

Accident Compensation (Occupational Health and Safety) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

- Clause 1 outlines the main purposes of the Bill.
- Clause 2 details the commencement of the provisions of the Bill.

PART 2—AMENDMENTS TO THE ACCIDENT COMPENSATION ACT 1985

- Clause 3 Provides that, in this Part of the Bill, the **Accident Compensation Act 1985** is called the Principal Act.
- Clause 4 amends section 18(2)(d) and (e) of the **Accident Compensation Act 1985** to make it clear that the Victorian WorkCover Authority may do all of the things referred to in those paragraphs for the purpose of performing its functions and exercising its powers under any other Act as well as the **Accident Compensation Act 1985**.
- Clause 5 amends section 19(b) of the **Accident Compensation Act 1985** to include in the Victorian WorkCover Authority's objectives the administration of the **Occupational Health and Safety Act 1985**, the **Equipment (Public Safety) Act 1994**, the **Dangerous Goods Act 1985** and any other relevant Act.
- Clause 6 amends section 20C(1) of the **Accident Compensation Act 1985** to extend the Authority's accountability to the Minister to include exercise of its powers and the performance of its functions under the **Occupational Health and Safety Act 1985**, the **Equipment (Public Safety) Act 1994**, the **Dangerous Goods Act 1985**, the **Mines Act 1958** and the **Road Transport (Dangerous Goods) Act 1995**.
- Clause 7 amends section 21 of the **Accident Compensation Act 1985** to limit the delegation powers of the Authority in respect of any power, function, authority or discretion to which section 14 of the **Dangerous Goods Act 1985** applies.

Clause 8 amends section 32 of the **Accident Compensation Act 1985**.

Sub-clause (1) inserts in section 32(3) new paragraphs (ba), (bb) and (bc) which provide for certain amounts recovered as a penalty for an offence against the **Occupational Health and Safety Act 1985**, the **Equipment (Public Safety) Act 1994**, the **Dangerous Goods Act 1985**, the **Mines Act 1958** or the **Road Transport (Dangerous Goods) Act 1995** or the regulations made under those Acts, and any fee payable under those Acts and regulations (except the **Mines Act 1958**), and any amount certified by the Treasurer as a contribution from the Consolidated Fund, to be paid into the WorkCover Authority Fund.

Sub-clause (2) amends section 32(4).

Paragraph (a) amends section 32(4)(a) to allow payments required under regulations made under the **Accident Compensation Act 1985** or any other Act to be paid out of the WorkCover Authority Fund.

Paragraph (b) repeals section 32(4)(c), which currently provides for payment out of the WorkCover Authority Fund of an amount certified by the Minister as a contribution to the costs of administering the **Occupational Health and Safety Act 1985**.

Sub-clause (3) amends section 32(7) to extend the operation of that sub-section to allow the land and buildings in which money from the WorkCover Authority Fund is invested to be used in connection with the powers, duties or functions of the Victorian WorkCover Authority under any other Act in addition to the **Accident Compensation Act 1985**.

Clause 9 requires the Minister administering the **Accident Compensation Act 1985** to designate the officers and employees of the Public Service who are to become officers and employees of the Victorian WorkCover Authority.

Clause 10 provides that any officer or employee designated under clause 9, on and from the commencement of this clause, is deemed to have been appointed by the Victorian WorkCover Authority under section 22 of the **Accident Compensation Act 1985** and ceases to be an officer of the Public Service. The clause also details the conditions to apply to the deemed appointments. Finally, sub-clause (3) provides that a person is not entitled to any compensation as a result of the person ceasing to be an officer or employee of the Public Service by virtue of the clause.

Clause 11 states that it is the intention of clause 10(3) to alter or vary section 85 of the **Constitution Act 1975**.

PART 3—AMENDMENTS TO THE DANGEROUS GOODS ACT 1985

Clause 12 provides that in this Part of the Bill, the **Dangerous Goods Act 1985** is called the Principal Act.

Clause 13 inserts in section 3 (1) of the **Dangerous Goods Act 1985** a definition of “Authority” and repeals the definition of “Director-General”.

Clause 14 amends section 11 of the **Dangerous Goods Act 1985** to provide for the Victorian WorkCover Authority to appoint any officer or employee of the Authority as an inspector for the purposes of the **Dangerous Goods Act 1985**, to provide for the Authority to furnish inspectors with a certificate of appointment and to provide that the Authority has all the powers, functions, authorities and discretions of an inspector.

Clause 15 amends section 14 of the **Dangerous Goods Act 1985**, which confers certain powers of delegation, by substituting references to the Authority for references to the Director-General.

Clause 16 repeals section 16 of the **Dangerous Goods Act 1985**, which relates to reporting, as the annual reporting in relation to the administration of the **Dangerous Goods Act 1985** will be subsumed in the annual report of the Victorian WorkCover Authority made in accordance with the requirements of the Financial Management Act 1994.

Clause 17 amends section 40 of the **Dangerous Goods Act 1985** to provide that proceedings for an offence against that Act may be brought by the Victorian WorkCover Authority rather than the Minister. Such proceedings will continue to be able to be brought by an inspector and a member of the police force and an existing requirement for the Minister to issue guidelines with respect to the prosecution of offences remains.

Clause 18 amends section 42 of the **Dangerous Goods Act 1985**, which contains evidentiary provisions.

Sub-clause (1) amends section 42 to provide that a document purporting to be signed by the Chief Executive of the Victorian WorkCover Authority or any person authorized in writing by the Chief Executive in that behalf in relation to certain matters shall be evidence and, in the absence of evidence to the contrary, shall be proof of the facts stated in it.

Sub-clause (20 amends section 42 to substitute references to the Victorian WorkCover Authority for references to the Director-General.

- Clause 19 amends section 58(2) of the **Dangerous Goods Act 1985** to provide that codes of practice must be made available for inspection at the offices of the Victorian WorkCover Authority rather than the offices of the Minister's Department.
- Clause 20 inserts a new section 61 into the **Dangerous Goods Act 1985** which maintains an existing arrangement under which responsibility for administering the **Dangerous Goods Act 1985** rests with the Minister administering the **Petroleum (Submerged Lands) Act 1982** in certain circumstances and for certain purposes.
- Clause 21 amends a number of sections of the **Dangerous Goods Act 1985** by substituting references to the Director-General with references to the Authority.
- Clause 22 details statute law revisions to sections 9(e), 20 and 45A of the **Dangerous Goods Act 1985**.
- Clause 23 provides definitions of "Director-General", "former inspector" and "Minister" for the purposes of transitional provisions.
- Clause 24 provides that the Interpretation of **Legislation Act 1984** is not affected by anything in Division 2 (Transitional Provisions) of this Part of the Bill.
- Clause 25 provides that a reference to the Minister or the Director-General in regulations made under the **Dangerous Goods Act 1985** or any instrument or other document made, issued, served or given under that Act or the regulations made under that Act is deemed to be a reference to the Authority, with the exception of guidelines issued by the Minister under section 40(2) of the **Dangerous Goods Act 1985** or any code of practice approved by the Minister under section 56 of that Act.
- Clause 26 contains transitional provisions in relation to the Minister and the Director-General.

Sub-clause (1) contains transitional provisions in relation to certain proceedings involving the Minister or the Director-General before the commencement of this clause.

Sub-clause (2) contains transitional provisions in relation to any application made or notification given to the Director-General before the commencement of this clause.

Sub-clause (3) provides that, on and after the commencement of this clause, the Victorian WorkCover Authority may complete any other continuing matter or thing commenced by or against or in relation to the Director-General under the **Dangerous Goods Act 1985** or the regulations made under that Act.

- Clause 27 contains transitional provisions in relation to documents issued, served or given, actions taken and decisions made by the Director-General.
- Clause 28 deems the register established by the Director-General under section 54 of the **Dangerous Goods Act 1985** and any other register established by the Director-General under that Act or the regulations to be a register established by the Authority.
- Clause 29 deems inspectors appointed by the Minister administering the **Dangerous Goods Act 1985** holding office immediately before the commencement of the clause to be inspectors appointed by the Authority under that Act as amended by the Bill and saves existing certificates of appointment and identification cards.
- Clause 30 contains transitional provisions in relation to certain proceedings commenced or made by or against or in relation to inspectors.
- Clause 31 contains transitional provisions in relation to documents issued, served or given, actions taken and decisions made by inspectors.

PART 4—AMENDMENTS TO THE EQUIPMENT (PUBLIC SAFETY) ACT 1994

- Clause 32 provides that in this Part of the Bill, the **Equipment (Public Safety) Act 1994** is called the Principal Act.
- Clause 33 amends section 3 (1) of the **Equipment (Public Safety) Act 1994** to insert a definition of the “Authority”.
- Clause 34 amends section 12 of the **Equipment (Public Safety) Act 1994** to provide for the Victorian WorkCover Authority to appoint any officer or employee of the Authority as an inspector for the purposes of the **Equipment (Public Safety) Act 1994** and to provide for the Authority to furnish inspectors with a certificate of appointment and an identification card.
- Clause 35 amends section 28 of the **Equipment (Public Safety) Act 1994** to provide that proceedings for an offence against that Act may be brought by the Victorian WorkCover Authority rather than the Minister. Such proceedings will continue to be able to be brought by an inspector on the authority of the

Authority and an existing requirement for the Minister to issue guidelines with respect to the prosecution of offences remains.

- Clause 36 amends section 29 of the **Equipment (Public Safety) Act 1994** to require the courts to take judicial notice of the signature of the Chief Executive of the Victorian WorkCover Authority on every document authorised or required to be signed by the Chief Executive for the purposes of the **Equipment (Public Safety) Act 1994** or the regulations made under that Act.
- Clause 37 amends section 33 (5) of the **Equipment (Public Safety) Act 1994** to provide that codes of practice must be made available for inspection at the offices of the Victorian WorkCover Authority rather than the offices of the Department of Business and Employment.
- Clause 38 amends section 36 of the **Equipment (Public Safety) Act 1994**, which provides the regulation making powers under that Act, by replacing references to the Minister and the Secretary to the Department of Business and Employment with references to the Authority and repealing a provision which will be redundant following the amendments made by the Bill.
- Clause 39 amends the Schedule to the **Equipment (Public Safety) Act 1994** by replacing a reference to the Minister with a reference to the Authority.
- Clause 40 provides a definition of “former inspector” for the purposes of transitional provisions.
- Clause 41 provides that the **Interpretation of Legislation Act 1984** is not affected by anything in Division 2 (Transitional Provisions) of this Part of the Bill.
- Clause 42 provides that a reference to the Minister in regulations made under the **Equipment (Public Safety) Act 1994** or any instrument or other document made, issued, served or given under that Act or the regulations made under that Act is deemed to be a reference to the Authority, with the exception of guidelines issued by the Minister under section 28(5) of the **Equipment (Public Safety) Act 1994** or any code of practice approved by the Minister under section 33 of that Act.
- Clause 43 contains transitional provisions in relation to the Minister.
- Sub-clause (1) contains transitional provisions in relation to certain proceedings involving the Minister before the commencement of this clause.
- Sub-clause (2) contains transitional provisions in relation to any application made or notification, notice or request given to the Minister under the

Equipment (Public Safety) Act 1994 or the regulations made under that Act before the commencement of this clause.

Sub-clause (3) provides that, on and after the commencement of this clause, the Victorian WorkCover Authority may complete any other continuing matter or thing commenced by or against or in relation to the Minister under the **Equipment (Public Safety) Act 1994** or the regulations made under that Act.

- Clause 44 contains transitional provisions in relation to documents issued, served, granted, made or given, actions taken and decisions made by the Minister.
- Clause 45 deems inspectors appointed by the Minister administering the **Equipment (Public Safety) Act 1994** holding office immediately before the commencement of the clause to be inspectors appointed by the Authority under that Act as amended by the Bill and saves existing certificates of appointment and identification cards.
- Clause 46 contains transitional provisions in relation to certain proceedings commenced or made by or against or in relation to inspectors.
- Clause 47 contains transitional provisions in relation to documents issued, served, made or given, actions taken and decisions made by inspectors.

PART 5—AMENDMENTS TO THE OCCUPATIONAL HEALTH AND SAFETY ACT 1985

- Clause 48 provides that, in this Part of the Bill, the **Occupational Health and Safety Act 1985** is called the Principal Act.
- Clause 49 amends section 4 of the **Occupational Health and Safety Act 1985** by inserting a definition of “Authority” and repealing the definition of “Department”.
- Clause 50 amends section 8 of the **Occupational Health and Safety Act 1985** so as to provide that the functions and obligations, currently conferred and imposed by the section on the Department, are conferred and imposed on the Victorian WorkCover Authority.
- Clause 51 amends sections 9 and 10 of the **Occupational Health and Safety Act 1985**.
- Sub-clause (1) amends section 9 of the **Occupational Health and Safety Act 1985** so as to empower the Authority, rather than the Department, to require that information be furnished in accordance with that section.

Sub-clause (2) amends section 10 of the **Occupational Health and Safety Act 1985**, which imposes restrictions on the disclosure of information furnished under section 9, so as to impose those restrictions on Directors of the Board of Management of the Authority and officers and employees of the Authority, rather than on members of the Department.

Sub-clause (3) amends section 10 of the **Occupational Health and Safety Act 1985** by replacing all references to the Department with references to the Authority.

Sub-clause (4) inserts a new sub-section (11) into section 10 of the **Occupational Health and Safety Act 1985** which makes it clear that it is that section, and not an existing secrecy provision in the **Accident Compensation Act 1985**, which applies in respect of information furnished under section 9 of the **Occupational Health and Safety Act 1985**.

- Clause 52 amends sections 29, 30 and 31 of the **Occupational Health and Safety Act 1985**, which relate to designated work groups and health and safety representatives, so as to confer the powers and responsibilities of the Minister under those sections on the Authority, to empower the Authority to appoint any person, not necessarily an officer of the Public Service, to conduct an election of a health and safety representative and to replace a reference to the Department with a reference to the Authority.
- Clause 53 amends section 38 of the **Occupational Health and Safety Act 1985** to provide for the Authority to appoint any officer or employee of the Authority as an inspector for the purposes of that Act and to provide for the Authority to furnish inspectors with a certificate of appointment and an identification card.
- Clause 54 amends section 48 of the **Occupational Health and Safety Act 1985** to provide that proceedings for an offence against that Act may be brought by the Victorian WorkCover Authority rather than the Minister. Such proceedings will continue to be able to be brought by an inspector on the authority of the Authority and an existing requirement for the Minister to issue guidelines with respect to the prosecution of offences remains. The clause also amends section 49 of the **Occupational Health and Safety Act 1985**, which establishes a procedure for review of a failure to bring a prosecution, by replacing references to the Minister with references to the Authority.
- Clause 55 amends section 50 of the **Occupational Health and Safety Act 1985** so as to require courts to take judicial notice of the signature of the Chief Executive of the Authority on certain documents.

- Clause 56 amends section 55 of the **Occupational Health and Safety Act 1985** by replacing a reference to the Department with a reference to the Authority.
- Clause 57 amends section 59 and Schedule One of the Occupational Health and Safety Act 1985, which provide the regulation making powers under that Act, by replacing references to the Minister, the Secretary to the Department and the Department with references to the Authority and repealing a provision which will be redundant following the amendments made by the Bill.
- Clause 58 inserts a new section 60 into the **Occupational Health and Safety Act 1985** which maintains an existing arrangement under which responsibility for administering the **Occupational Health and Safety Act 1985** rests with the Minister administering the **Petroleum (Submerged Lands) Act 1982** in certain circumstances and for certain purposes. The section also provides a mechanism for establishing a similar arrangement with respect to activities carried out under the **Extractive Industries Development Act 1995**.
- Clause 59 provides definitions of “Department”, “former inspector” and “Secretary” for the purposes of transitional provisions.
- Clause 60 provides that the **Interpretation of Legislation Act 1984** is not affected by anything in Division 2 (Transitional Provisions) of this Part.
- Clause 61 provides that, with certain exceptions, a reference to the Minister or the Department or the Secretary to the Department in regulations made under the **Occupational Health and Safety Act 1985** or any instrument or other document made, issued served or given under that Act or the regulations made under that Act is deemed to be a reference to the Authority. The exceptions relate to certain appellate functions of the Minister which have been allocated to the Administrative Appeals Tribunal and to guidelines issued by the Minister under section 48(5) of the **Occupational Health and Safety Act 1985** and any codes of practice approved by the Minister under section 55 of that Act.
- Clause 62 contains transitional provisions in relation to the Minister, the Secretary of the Department and the Department.
- Sub-clause (1) contains transitional provisions in relation to certain proceedings involving the Minister before the commencement of this clause.
- Sub-clause (2) provides transitional provisions in relation to any application made or notification, notice or request given to the Minister, the Secretary of the Department or the Department before the commencement of this clause.

Sub-clause (3) provides that, on and after the commencement of this clause, the Victorian WorkCover Authority may complete any other continuing matter or thing commenced by or against or in relation to the Minister under the **Occupational Health and Safety Act 1985** or the regulations made under that Act.

- Clause 63 contains transitional provisions in relation to documents issued, served or given, actions taken and decisions made by the Minister. The provisions do not, however, apply to guidelines issued by the Minister under section 48(5) of the **Occupational Health and Safety Act 1985** or to any codes of practice approved by the Minister under section 55 of that Act.
- Clause 64 deems all information furnished to the Department under section 9 of the **Occupational Health and Safety Act 1985** to be furnished the Authority under that section.
- Clause 65 deems inspectors appointed by the Minister administering the **Occupational Health and Safety Act 1985** holding office immediately before the commencement of the clause to be inspectors appointed by the Authority under that Act as amended by the Bill and saves existing certificates of appointment and identification cards.
- Clause 66 contains transitional provisions in relation to certain proceedings commenced or made by or against or in relation to inspectors.
- Clause 67 contains transitional provisions in relation to documents issued, served or given, actions taken and decisions made by inspectors.