Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Minister for Employment and Workplace Relations, the Honourable Joe Hockey MP)
SAFETY, REHABILITATION AND COMPENSATION AND
OTHER LEGISLATION AMENDMENT BILL 2006

(Amendments to be moved on behalf of the Government)

OUTLINE

The Government’s amendments to this Bill would:

- Ensure the continuation of workers’ compensation coverage under the Safety, Rehabilitation and Compensation Act 1988 (the SRC Act) for certain work-related journeys;

- enable additional functions be conferred on Comcare by regulations;

- make a minor technical amendment to the Bill as introduced;

- amend the Occupational Health and Safety Act 1991 (the OHS Act) to prohibit the operation of major hazard facilities without a licence; and

- amend the OHS Act to extend its civil penalty regime to breaches of regulations made under the Act.

FINANCIAL IMPACT STATEMENT

The proposals in these amendments are budget neutral.
NOTES ON AMENDMENTS

Amendment (1) – commencement of new Schedule 3

Amendment (1) provides that new Schedule 3 – inserted by Amendment (7) and containing amendments to the OHS Act – will commence the day after the Act receives the Royal Assent.

Amendment (2) – expanding coverage of injuries

Amendment (2) inserts a new paragraph 6(1)(ea) into the SRC Act which would have the effect of extending workers’ compensation coverage under the SRC Act to any injury sustained in the course of travelling between the employee’s place of work and a place of education in accordance with a condition of the employee’s employment or at the request or direction or with the approval of the employer.

Amendment (3) – expanding coverage of injuries

Amendment (3) is a technical amendment consequential upon Amendment (4).

Amendment (4) – expanding coverage of injuries

Amendment (4) inserts a new paragraph 6(1)(g) into the SRC Act which would have the effect of extending workers’ compensation coverage under the SRC Act to any injury sustained in the course of travelling between the employee’s place of work and a place for the purposes of:

- obtaining a medical certificate for the purposes of the SRC Act;
- receiving medical treatment for an injury;
- undergoing a rehabilitation program provided under the SRC Act;
- undergoing a medical examination or rehabilitation assessment in accordance with a requirement made under the SRC Act.

Amendment (5) – Comcare’s functions

Amendment (5) inserts a new item 31A. New item 31A amends existing section 69 of the SRC Act by inserting new paragraph 69(fb) to enable additional functions be conferred on Comcare by regulations.

Section 69 of the SRC Act currently specifies Comcare’s functions. These functions are tightly drawn and lack flexibility. The amendment would enable additional functions be conferred on Comcare by regulation. This will allow for greater flexibility, yet at the same time ensuring such conferral is still subject to parliamentary scrutiny.

Amendment (6) – technical correction
Amendment (6) makes a minor technical correction to item 47 of the Bill as introduced. Item 47 is a transitional provision which would enable the Minister to specify a transitional interest rate for the purposes of new subsection 21(5) – contained in item 24 of the Bill. As presently drafted, the specified transitional interest rate would have to take effect from the day after the amendments receive the Royal Assent, and before commencement of the substantive provision on Proclamation. The amendment would enable the Minister to specify a transitional interest rate before the commencement of the substantive provision but that would take effect from the date the substantive provision takes effect.

Amendment (7) – amendments relating to occupational health and safety

Amendment (7) inserts a new Schedule 3 which contains amendments to the OHS Act.

Item 1 – new section 23A
Item 1 inserts a new section 23A that specifies a person must not operate a major hazard facility if the person is required by regulations to have a licence to operate the facility and the person does not have such a licence.

Regulations made under the Act impose licensing requirements on major hazard facility operators. The ultimate sanction for a failure to comply with these licensing requirements is suspension or revocation of the licence. However, the maximum level of penalties that could be imposed under the regulations for operating a major hazard facility without a licence are substantially less than the costs of complying with the licensing requirements. The amendments address this problem by including provisions in the OHS Act which prohibit the operation of a major hazard facility without a licence and by providing for a more appropriate level of penalty for failure to comply with these provisions.

The note following subsection (1) alerts the reader that a person who contravenes this provision may be subject to civil action.

Item 2 – Schedule 2 (heading)
Item 2 repeals the former heading of Schedule 2 and replaces it with the heading ‘Civil and criminal proceedings’. This change reflects that the proceedings are no longer only in respect of breaches of the Act.

The OHS Act contains a dual civil and criminal penalty regime. However, the civil penalty regime applies only to breaches of the Act itself and not to breaches of the regulations. Currently, the only available sanction for a breach of the regulations is a criminal penalty. This is inconsistent with the scheme of the Act which gives primacy to the civil penalty regime and retains criminal penalties for serious breaches of the Act, such as negligent or reckless conduct that may cause or expose an employee to death or serious injury. The proposed amendments in items 2-8 correct this anomaly and will enable breaches of the regulations to attract civil penalties.

Item 3 – new paragraph 2(1)(fa) of Schedule 2
Item 3 inserts new paragraph 2(1)(fa) to require a court to make a declaration of contravention if a person breaches the requirement to hold a licence under new section 23A to operate a major hazard facility. A declaration of contravention is required before a civil pecuniary penalty can be imposed.

Item 4 – new paragraph 2(1)(o) of Schedule 2
Item 4 inserts new paragraph 2(1)(o) to require a court to make a declaration of contravention if a person breaches a provision of the regulations specified in the regulations to be a civil penalty provision. A declaration of contravention is required before a civil pecuniary penalty can be imposed.

Item 5 – Paragraph 2(3)(c) of Schedule 2
Item 5 substitutes a new paragraph 2(3)(c) in Schedule 2. This amendment is consequential upon the amendment made by item 4 which extends the declaration of contravention provisions to breaches of the regulations.

Items 6 and 7 – Penalties
Items 6 and 7 amend the table of maximum penalties contained in subclause 4(2) of Schedule 2. Items 6 and 7 insert the respective penalties applicable for being an unlicensed operator of a major hazard facility and breaching a provision of the regulations.

Item 8 – Subclause 13(1) of Schedule 2 – paragraph (a) of the definition of civil penalty proceedings
Item 8 amends the definition of ‘civil penalty proceedings’ in subclause 13(1) to make it clear that clause 13, which allows for relief to be granted from liability for breaching civil penalty provisions, does not apply if the contravention arises from breaching a provision of the regulations to which strict liability applies.