5A Objects

The objects of the establishment of Safe Work Australia are, through a partnership of governments, employers and employees, to lead and coordinate national efforts to:
(a) prevent workplace death, injury and disease; and
(b) harmonise occupational health and safety laws and associated regulations and codes of practice; and
(c) improve national worker’s compensation arrangements.

(2) Xenophon (2) [Sheet 5612]

Clause 10, page 9 (lines 10 to 13), omit paragraphs (1)(d) and (e), substitute:
(d) 3 members nominated by the Australian Council of Trade Unions;
(e) 3 members nominated by the Australian Chamber of Commerce and Industry;

(3) Xenophon (3) [Sheet 5612]

Clause 15, page 11 (line 16) to page 12 (line 1), omit subclauses (2) to (5), substitute:
(2) The Minister can only make the appointment if the person has been nominated for the appointment by the Australian Council of Trade Unions.

(4) Xenophon (4) [Sheet 5612]

Clause 16, page 12 (lines 8 to 21), omit subclauses (2) to (5), substitute:
(2) The Minister can only make the appointment if the person has been nominated for the appointment by the Australian Chamber of Commerce and Industry.
(5) **AG (1) [Sheet 5593]**

Clause 26, page 16 (lines 18 and 19), omit “Division 4 allows the Ministerial Council to direct Safe Work Australia to amend either of the final plans.”.

(6) **Opp (2) [Sheet 5611]**

Clause 28, page 17 (line 24) to page 18 (line 24), omit subclauses (2) to (5).

(7) **Opp (3) [Sheet 5611]**

Clause 28, page 19 (lines 1 to 4), omit subclause (8).

(8) **Opp (4) [Sheet 5611]**

Clause 30, page 21 (lines 1 to 31), omit subclauses (2) to (5).

(9) **Opp (5) [Sheet 5611]**

Clause 30, page 22 (lines 8 to 11), omit subclause (8).

(10) **Opp (6) [Sheet 5611]/AG (2) [Sheet 5593]**

Division 4, clauses 31 and 32, page 23 (line 1) to page 25 (line 27), omit the Division.

(11) **Opp (7) [Sheet 5611]**

Clause 38, page 28 (lines 21 to 29), omit subclause (2).

(12) **Opp (8) [Sheet 5611]**

Clause 42, page 31 (lines 15 to 29), omit subclause (2).

(13) **Opp (9) [Sheet 5611]**

Clause 42, page 31 (line 31), omit “or (2)”.

(14) **Opp (10) [Sheet 5611]**

Clause 42, page 32 (line 7), omit “and subparagraph (2)(a)(i)”.

(15) **Opp (11) [Sheet 5611]**

Clause 43, page 33 (line 13), omit “any direction”, substitute “certain directions”.
Clause 45, page 34 (lines 14 to 16), omit paragraph (3)(a).

Clause 46, page 35 (lines 1 and 2), omit paragraph (1)(a), substitute:
(a) about the performance of the CEO’s functions but not in relation to operational matters; or

Clause 46, page 35 (after line 17), at the end of the clause, add:
(5) In this section, operational matters are matters addressed in the strategic and operational plans of Safe Work Australia.

Clause 57, page 39 (lines 27 to 29), omit subclause (3).

Page 45 (after line 9), after clause 67, insert:

67A Audit committee
(1) Safe Work Australia may establish an audit committee.
(2) The functions of the audit committee shall be:
(a) to receive reports and request information from the CEO on the Safe Work Australia Special Account and the financial management of Safe Work Australia;
(b) to make recommendations on the financial management of Safe Work Australia.

HOUSE OF REPRESENTATIVES REASONS FOR DISAGREEING TO THE SENATE AMENDMENTS

Senate amendment 1—Objects clause
This amendment is unnecessary.

Clause 3 of the bill explains to the reader that Safe Work Australia’s (SWA’s) role will be to ‘improve occupational health and safety outcomes and workers’ compensation arrangements across Australia’.

The recitals to the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (IGA) contain the aspirations of the parties, namely that the parties are committed to improving the health and safety of Australian workers and recognise that the prevention of workplace death, injury and disease is an object of the occupational health and safety (OHS) laws of each jurisdiction.

Senate amendments 2 to 4—Worker and employer members of Safe Work Australia
The bill provides for SWA to be constituted by an independent Chair, one representative from each of the jurisdictions and two representatives each of workers and employers in Australia. The bill also provides that the Minister is able to seek nominations from bodies which are the most representative organisations of employers and workers at the time nominations are sought.

These provisions are consistent with the IGA and reflect the view agreed to between the Commonwealth and the States and Territories that this composition strikes the right balance between the interests of the jurisdictions which will be required to adopt the model OHS legislation and the employers and workers who will be affected by it.

The amendment to increase the number of worker and employer representatives, if accepted, will only serve to delay the harmonisation process as it will inevitably result in further inter-governmental consultations and the need to seek amendments to the IGA.

**Senate amendments 5 to 10—Ability of Workplace Relations Ministers’ Council to direct changes to Safe Work Australia’s draft and final strategic and operational plans**

The States and Territories are providing 50 per cent of the funding for SWA. Accordingly, it is appropriate that the Workplace Relations Ministers’ Council (WRMC) has an oversight role in relation to SWA’s strategic and operational plans. It is still the responsibility of SWA to develop the plans with WRMC having a right to review—and, if necessary, amend—the plans.

For WRMC’s role to be effective, it needs to be given explicit powers to approve or reject a plan, as well as the power to give directions to make specified alterations. If the Bill is not drafted to give WRMC such powers, then WRMC would have to rely on its informal authority, rather than having a legislated authority. As with other amendments, the practical effect of this change would be delays to the harmonisation process.

**Senate amendments 11 to 14—Voting on model occupational health and safety laws**

If Australia is to have a harmonised set of OHS laws, then it can only do so with the cooperation and agreement of the States and Territories.

The IGA provides for WRMC to agree to the model OHS legislation proposed by SWA by consensus. It is reasonable to conclude that if a majority of jurisdictional representatives on SWA do not support proposed model OHS legislation than it is unlikely that WRMC would reach a different conclusion. Consequently, the voting rules are intended to avoid unnecessary delays that would result from SWA recommending to WRMC model legislation that has no chance of gaining agreement.

It is about ensuring that the States and Territories, who are responsible for OHS laws in their jurisdiction, are involved in the development of and agree with any proposed model OHS legislation.

**Senate amendments 15 to 18—Ministerial directions to CEO**

The CEO has responsibilities to manage the administration of SWA and to assist SWA in the performance of its functions. The CEO is subject to statutory obligations contained in the *Financial Management and Accountability Act 1997* (FMA Act).

Notwithstanding the independence of SWA, the Minister will be accountable to the Commonwealth Parliament, for the performance of the CEO and SWA staff, including in relation to the strategic and operational plans for SWA.

Accordingly, where there is conflict between the CEO’s functions under the strategic or operational plan and the Minister’s directions, it is appropriate that the Minister’s directions prevail.

**Senate amendment 19—Termination of CEO’s appointment for unsatisfactory performance**

Provisions enabling the Minister to terminate the appointment of a CEO for unsatisfactory performance are not uncommon. Such a provision is appropriate for a body like SWA. If the CEO is performing poorly, is not achieving results or is impeding the progress of OHS harmonisation through poor leadership or poor management of resources or staff, there must be a mechanism to terminate his or her appointment.
Provisions of this nature are not uncommon. Indeed, there is considerable precedent. Legislation that includes similar provisions include the *Offshore Petroleum Act 2006*, *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, *Australian Crime Commission Act 2002* and the *Commonwealth Services Delivery Agency Act 1997*.

**Senate amendment 20—Audit Committee**

The amendment is unnecessary.

SWA will be subject to the accountability regime contained in the FMA Act. Part 7 of the FMA Act goes further than the amendment and deals in some detail with the Chief Executive’s responsibilities in relation to financial management including:

1. the promotion of efficient, effective and ethical use of Commonwealth resources (section 44);
2. the implementation of a fraud control plan (section 45);
3. the requirement to establish an audit committee (section 46);
4. recovery of debts (section 47);
5. the keeping of accounts and records and access to those by the Finance Minister (section 48);
6. requirement to give the annual financial statements to the Auditor General (section 49); and
7. provision of additional financial statements and information to the Finance Minister that the Finance Minister requires about the financial affairs of the agency (section 50).

I C HARRIS  
Clerk of the House of Representatives

House of Representatives  
20 October 2008