Convening meetings**

This clause provides for the procedure to be followed by Council in convening meetings and gives the Minister power to also convene meetings.

**Clause 24 : Procedure at meetings**

This clause specifies the procedural framework for meetings of Council. Matters of particular note are:-

- . A quorum consists of 5 members with at least 1 from each category (subclause(5)).
- . Matters are decided by majority vote and the chairperson has no casting vote (subclauses(6) & (7)).

**- ADVISORY COMMITTEES**

**Clause 25 : Establishment**

This clause gives Council power to establish such advisory councils as are considered necessary to assist it to perform its functions.

Subclause 25(2) enables the Minister to require Council to form an advisory committee in relation to a matter which the Minister specifies.

Subclause 25(3) enables an advisory committee to itself determine the manner in which it performs its functions.

**Clause 26 : Remuneration and allowances**

This clause allows that members shall be paid such remuneration and allowances as are prescribed by regulation unless a determination of the Commonwealth Remuneration Tribunal has been made.

**DUTIES RELATING TO OCCUPATIONAL HEALTH AND SAFETY**

**Clause 27 : Duties of employers in relation to employees**

Subclause 27(1) codifies the common law duty under which employers have to take all reasonable steps to protect the health, safety and welfare at work of their employees.

Maximum penalties of \$20,000 for natural persons and \$100,000 for corporations are set for breaches of this duty.

Subclause 27(2) expands the meaning of subclause 27(2) to expressly require employers to take all reasonable steps to:-

- . Provide and maintain a working environment which is safe for employees and without risk to their health and provides adequate facilities for employee welfare at work.
- . Ensure workplaces under their control are safe for employees and without risk to their health and to provide and maintain a means of access to and egress from the workplace which is safe for employees and without risk to their health.
- . Ensure employees are safe from risks connected with handling, storage and transport of substances.
- . Provide employees in appropriate languages with information, instruction, training and supervision necessary to perform their work safely and without risk to their health.
- . Develop and maintain a policy on occupational health and safety that enables employer/employee cooperation in promoting/developing measures to ensure employee health, safety and welfare at work and provides an adequate review of policy effectiveness.
- . Bring to the attention of employees the measures in the policy to protect them.
- . Monitor employee health and safety at work and the condition of workplaces.
- . Maintain information and records relating to employee health and safety.
- . Provide appropriate medical and first-aid services for employees.
- . Subclause 27(3) requires that the policy developed pursuant to subclause 27(2) be developed in consultation with any health and safety committee or where no committee with the employer's employees or any involved union.

**Clause 28 : Duty of employers in relation to third parties**

This clause codifies the duty of employers under the common law to ensure that people at or near the workplace are not exposed to risk from the undertaking.

**Clause 29 : Duties of persons in control of workplaces**

This clause requires people in control of workplaces; access or egress to a workplace; or plant or substances at a workplace to take all reasonable practicable steps to ensure it is safe and without risk to health.

**Clause 30 : Duties of employees**

Subclause 30(1) requires employees while at work to take reasonable practicable steps to:-

- . Ensure no action or omission creates or increases risk to anyone at or near the workplace.
- . Cooperate with the employer and anyone else to fulfil that person's obligations under this legislation.
- . Use safely and properly equipment supplied by the employer to protect health and safety.

Subclause 30(2), (3) and (4) ensure that agreements between an involved union and an employer concerning choice/use of protective equipment/clothing are not upset by subclause 30(1). This provision aims at preservation of the status quo regarding use of safety equipment.

**Clause 31 : Duties of self-employed persons**

This clause requires self-employed people to take all reasonably practicable steps to protect the health and safety of others affected by their work.

**Clause 32 : Duties of manufacturers in relation to plant and substances**

Subclause 32(1) requires manufacturers of plant expected to be used by employees at work to take all reasonably practicable steps to:-

- . Ensure the plant is designed and constructed so that when properly used it is safe for employees and without risk to their health.
- . Carry out necessary research, testing and examination to discover and eliminate or minimise risk from its use.
- . Make available to employers with employees using the plant adequate information concerning its designed use, conditions of use, and proper maintenance requirements.

Subclause 32(1) requires manufacturers of substances expected to be used by employees at work to take all reasonable practicable steps to:-

- . Ensure that the substance is manufactured so that when properly used it is safe for employees and without risk to their health.

- . Carry out necessary research, testing and examination to discover and eliminate or minimise risk from its use.

- . Make available to employers with employees using the substance adequate information concerning its use, composition, conditions of use, and first-aid and medical procedures in the event it causes injury.

Subclause 32(3) provides that where a person imports plant or a substance into the territory then they are taken to be the manufacturer of the plant or substance. This clause is intended to place responsibility for compliance with the legislation on a person who is accessible to our legal jurisdiction.

**Clause 33 : Duties of suppliers in relation to plant and substances**

Subclause 33(1) requires a supplier of plant or a substance expected to be used by employees at work to take all reasonably practicable steps to:-

- . Ensure the condition of the plant or substance at the time of supply.
- . Carry out necessary research, testing and examination to discover and eliminate or minimise risk from its use.
- . Make available to employers with employees using the plant or substance adequate information concerning its condition at time of supply; any risks which may arise from improper use; in the case of plant proper maintenance requirements; and in the case of a substance the first-aid and medical procedures in the event it causes injury.

Subclause 33(2) protects financiers who acquire property in the plant or substance, in the normal course of business, from being regarded as suppliers under subclause 33(1).

**Clause 34 : Duties of persons erecting or installing plant in a workplace**

Clause 34 imposes a duty upon those erecting or installing plant to take all reasonably practicable steps to ensure that it is safe and without risk to employees health.

**Clause 35 : Reliance on information supplied or results of research**

Subclause 35(1) qualifies the duties of care laid down in clauses 27(1), 28 or 29 by providing that reasonable reliance may be placed on information supplied by manufacturers and approved codes of practice in satisfying those duties of care.

Subclause 35(2) qualifies the requirement to carry out research, testing, and examination in relation to plant and substances under subclauses 32(1) or (2) or 33(1) by providing that reasonable reliance can be placed on such work already carried out.

Subclause 35(3) qualifies the duty of care cast upon those erecting or installing plant in clause 34 by providing that reasonable reliance information provided by the manufacturer or an approved code of practice covering the work.

#### **WORKPLACE ARRANGEMENTS**

##### **HEALTH AND SAFETY REPRESENTATIVES**

**Clause 36 : Small employers not affected**

This clause exempts employers with 10 or less employees from the requirements to form designated work groups with health and safety representatives.

**Clause 37 : Work groups designated by employers**

Subclauses 37(1), (2) and (3) require employers to form designated work groups within 14 days of the commencement of the Act or of becoming an employer, whichever event occurs later, and also provides that employers may vary designated work groups.

Subclause 37(4) provides that designated work groups are to be established or varied with the main aim of ensuring the employees occupational health and safety interests are safeguarded and that any health and safety representative is accessible to each employee in the group.

Subclause 37(5) provides other factors which employers should have regard to in forming designated work groups. These criteria are intended to ensure that employees are formed into designated work groups which approximate the recognisable or logical groupings naturally existing by virtue of the work arrangements. In other words, employees who see themselves as belonging together should generally be together in the same designated work groups.

Subclause 37(6) requires employers to consult with involved unions or, if no involved union with such of the employees as the employer considers appropriate, when forming or varying designated work groups.

Subclause 37(8) allows a single designated work group where the other criteria is met.

Subclause 37(9) requires the display of notices in the workplace describing each designated work group formed.

**Clause 38 : Work groups designated by Registrar**

Clause 38 provides the procedure for the Registrar to establish designated work groups or vary them where the employer fails to establish them (subclause 38(1)) or 25% or more of all employees or those in a designated work group so request (subclause 38(2) & (3)). The clause requires the Registrar to consult with any involved union, or in the absence of an involved union, with such of the employees affected as the Registrar considers appropriate (subclause 38(5)). The Registrar must notify the employer with details of any variation or establishment of a designated work group (subclause 38(4) and the employer must display notice of the decision at the workplace (subclause 38(6)).

**Clause 39 : Selection**

This clause provides that the employees of a designated work group may, subject to any regulations which may be made, select one of their number to be their health and safety representative. The subclause also provides that the representative selected will have no power until the employer of the employees in the group has been notified in writing of the selection. The clause also requires the employer to display notice of the selection in the workplace.

**Clause 40 : Objections to selection**

This clause provides for the Registrar to conduct an election for a health and safety representative in cases where the employer or 25% of the employees in the designated work group object to the selection process which occurred under clause 39 and covers some procedural aspects of that process. The clause is superseded if regulations governing selections are made.

**Clause 41 : Lists of health and safety representatives**

This clause requires employers to prepare and keep updated lists of all health and safety representatives for designated work groups and to enable employees, involved unions, and inspectors access to the list.

**Clause 42 : Powers**

This clause sets out the powers which a health and safety representative may exercise in the employers workplace to ensure the health and safety of employees. They are:-

- . To inspect all or part of the workplace immediately after accidents or dangerous occurrences or where on reasonable grounds they believe there is an immediate threat or where reasonable notice has been given to the employer.
- . To accompany an inspector in any inspection.

- . To represent the designated work group employees in consultations concerning development, implementation and review of health and safety measures, where no health and safety committee has been established.
- . Where a health and safety committee has been established to examine the records of the committee.
- . To investigate complaints by the designated work group employees concerning health and safety.
- . To be present at interviews concerning health and safety at work between an inspector or an employer and an employee where the employee consents.
- . To obtain, subject to clause 43, access to information under the employer's control relating to the risks to health and safety of any employee.
- . To obtain, subject to clause 43, access to information under the employer's control relating to the health and safety of any employee.

Clause 43 : Access to information

This clause protects access to information held by employers which is subject to legal privilege or a confidential medical nature.

Clause 44 : Duties of employers

This clause imposes duties on employers of employees in a designated work group. The duties are:-

- . Upon request by a health and safety representative to consult with them about changes affecting the health and safety of employees in the designated work group.
- . To permit the health and safety representative to inspect the workplace or accompany an inspector as per clause 42.
- . Upon request to consult with the health and safety representative, where there is no health and safety committee, concerning development, implementation and review of measures to ensure employee health and safety.
- . To permit the health and safety representative to be present at interviews with employees as per clause 42.
- . Upon request to permit the health and safety representative to have access to information to which they are entitled under clause 42.
- . To permit the representative necessary and reasonable time off work, without loss of pay, to perform the duties.

- . To permit the representative access to facilities prescribed by regulations or necessary and reasonable to exercise the powers given.

Subclause 44(2) preserves the confidentiality of medical information.

**Clause 45 : Term of office**

This clause provides that health and safety representatives hold office, subject to determination by the designated work group employees, for up to 2 years and may be re-elected.

**Clause 46 : Resignation etc**

This clause provides for the termination of a health and safety representatives appointment where they resign, cease to be in the designated work group, or are removed under clause 47. Resignations must be in writing and delivered to the employer.

**Clause 47 : Disqualification**

This clause empowers the Registrar to disqualify a health and safety representative from office on application by the employer, any involved union or if no involved union, by an employee of the designated work group. Such applications must be in writing. Disqualification is for a period of up to 5 years and can only occur where the Registrar believes on reasonable grounds that the representative has abused power by:-

- . Exercising power to intend harm to the employer or the employer's undertaking.
- . Exercising power unreasonably, capriciously or otherwise than for the purpose the power was conferred.
- . Intentionally disclosing information for a purpose not connected with the exercise of the power.

Subclause 47(4) provides that the Registrar may have regard to certain matters when making his decision and subclause 47(5) requires the former representative to be notified in writing by the Registrar if possible.

**Clause 48 : Liability**

This clause protects health and safety representatives from liability for acts and omissions done in good faith in connection with their role.

**Clause 49 : Deputy health and safety representatives**

This clause provides for the election and appointment of deputy health and safety representatives. They are selected in the same manner as health and safety representatives and can exercise power if the health and safety representative ceases to be the representative or is unable for any reason to exercise power.



## PROVISIONAL IMPROVEMENT NOTICES

### Clause 50 : Issue

Subclause 50(1) provides that a health and safety representative may issue a provisional improvement notice to a person where that person is, or is likely to, contravene the Act or regulations.

Subclause 50(2) requires the health and safety representative to take all reasonably practicable steps to consult with the responsible person and seek rectification of the matter before issuing the notice.

Subclause 50(3) stops the issue of provisional improvement notices in respect of matters already the subject of an improvement notice or prohibition notice (issued by inspectors or the Registrar).

Subclause 50(4) provides that a provisional improvement notice must state the contravention relied upon and give 7 days or more to rectify the contravention.

Shorter periods allowing 24 hours to rectify the hazard are specially provided by subclause 50(5) for the building industry. This has been done because of regard for the dynamic and changing nature of building sites; the ability of building industry employers to have hazards remedied quickly; and the hazardous potential of work in that industry. Subclause 50(6) provides a definition of building industry. (In Victoria, the provisional improvement notices system has failed in the building industry and use is made only stop work type notices.)

Subclause 50(7) allows notices to specify the remedial action needing to be taken.

Subclause 50(8) requires a copy of every provisional improvement notice to be given to the Registrar, relevant employers and people with prescribed interests.

Subclause 50(9) enables the issuing health and safety representative to extend the period of the notice provided that is done before the notice expires.

### Clause 51 : Display

This clause requires the employer receiving a provisional improvement notice to notify employees whose work relates to the notice of the fact of the notice and to display it in the workplace.

### Clause 52 : Compliance

This clause requires the responsible person receiving the provisional improvement notice to comply with the notice and notify the health and safety representative of the steps taken to comply with the notice.

**Clause 53 : Revocation**

This clause requires health and safety representatives to revoke notices where they have been complied with and to notify the Registrar of such revocation.

**Clause 54 : Review**

This clause provides that the responsible person receiving a provisional improvement notice may request the Registrar to arrange for an inspector to review the notice. Such a request must be made within 7 days of the issue of the notice and must be in writing. Once a request is lodged then the operation of the notice is suspended until the inspector completes a review of the notice. The Registrar then must arrange for an inspector to review the notice as soon as practicable and the inspector on reviewing the notice may revoke it if it is considered that the notice has been complied with; should not have been given to a person; or should for any other reason no longer remain in force.

Inspectors revoking notices must take all reasonably practicable steps to notify the parties required to be notified about the issue of the notice under subclause 50(8).

**EMERGENCY PROCEDURES**

**Clause 55 : Action by health and safety representatives**

Subclause 55(1) provides that where a health and safety representative believes on reasonable grounds that there is an immediate threat to the health and safety of an employee in the designated work group unless the employee ceases to perform particular work then they must inform the supervisor of the threat or, if no supervisor is contactable immediately, direct the employee to cease the work and then inform the supervisor.

Supervisors are then required under subclause 55(2) to take any necessary action considered appropriate to remove the threat, and that action may include directing the employee to cease work.

Subclause 55(3) provides for either the supervisor or the health and safety representative to request the Registrar to have an inspector investigate the problem where no agreement is reached. The Registrar is then required to have an inspector attend as soon as practicable with the inspector exercising any necessary powers to deal with the situation.

**Clause 56 : Alternative work**

This clause preserves the employer's right to direct alternative work when work is stopped under clause 55.

## **HEALTH AND SAFETY COMMITTEES**

### **Clause 57 : Functions**

This clause establishes the functions of health and safety committees as being:-

- . To assist employers to develop and implement health and safety measures and to review them.
- . To facilitate co-operation between employers and employees in relation to health and safety matters.
- . To assist employers to disseminate information among employees in appropriate languages about health and safety.
- . To perform any functions prescribed.
- . To perform any functions agreed between the employer and the committee.

Subclause 57(2) gives health and safety committees power to do things necessary to their functions.

### **Clause 58 : Duties of employers**

Subclause 58(1) requires employers to:-

- . Make available to health and safety committees information relating to risks to the health and safety of employees at their workplaces or arising from their undertakings.
- . Permit health and safety committee members to take such time off from work, without loss of remuneration, as is necessary and reasonable for members to attend meetings or with committee approval engage in the affairs of committee.

Subclause 58(2) & (3) protect employers from the need to disclose confidential medical information and information normally subject to legal professional privilege.

### **Clause 59 : Liability**

This clause protects committee members from liability for acts and omissions done in good faith in connection with their functions.

## **INSPECTORS**

### **INSPECTIONS**

### **Clause 60 : Things connected with offences**

This clause defines a thing connected with an offence and the meaning to be given to the word "offence".

**Clause 61 : Inspections etc.**

This clause establishes the powers of inspectors (and the Registrar to inspect premises. These powers are in line with Commonwealth leg policy concerning such powers.

Subclause 61(1) provides that inspectors can for the purpose of ascertaining compliance with the legislation and provided the inspector believes on reasonable grounds that the premises are used as a workplace:-

- . Enter premises, except domestic premises at any reasonable time.
- . Enter any premises with occupier consent.

Subclause 61(2) provides that an inspector must show his or her identity card on request or leave the premises.

Subclause 61(3) provides that an inspector entering premises under 61(1) may:-

- . Inspect, examine, measure or test the premises or system work, plant, substance or thing there.
- . Take any materials or equipment into the premises which the inspector considers necessary.
- . Require relevant information or documentation.
- . Inspect or copy relevant documents.
- . Take photographs, make sketches or recordings if considered necessary.
- . Seize things as necessary for necessary testing and take free samples of substances for testing.
- . Seize things believed on reasonable grounds to be connected with offences.
- . Require occupiers to assist.

**Clause 62 : Consent to entry**

This clause requires an inspector to inform an occupier of premises being asked to consent to entry that such consent may be refused.

**Clause 63 : Notice of removal**

Subclause 63(1) requires that an inspector take reasonable steps when seizing things to notify in writing employers; those with prescribed interests; and health and safety representatives of the seizure and reasons for it.

Subclause 63(2) requires removed things to be tested and returned as soon as possible, subject to clause 64.

Subclause 63(3) requires the inspector to furnish a written statement of the test results as soon as practicable after completing tests.

**Clause 64 : Return of certain seized articles**

This clause enables inspectors to retain things seized which will be used in a prosecution provided that a prosecution is instituted within 60 days.

**Clause 65 : Search warrants**

This clause enables an inspector to obtain a search warrant the inspector suspects on reasonable grounds that within the next 72 hours there may be in or on any premises a thing of a particular kind connected with particular offence.

Subclauses specify the powers of the warrant, details it is required to contain, and procedural aspects and requirements of obtaining and being granted such a warrant.

**Clause 66 : Obstructing inspectors**

This clause creates an offence for hindering inspectors in the exercise of their powers without reasonable cause.

**Clause 67 : False information**

This clause creates an offence for providing an inspector with information or documentation under clause 61 which to the persons knowledge is false or misleading.

**ADMINISTRATION**

**Clause 68 : Registrar**

This clause establishes the office of a Registrar to be appointed by the Minister. The Minister is able by virtue of subclause 68(3) to give directions to the Registrar. The Registrar is given all of the powers of an inspector by virtue of subclause 68(4) and an identity card issued by the Minister (subclause 68(5)).

**Clause 69 : Acting Registrar**

The role of Registrar is pivotal to the whole legislation and clause 69 provides for an acting Registrar to perform the role during absences from duty of the Registrar so that the Registrar will always be available to attend to key matters.

**Clause 70, 71 & 72 : Inspectors, Identity Cards & Return of Identity Cards.**

Clause 70 empowers the Registrar to appoint inspectors and direct them. Clauses 71 and 72 provide for the issue to inspectors of identity cards by the Registrar and for the requirement for them to be returned upon ceasing to be an inspector.

**Clause 73 : Liability**

This clause protects the Registrar and inspectors from liability for omissions or actions done in connection with powers under the legislation in good faith.

**Clause 74 : Delegation by Registrar**

This clause provides that the Registrar may delegate powers, other than those dealing with reconsideration of inspectors decisions under clause 80, to any person.

**IMPROVEMENT AND PROHIBITION NOTICES**

**Clause 75 : Improvement notices**

Subclause 75(1) provides that an inspector may issue an improvement notice to a person where he believes on reasonable grounds that they are contravening or likely to contravene this legislation. Subclause 75(2) specifies the matters to be specified on a provisional improvement notice. Improvement notices may specify the action that the responsible person should take to satisfy the notice (subclause 75(3)).

Where an improvement notices is given to an employer then the employer must give a copy to the health and safety representative of a designated work group affected by the notice and the Chairperson of any health and safety committee. A copy must also be displayed at the workplaces of the employer. (Subclause 75(4)).

Inspectors are required under subclause 75(5) to ensure that copies of notices go to certain specified people having control of the workplace and interests in it.

Inspectors may extend the period for compliance provided they do so before the time specified in the notice has expired. (subclause 75(6) and may revoke notices when they have been satisfied (subclause 75(7)).

**Clause 76 : Prohibition notices**

Under subclause 76(1) where an inspector believes on reasonable grounds that an activity in a workplace involves a risk of imminent and serious injury to a person at or near the workplace then the inspector may issue a prohibition notice to the person reasonably believed to be in charge of the activity. The notice directs that the activity not be carried out or only be carried out subject to certain requirements being met.

Subclause 76(2) enables certain directions aimed at specifying the prohibited activity to be included in the direction.

The employer is required by subclause 76(3) to have copies of the notice given to the health and safety representative for any affected designated work group; the chairperson of any health and safety committee; and displayed in a prominent place at the workplace.

Inspectors are required to take all reasonable steps to give copies of such notices to employers and others with a prescribed interest (subclause 76(4)) and may revoke the notice in writing when the risk has been removed (subclause 76(5)).

**Clause 77 : Directions not to disturb workplace etc.**

This provision is similar in terms to the prohibition notice except that it is used to freeze activity in the workplace or part of the workplace where that is necessary for that to occur to remove an immediate threat or to facilitate an examination of the workplace or part of it. Provisions relating to notice etc are similar to clause 76. The reasons for the direction must be specified.

**Clause 78 : Compliance**

This clause contains the offence provision for failure to comply with inspectors' notices.

#### REVIEW OF DECISIONS

**Clause 79 : Reviewing authority**

This clause defines reviewing authority to refer to the body specified by the regulations to be the reviewing authority. The policy intention is that the reviewing authority will be the Industrial Relations Commission. (This is subject to the Commonwealth amending the Industrial Relations 1988.) This is the approach in the Commonwealth proposed legislation. In the meantime it may be necessary to establish a temporary tribunal under regulations to handle such matters.

**Clause 80 : Reviewable decisions**

This clause lists all of the decisions of an inspector and of the Registrar which are reviewable. The lists cover all significant decisions of inspectors and the Registrar.

**Clause 81 : Eligible persons**

This clause imports 2 schedules at the end of the Act which list the people who may appeal against decisions of the Registrar and inspectors. Generally any person who is a party to the decision and/or directly affected by it may appeal.

**Clause 82 : Reconsideration of inspectors' decisions**

Inspectors often will be required to make quick decisions in adverse circumstances which on more reflection may not be supportable. It is also recognised that some inspector's decisions can occasion considerable economic loss to employers etc. The scheme of the legislation is therefore to provide parties with an optional virtually immediate and inexpensive review by the Registrar of inspectors' decisions.

Subclause 82(1) allows the Registrar to review an inspector's decision without any application being made for such a review. Subclause 82(2) requires a review to be made by the Registrar when requested in writing by an eligible person.

Subclause 82(3) provides that the inspector's decision stands until the review is completed except for improvement notices which are suspended pending the outcome of the review (subclause 82(4)). Subclause 82(5) is the operative provision giving the Registrar power to vary, confirm or revoke the decision of the inspector.

**Clause 83 : Review of decisions**

This clause provides for appeals to the reviewing authority to be made in writing (subclause 83(1)); for the existing decision to continue whilst the appeal is being made (subclause 83(2)) except for improvement notices which are suspended pending the appeal (subclause 83(3)); and for the reviewing authority to vary, confirm or rescind the subject decision (subclause 83(4)).

**MISCELLANEOUS**

**Clause 84 : Notice of accidents**

This clause requires notification to the Registrar of serious accidents, injuries and dangerous occurrences by employers. The information will be used to identify areas of concern which have excessively high rates of injury. These areas can then be given special attention by way of developing safer or healthier systems of work, education, target enforcement, or other remedial action. Further regulations are foreshadowed which will refine this aspect.

**Clause 85 : Records of accidents etc.**

This clause requires the employer to keep records of serious accidents, injuries and dangerous occurrences which are notifiable to the Registrar. Further regulations are foreshadowed which will refine this aspect.



**Clause 86 : Codes of practice**

This clause empowers the minister to approve and vary codes of practice as guidance to employers, self-employed persons and employees. Before approving each code or variation to a code the Minister will be required to obtain Council's advice. Approved codes will be advertised and kept for inspection at the Registrar's office. Codes will provide an efficient and simple way of incorporating and updating approved standards for performing work in safe and healthy manner.

**Clause 87 : Use of codes of practice**

This clause enables codes of practice to be used in prosecutions as evidence of a failure to observe health and safety requirements at work.

**Clause 88 : Protected information**

This clause requires people obtaining information by virtue of the legislation to keep such information confidential except in so far as disclosure is necessary under the legislation.

**Clause 89 : Interfering with safety equipment**

This clause prohibits a person from interference without reasonable excuse with any equipment provided in the interests of health and safety at work.

**Clause 90 : Interfering with workplace notices**

This clause creates an offence for interference with notices required by the legislation to be displayed in workplaces.

**Clause 91 : Employer not to levy employees**

This clause stops employers from passing on the costs of health, safety and welfare requirements to employees.

**Clause 92 : Employer not to discriminate**

This clause protects employees from victimization by employers as a consequence of them performing actions under the legislation.

**Clause 93 : Conduct of directors, servants and agents**

This clause deems the actions of directors, servants and agents to be the actions of the corporation they serve when their actions are within the scope and apparent authority they have been given.

The clause also ensures that natural persons are responsible for the actions of their servants and agents when those people are acting within the scope of their apparent authority. However the provision is limited in operation so that a natural person cannot be imprisoned on the basis of such imputed conduct.

**Clause 94 : Contracting out prohibited**

This provision renders void contracts entered into to avoid the legislation.

**Clause 95 : Civil liability not affected**

This clause ensures that civil proceedings are not affected by the legislation.

**Clause 96 : Inconsistency with associated laws**

This provision ensures that inconsistent provisions in associated laws (as defined in clause 5) are overridden by the provisions of this legislation.

**Clause 97 : Regulations**

It is intended that the legislation provide an umbrella to sit over the whole field of occupational health and safety. The concept is for all of the associated legislation to eventually be repealed and replaced by regulations dealing with specific matters.

With this scheme in mind the regulation making power is necessarily very extensive and embraces all manner of matters in the workplace or about the scheme which might need regulations.

Of particular note is the power to introduce regulations covering the formation of health and safety committees and the power to regulate training requirements for anyone such as health and safety representatives.

The Executive is required to consult with and have regard to the views of the Occupational Health and Safety Council when making regulations for training requirements.

**SCHEDULES**

The schedules list appealable decisions and persons eligible to appeal.