DANGEROUS GOODS AND SUBSTANCES LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2008

CLAUSE NOTES

PART 1 **PRELIMINARY**

Clause 1 Citation

Clause 2 Provides that the amendments are to commence on the date on which the Act receives Royal Assent except for the amendments in Part 2 (*Dangerous Goods (Safe Transport) Act 1998) and Part 5 (Security-sensitive Dangerous Substances Act 2005)* which are to commence when the *Dangerous Substances (Safe Handling) Act 2005* commences.

PART 2 **DANGEROUS GOODS (SAFE TRANSPORT) ACT 1998 AMENDED**

Clause 3 Provides that the Principal Act referred to in Part 2 of the Bill is the *Dangerous Goods (Safe Transport) Act 1998*.

Clause 4 repeals section 19 of the *Dangerous Goods (Safe Transport) Act 1998* and replaces it with a new provision in relation to self-incrimination.

This will ensure consistency with the *Dangerous Substances (Safe Handling) Act 2005* (refer to the clause note for clause 27) and Security-sensitive *Dangerous Substances Act 2005* (refer to the clause note for clause 43).

PART 3 **DANGEROUS GOODS AMENDMENT ACT 2005 AMENDED**

Clause 5 Provides that the Principal Act referred to in Part 3 of the Bill is the *Dangerous Goods Amendment Act 2005*.

Clause 6 Amends section 6 of the *Dangerous Goods Amendment Act 2005* by removing the reference to importing from the definition of 'involvement in the transportation of dangerous goods'.

The *Dangerous Goods Amendment Act 2005* has not yet commenced. It amends the *Dangerous Goods Act 1998*. Once the *Dangerous Goods Amendment Act 2005* commences, its effect will be to remove all references to storage and handling of dangerous goods from the *Dangerous Goods Act 1998*.Handling and storage

of dangerous substances will be regulated by the *Dangerous Substances (Safe Handling) Act 2005*. The Dangerous Goods Act will regulate the transportation (by road and rail) of dangerous goods/substances and its title will change to the *Dangerous Goods (Safe Transport) Act 1998* to reflect this.

The purpose of this clause is to ensure that the areas covered by the Dangerous Goods (Safe Transport) Act and Dangerous Substances (Safe Handling) Act are distinct and unambiguous and reflect national commitments to separate standards for transport and for storage of dangerous goods. Inclusion of importation in the definition of 'involvement in the transportation of dangerous goods' indicates that all aspects of importation are to be covered by the Dangerous Goods (Safe Transport) Act. This is not the policy intent.

The intention is that the Dangerous Goods (Safe Transport) Act will apply to those aspects of importing that involve transport. The definition of 'transport' in the Dangerous Goods (Safe Transport) Act includes packing, loading and transfer of goods as well as marking and/or placarding of packages or containers. The Dangerous Substances (Safe Handling) Act is intended to apply to other aspects of importation that involve the handling of dangerous substances.

PART 4 **DANGEROUS SUBSTANCES (SAFE HANDLING) ACT 2005 AMENDED**

Clause 7 Provides that the Principal Act referred to in Part 4 of the Bill is the *Dangerous Substances (Safe Handling) Act 2005.*

Clause 8 Amends section 3 of the Act – by amending some existing definitions and adding new definitions.

Further details are set out in the clause notes for clauses 8(a) to 8(i) below.

Clause 8(a) Inserts a definition of 'agvet chemical' in section 3 of the Act.

Refer to clause notes for clauses 9 and 11 for further explanation.

Clause 8(b) Inserts a definition of 'ASSC' in section 3 of the Act.

Currently, the Act makes references to NOHSC (the National Occupational Health and Safety Commission). The national standards on which the legislation is based are made by the

NOHSC and the acronym is used in the nomenclature for all national standards referenced in the dangerous substances legislation. NOHSC was abolished on 1 January 2006 and the ASCC (Australia Safety and Compensation Council) was established to replace it.

The Federal Government has recently decided to replace the ASCC with another national body (refer to the clause note for clause 41).

Clause 8(c) Omits the definition of 'chemical' from section 3 of the Act.

Refer to clause notes for clauses 9 and 11 for further explanation.

Clause 8(d) Amends the definition of 'emergency services' in section 3 of the Act to reflect new legislation – *the Emergency Management Act 2006* (this Act commenced on 20 October 2006).

Clause 8(e) Inserts a definition of 'employee' in section 3 of the Act.

The purpose of the new definition is to extend the usual interpretation of the term 'employee' to persons such as contractors, sub-contractors, labour-hire employees, and on-hired employees.

This is important as there may be many people working at a DSL or MHF engaged by means other than the traditional employee/employer relationship (contract of service).

It is essential that these people also be subject to the obligations that employees have in relation to handling dangerous substances as the potential risk to the community and environment is the same.

Clause 8(f) Inserts a definition of 'hazardous substance' in section 3 of the Act.

Refer to clause notes for clauses 9 and 11 for further explanation.

Clause 8(g) Amends the definition of 'NOHSC' in section 3 of the Act.

The amended definition refers to the abolition of NOHSC under the Commonwealth's National Occupational Health and Safety Commission (Repeal, Consequential and Transitional Provisions) Act 2005.

Clause 8(h) Inserts a definition of 'pipe' in section 3 of the Act.

The term ‘pipe’ is used in various provisions in the Act. The purpose of this new definition is to clarify that references to ‘pipe’ include ‘pipeline’. Pipes and pipelines are means by which dangerous substances can be conveyed or transported within, between or to facilities.

Clause 8(i) Inserts a definition of ‘State’ in section 3 of the Act.

The term ‘State’ is defined as including a Territory.

Clause 9 Amends section 5(2) of the Act by removing the reference to ‘chemicals’ and replacing it with ‘hazardous substances and agvet chemicals’.

The term ‘chemicals’ is defined in section 8(a) of the Act as including a chemical that is listed or considered for listing in the Australian Inventory of chemical Substances published by the National Industrial Chemicals Notification and Assessment Scheme (NICNAS).

The inventory includes industrial chemicals that are not dangerous or harmful. This is not appropriate as the Act is not intended to regulate the handling of all chemicals – only those that may be dangerous (to property or the environment) or harmful (to the health of persons).

This clause restores the original intent of the legislation by replacing the reference to ‘chemicals’ in the definition of ‘dangerous substances’ which ‘hazardous substances and agvet chemicals’ are subsequently defined in the amended section 8 and new section 8A (refer to clause note for clause 11 below).

Clause 10 Amends section 6 of the Act by removing paragraph (e).

Section 5(2) of the Act provides that all dangerous goods, combustible liquids and chemicals are dangerous substances. The term ‘combustible liquids’ is subsequently defined in section 7.

However, section 6 of the Act also includes ‘combustible liquids’ in the definition of ‘dangerous goods’. This is anomalous and confusing given that ‘combustible liquids’ are already included in the definition of ‘dangerous substances’ in their own right and then defined separately in section 7. They are not the same as, or part of, ‘dangerous goods’.

This clause resolves the anomaly by removing the incorrect reference to 'combustible liquids' from the definition of 'dangerous goods' in section 6 of the Act.

Clause 11 Substitutes section 8 with two new provisions – a new section 8 and section 8A.

Refer to the clause note for clause 9 above.

The new section 8 provides a definition of hazardous substances making reference to the Approved Criteria for Classifying Hazardous Substances published by the ASCC. These criteria are adopted from the European Community legislation for classifying hazardous substances. The ASCC website contains a list of substances which have already been classified as hazardous in accordance with the Approved Criteria – this is reviewed and updated by ASCC. However, the fact that a substance does not appear on that list does not mean that it is not hazardous. If the substance is not on the list, manufacturers and importers are expected to use the Approved Criteria in determining whether substances are hazardous and in preparing labels and Material Safety Data Sheets (MSDS).

The new section 8A defines 'agvet chemical' as an agricultural chemical product or veterinary chemical product within the meaning of the Agvet Code of Tasmania. The Agvet Code is set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth.

Clause 12 Amends section 9 of the Act to include additional activities in what constitutes the handling of dangerous substances.

Section 9(1) specifies the activities that constitute the handling of dangerous substances. Obligations set out later in the Act, such as the general safety obligations in section 13, apply to persons who handle dangerous substances (refer to the clause note for clause 15 below). Section 9(1) helps determine who those obligations apply to.

The activities to be included in section 9(1) are:

- Design, manufacture or import of a handling system for the dangerous substance;

- Install, use, alter or maintain a handling system for the dangerous substance; and

- Organise, provide or undergo training in relation to the dangerous substance or any aspect of its handling.

The policy intent behind this amendment is to ensure that these activities are clearly stated. All may have significant bearing on the risk involved in dealing with a dangerous substance, and are subject to the general safety obligations applying under the Act.

Section 9(2) of the Act is amended to clarify that transportation of dangerous substance is transported by pipes. Transportation (by road and rail) of dangerous goods is covered by the Dangerous Goods Act 1998 (which will be known as the Dangerous Goods (Safe Transport) Act 1998 upon commencement of the Dangerous Goods Amendment Act 2005).

Clause 13 Amends section 10 of the Act to clarify the application of the Act.

Section 10 defines the scope of the Act.

Section 10(2) is to be amended to clarify that the Act does not apply to class 6.2 dangerous goods (infectious substances) and class 7 dangerous goods (radioactive materials) within the meaning of the Australian Dangerous Goods Code.

Traditionally, the Dangerous Goods legislation has not applied to the management of infectious substances and radioactive materials. The proposed amendment simply makes it clear that this exclusion is to continue.

The reason for the exclusion is that these classes of dangerous goods pose particular public health and environmental risks and are regulated by specific legislation, eg., the Radiation Protection Act 2005 and regulations, the Environmental Management and Pollution Control Act 1994 and Environmental Management and Pollution Control (Waste Management) Regulations 2000.

Under section 10(4), the Act does not apply to the transportation (by road and rail) of dangerous substances. Transportation is to be covered by the Dangerous Goods (Safe Transport) Act (refer to the clause note for clause 6 above). Movement of dangerous substances within a facility as part of the handling processes does not constitute transportation.

This clause further refines the scope of the Act by excluding dangerous substances that are in transit. Under the proposed new

subsection (5), dangerous substances are taken to be in transit if they:

- Are on premises to which they have been supplied in unopened containers;
- Have been at the premises for less than 5 consecutive days (calculated from the time at which they were supplied to the premises; and
- Have not been opened or used at the premises during that period.

The reason for making this exclusion to avoid confusion about which legislation applies. Substances in transit are effectively still in the transportation process, therefore the Dangerous Goods (Safe Transport) Act and associated regulations apply.

Clause 14 Amends section 12(1) of the Act to include the *Poisons Act 1971*.

Section 12 of the Act explains how other legislation that deals with dangerous substances relates to the Act. Section 12(1) provides for the provisions of other specified Acts to prevail over the provisions of the Act to the extent of any inconsistency.

This amendment simply provides a similar level of application as the other mentioned Acts and rectifies the omission of the *Poisons Act 1971* in the Act.

This is necessary to clarify that where substances are classified as poisons under the Poisons Act and the Poisons Act applies safety obligations to those substances, then, if there is some inconsistency between the Poisons Act and the Dangerous Substances Act, the former Act applies to the extent of that inconsistency. This follows the applicable legislative rule that the specific prevails over the general.

Clause 15 Amends section 13(1) of the Act to remove the reference to ‘involvement with the handling of dangerous substances’.

Section 13(1) of the Act sets out the general safety obligations to comply with the Act and to take all reasonable precautions and care to achieve an acceptable level of risk.

The provision currently states that these obligations apply to all persons who, through their involvement with the handling of

dangerous substances or with the handling systems at any place, may affect the safety of any person or harm any property or the environment.

The phrase 'involvement with' is ambiguous and may be subject to broader interpretation than intended. Interpreted more broadly than intended, e.g., to apply to the owner (as distinct from 'occupier') of a premises where substances are handled or to a company that finances the purchase of, or leases out, plant, equipment or handling systems.

This clause is aimed at resolving the ambiguity by simplifying section 13(1) so that the general obligations will apply to all persons who handle dangerous substances. Section 9(1) defines what constitutes handling dangerous substances and this is being amended to include activities relating to handling systems and training (*refer to the clause note for clause 12 above*)

This clause also amends section 13(2) of the Act to include a person that alters or maintains a handling system at an MHF or DSL as a person who has additional obligations under Division 2 of Part 2 of the Act. Specific obligations will apply to persons who alter or maintain handling systems under proposed amendments to sections 24 and 25 of the Act (refer to the clause notes for clauses 18 and 19 below).

Clause 16

Amends section 20 to require an occupier to maintain a dangerous substances inventory.

Section 20 sets out the obligations on occupiers of MHFs and DSLs.

The purpose of this clause is to enhance safe handling of dangerous substances by requiring occupiers to maintain a clear and consolidated record (dangerous substances inventory) as a first step in the risk minimization process. The inventory would comprise a list of:

- Which dangerous substances are at the MHF or DSL;
- The form of those dangerous substances;
- The whereabouts and method of storage or containment of those dangerous substances;
- Any prescribed information

It is essential that the inventory specify the maximum containment capacity of particular dangerous substances as actual quantities may vary from day to day (or even during the course of a day) and containers that are partly or completely empty of liquid or solid substances may still contain gas, e.g., petroleum.

The proposed new paragraphs (h) and (i) of section 20 ensure that employees and emergency service workers have access to the inventory when necessary.

This clause also makes a minor amendment to section 20 (a)(ii) to replace the words ‘an incident’ with a ‘dangerous situation’. This will provide greater consistency and clarity as the term ‘dangerous situation’ is used throughout the Act and is defined in section 3.

Clause 18

Amends section 24 of the Act to impose a new safety obligation upon persons who alter or maintain handling systems at DSLs or MHFs.

Section 24 of the Act imposes specific obligations on the designers, manufacturers, importers, suppliers and installers of handling systems. This clause expands this provision to also impose obligations on persons who alter or maintain handling systems.

The policy intent of this amendment is to ensure that those persons who have the ability to affect the performance of a handling system through altering or maintaining it also have a clear obligation to ensure that the risk posed by the use of the handling system is at an acceptable level (refer to the clause notes for clauses 15 and 19).

Clause 19

Amends section 25 of the Act to impose a new safety obligation on persons who alter or maintain handling systems at DSLs or MHFs.

Section 25 requires people who install or supply handling systems to DSLs or MHFs to inform the occupier of any hazards or defects in the handling system and any modifications or controls that may eliminate or correct the hazard or manage the risk. Clearly this is essential to minimize the risk that may result from the use of a defective handling system.

This clause extends this obligation to persons who alter or maintain a handling system as it is possible that a hazard or defect in the

system may become apparent during the altercation or maintenance process (refer to the clause notes for clauses 15 and 18 above).

Clause 20 Amends section 35 of the Act to clarify the required notification procedure.

Section 35 of the Act obliges occupiers to notify the Secretary when there is a specified change to the facility.

This clause makes a minor procedural amendment to section 35(2) to clarify that the notification to the Secretary must be done in accordance with the requirements set out in subsection (3) (i.e., notification to be in an approved form and given to Secretary within certain timeframes).

This amendment will make section 35 consistent with similar provisions in sections 33 and 34 of the Act.

Clause 21 Amends section 36 of the Act to allow the regulations to prescribe the way in which an occupier is to notify the Secretary of proposed modifications to an MHF.

The intention of this clause is to ensure that the notification contains all relevant details. The details that must be supplied are specified in the Regulations.

Clause 22 Amends section 44(1) of the Act in relation to MHF safety reports.

Section 44(1) requires the occupier of an MHF to provide the Secretary with a written safety report. The initial report is to be provided within a specified time after a facility is classified as an MHF and then the report must be reviewed and updated at least once every 5 years.

Given the large quantities of dangerous substances handled, and the complexity of the operations involved, MHFs pose the greatest risk of harm to persons, property or the environment. It therefore crucial that safety obligations in relation to MHFs be clear and unambiguous, and also that occupiers can clearly indicate how their obligations have been satisfied.

Under section 44(1), the occupiers must document how their safety obligations are to be met through a detailed report called a ‘safety report’. (The methodology is the same as the safety case methodology that applies to off-shore petroleum facilities and MHFs regulated in other states and is based upon the National

Standard for the Control of Major Hazard Facilities referenced by the legislation.)

The amendment to section 44(1) simply clarifies that the onus is on the occupier to demonstrate through the details provided in the safety report;

- That the risks at the MHF are at an acceptable level (where 'acceptable level' means 'minimised as far as reasonably practicable'); and

- That the occupier has discharged specified obligations, e.g., - training systematic risk assessment; emergency plans, safety management systems etc.; and

- The performance criteria (eg specific standards to be met).

The details provided in the safety report then provide the basis upon which the occupier would monitor their performance, the conduct of regular reviews or audits and updating the report for safety management purposes. It also provides the basis for enforcement by the regulator.

Clause 23 Amends section 45 of the Act to resolve a minor anomaly.

Section 45(1)(a) requires the occupier of a MHF or possible MHF to advise the Secretary when a dangerous substances emergency has occurred and of any resulting serious harm or material harm to persons, property or the environment. This clause removes the words' to persons, property or the environment'. These words are superfluous as the definitions of 'serious harm' and 'material harm' already include 'harm to persons, property or the environment'.

Clause 24 Amends section 47 of the Act to make some minor clarifications to the definitions and provisions relating to DSLs and LDSLs.

Subsections 47(1) and (3) define when a place is deemed to be a dangerous substances location (DSL) or large dangerous substances location (LDSL). This clause removes the reference to 'prescribed dangerous goods' and 'combustible liquids' in those provisions as there are no prescribed dangerous goods or combustible liquids. The determination of whether a place is a DSL or LDSL depends upon the quantities of dangerous goods and/or combustible liquids handled at that place, relating to the

relevant Schedules appended to the National Standards. The Regulations specify the relevant quantities.

This clause also inserts a new subsection (4) into section 47. Subsequent to the passage of the Act there was some confusion about whether the obligations applying to a DSL applied also to a LDSL. In seeking this amendment, the intent is to make it clear that all those obligations that apply to a DSL still apply to a LDSL because they do not cease being a DSL when the thresholds for being a large DSL (LDSL) are met.

The purpose of this new provision is therefore to make it clear that LDSLs are DSLs and therefore subject to all of the requirements and obligations that apply in respect of DSLs. Given that greater quantities pf dangerous substances are handled at large dangerous substances locations the risks are increased, and a LDSL must notify the Secretary to enable the identification of a possible MHF.

Clause 25 Amends section 52 of the Act resolve a minor anomaly (refer to the clause note for clause 23 above).

Clause 26 Amends section 55(4)(a) of the Act to remove the reference to 'State Service employment' and replace it with 'police employment'.

Under section 55(2) a police officer can be appointed to be an authorized officer. Authorized officers have powers under the Act, including to enter and search premises and vehicles, seize evidence and make directions.

Section 55(4)(a) states that a police officer appointed as an authorized officer holds that office in conjunction with State Service employment. This is anomalous as police officers are not State Service employees (they are not appointed under the *State Service Act 2000).*

This clause removes the anomaly by replacing the reference to State Service employment with police employment. This will restore the original intent of section 55(4)(a), namely that a police officer appointed as an authorized officer will hold that office in conjunction with his or her employment as a police officer.

Clause 27 Repeals section 65 of the Act and replaces it with a new provision in relation to self-incrimination.

Section 65 of the Act currently provides that a person is not excused from answering a question asked by an authorized officer under section 59 on the grounds that the answer may tend to incriminate him or her. However, the answer or any information, document or thing obtained as a direct or indirect result of that answer is not admissible in evidence against the person.

This clause replaces section 65 with a new provision consistent with the self-incrimination provisions in the *Workplace Health and Safety Act 1995* (in section 37(3) and (4)).

The Workplace Health and Safety Act also provides that a person is not excused from answering a question or providing information required by an inspector on the grounds that the answer or information may tend to incriminate him or her. However, the answer or information is not admissible against the person if he or she claims (before answering or providing the information) that it may tend to incriminate him or her. It is also inadmissible if the person has not been informed of the entitlement to make that claim prior to answering or providing information.

This proposed amendment is intended to facilitate the enforcement of the Act. The Act will be enforced by inspectors who also enforce the Workplace Health and Safety Act. They are familiar with the provisions of the Workplace Health and Safety Act and have a standard caution that they use in questioning people during the investigation pf a workplace incident or accident. This same caution will be able to be used in relation to this Act which will avoid confusion and error. The same amendments are proposed to the Dangerous Goods (Safe Transport) act and Security-sensitive Dangerous Substances Act to ensure consistency across all Acts dealing with dangerous goods and substances (refer to the clause notes for clauses 4 and 43).

Clause 28

Amends section 68 of the Act to extend its application to all facilities and not just to DSLs and MHFs.

Section 68 of the Act enables an authorized officer to direct an occupier to carry out a specified assessment or give specified information to enable the authorized officer to decide whether risk is at an acceptable level.

Currently, the direction can only be given to the occupier of a DSL or MHF. However under section 13(i) of the Act, all persons who handle dangerous substances have a general obligation to take all reasonable precautions and care to achieve an acceptable level of

risk, not just the occupiers of DSLs and MHFs. Given this, it is appropriate to enable an authorized officer to give a direction under section 68 of the Act to an occupier of any facility, so that the authorized officer can determine whether risk is at an acceptable level as required by section 13(1)(b) of the Act.

Clause 29

Amends section 69 of the Act to extend its application to all facilities and not just to DSLs and MHFs.

Section 69 of the Act enables an authorized officer to direct the occupier of a DSL or MHF to take specified corrective or preventable action to reduce risk to an acceptable level.

Currently, this type of direction can only be given to the occupier of a DSL or MHF. However, as stated in the clause note to clause 28 above, the obligation to achieve an acceptable level of risk is not limited to occupiers of DSLs and MHFs but applies to all persons who handle dangerous substances. This clause facilitates the enforcement of this general obligation by allowing an authorized officer to direct the occupier of any other facility to take action to reduce risk to an acceptable level.

Clause 30

Amends section 74 of the Act to ensure consistency with the other provisions concerning directions by authorized officers.

Section 74 allows an authorized officer to direct a person to stop and prevent further operation of a handling system. This applies where an authorized officer reasonably believes that a handling system at an MHF, DSL or other place has caused, or is likely to cause, material harm. (This is consistent with the objective of the Act to prevent harm to people, property and the environment.)

This clause amends section 74(1) by removing the word ‘place’ and replacing it with ‘facility. This makes the provision consistent with the proposed amendments to be made to other provisions relating to directions (i.e., sections 68, 69, 75 and 76) – (refer to the clause notes for clauses 28, 29, 31 and 32.

Clause 31

Amends section 75 of the Act to extend its application to all facilities and not just DSLs and MHFs.

Section 75 allows an authorized officer to direct an occupier to suspend operations in all or part of the MHF of DSL if the authorized officer believes on reasonable grounds that the risk from those operations is at an unacceptable level.

Currently, this type of direction can only be given to the occupier of a DSL or MHF. However, as stated in the clause note to clause 28 above, the obligation to achieve an acceptable level of risk is not limited to occupiers of DSLs and MHFs but applies to all persons who handle dangerous substances. The intention of this clause is to allow an authorized officer to direct the occupier of any other facility to suspend operations if there is an unacceptable level of risk.

Clause 32

Amends section 76 of the Act to extend its operation to all facilities and not just DSLs and MHFs.

Section 76 allows an authorized officer to direct the occupier of an MHF or DSL to isolate and protect the site of a dangerous substances emergency if he or she believes it is necessary to preserve evidence.

Currently, this type of direction can only be given to the occupier of a DSL or MHF. It is possible that a dangerous substances emergency could occur at a facility that is not a DSL or MHF and in a subsequent investigation of the emergency it may be necessary to preserve evidence by isolating or protecting the site. This clause allows an authorized officer to give the necessary direction to the occupier of a facility that is not a DSL or MHF.

Clause 33

Inserts a new provision – section 76A – Directions to address specific manufacturing, import or supply risks.

Under the Act, manufacturers, importers and suppliers have obligations to ensure that:

- The dangerous substances and handling systems they manufacture, import or supply are safe for handling and use; and

- Appropriate information is provided with the substances and handling systems.

This new provision is intended to facilitate the enforcement of those obligations by allowing an authorized officer to direct a manufacturer, importer or supplier to take appropriate action to reduce the risk related to a dangerous substance or handling system.

Under this new provision, an authorized officer can direct that a substance or handling system be recalled. This provides a means of

dealing urgently with a dangerous substance or handling system that is in an unsafe condition.

Clause 34 Inserts a new provision – section 77A – Directions to importers or exporters to have explosives analyzed, & c.

The intention of this new provision is to ensure that imported and exported explosives conform to the properties of explosives that have been authorized (explosives with the same properties can go by different brand names).

The requirements and process for authorization are set out in the Regulations.

Clause 35 Inserts a new provision – section 78A – Orders to secure compliance with directions.

Under Part 6 Division 3 of the Act, authorized officers can direct persons to do certain things including carrying out risk assessments, reduce risks, review safety management systems and emergency plans and procedures.

A person who fails to comply with a direction is in breach of the legislation and can be prosecuted.

This new provision provides another means of securing compliance by enabling an authorized officer to seek a court order compelling compliance in circumstances where:

(a) a person has failed to comply with a direction given by an authorized officer and

(b) the contravention has caused or contributed to a dangerous situation or dangerous substances emergency at any premises.

The *Workplace Health and Safety Act 1995* contains a similar provision (section 42).

Clause 36 Amends section 79 of the Act to ensure consistency with the other provisions concerning directions by authorized officers.

Clause 37 Amends section 85 of the Act to ensure that it includes standards issued or published by the ASCC as well as those issued or published by NOHSC or Standards Australia.

ASCC has replaced NOHSC and is the publisher of some of the relevant Standards under the Act and Regulations, but other relevant Standards are still referred to as having been published by NOHSC.

(Refer to clause notes for clauses 8(b) and 8(g) above and clause 41 below).

Clause 38 Inserts a new provision into the Act – section 90A – Infringement notices.

The Act provides penalties for contravening various provisions, particularly in respect of the failure to carry out obligations under the Act or comply with directions from authorized officers.

This amendment allows some offences (those that will be prescribed) to be dealt with by way of infringement notice rather than prosecution through the courts. The infringement notice approach has been adopted in other regulatory regimes (including Workplace Health and Safety regulation, Traffic regulation) and is considered to be a more efficient and less costly means of dealing with the more minor breaches of legislation.

The Regulations will prescribe the offences for which infringement notices may be issued. These will be limited to the breaches that are considered to be more minor or administrative in nature. More serious offences will not be subject to the infringement notice system and will be dealt with by way of prosecution.

Under this clause, the procedure relating to Infringement notices is in accordance with the *Monetary Penalties Enforcement Act 2005*, which commenced on 28 April 2008.

Clause 39 Amends section 91 of the Act to enable a person aggrieved by a decision made under the Regulations to apply for a review of the decision by the Magistrates Court (Administrative Appeals Division).

Clause 40 Amends section 98(2) of the Act to ensure that the Governor can make regulations necessary to support the Act.

Section 98(2) currently provides for a number of matters on which regulations can be made.

This clause makes minor clarifications of some of these matters and adds three more:

- the keeping and provision of information (proposed paragraph (ha));
- exemptions in respect of any matter (proposed paragraph (hb)); and
- recognition of qualifications, standings or authorities relating to the handling of dangerous substances from other states and Territories or the Commonwealth (proposed paragraph (hc)).

This clause also inserts a new provision – section 98(7), which relates to security issues concerning explosives. Under the new provision the regulations can authorize the disclosure of personal information relating to explosives to law enforcement or regulatory agencies of the Commonwealth or another State.

The development of the Regulations occurred some time after the Act had been passed (rather than in conjunction with the drafting of the Act) and the need to include these matters only become evident during the drafting of the Regulations.

Clause 41

Inserts two new provisions into the Act – section 99A and section ((B.

The Commonwealth Government has recently decided that the ASCC should be replaced by another body. The new section 99A is intended to deal with any possible change to, or replacement of, the ASCC.

Under the proposed section 99A(1), should the ASCC be renamed or replaced, the Governor can make an order amending the Act to update those references. The Governor must be satisfied that any new body has functions equivalent or substantially similar to those of the ASCC, i.e., to lead and co-ordinate national efforts to improve occupational health and safety (OHS) and workers compensation arrangements; declare national standards and codes of practice on OHS matters; and provide Government with policy advise on those matters.

Under the proposed section 99A(2) an order made by the Governor under section 99A(1) is not subject to the processes applying to new legislation under the *Subordinate Legislation Act 1992*. This

will provide a much shorter and simpler procedure for making a minor administrative adjustment.

The new section 99B clarifies that explanatory notes are not part of the law.

PART 5 SECURITY-SENSITIVE DANGEROUS SUBSTANCES ACT 2005 AMENDED

Clause 42 Provides that the Principal Act referred to in Part 5 of the Bill is the *Security-sensitive Dangerous Substances Act 2005.*

Clause 43 Repeals section 62 of the *Security-sensitive Dangerous Substances Act 2005* and replaces it with a new provision in relation to self-incrimination.

This will ensure consistency with the Dangerous Substances (Safe Handling) Act 2005 (refer to the clause note for clause 27) and the Dangerous Goods (safe Transport) Act 1998 (refer to the clause note for clause 4).

PART 6 DANGEROUS GOODS AND SUBSTANCES (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) ACT 2005 AMENDED

Clause 44 Provides that the Principal Act referred to in Part 6 of the Bill is the Dangerous Goods and Substances (Transitional and Consequential Provisions) Act 2005.

Clause 45 Amends Schedule 1 of the Act to remove items that are no longer necessary.

Schedule 1 makes amendments to the Admission to Courts Regulations 1995 and the Workplace Health and Safety Regulations 1998. The Admission to Courts Regulations 1998. The Admission to Courts Regulations expired in 1995 and have been remade. The Workplace Health and Safety Regulations are due to expire later this year. Any necessary amendments resulting from the dangerous goods and substances legislation will be dealt with during the remaking of the regulations.