

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE

ON THE

OCCUPATIONAL

HEALTH AND

SAFETY BILL 1989

REPORT

JULY 1989

COMMITTEE MEMBERSHIP

Mr Stefaniak (Chairman)
Mr Moore
Mr Wood

Secretary : Mr R Owens

RESOLUTION OF APPOINTMENT

(Agreed to 25 May 1989)

That –

- (1) A select committee be appointed to inquire into and report, in the context of wide public consultation, on the Occupational Health and Safety Bill 1989.
- (2) The committee report by 27 June 1989.
- (3) The committee shall consist of Mr Moore, Mr Stefaniak and Mr Wood.
- (4) A majority of Members constitutes a quorum of the committee.
- (5) The committee be provided with necessary staff, facilities and resources.
- (6) The foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

(Varied on 27 June 1989)

In Paragraph (2) omit "27 June", substitute "6 July".

REFERENCE

(Resolution agreed to on 25 May 1989)

That the Occupational Health and Safety Bill 1989 be now referred to a select committee.

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INTRODUCTION

Background

1. On 25 May 1989 the Minister for Industry, Employment and Education (Mr Whalan) presented the Occupational Health and Safety Bill 1989.
2. The bill presented to the Assembly was the result of a long consultation process with employer groups, trade unions and other interested parties.
3. In May 1988 prior to the establishment of the ACT Executive on 11 May 1989, 600 copies of a report of a working party on occupational health and safety were circulated and, following public comment, two drafts of proposed legislation were circulated for further public comment; one in November 1988 and the other in April 1989.
4. The first draft, in the form of a draft ordinance, was circulated by the Commonwealth Minister for Territories; as was the second draft, which was in the form of a draft bill.
5. Following the circulation of these two pieces of draft legislation the ACT Administration received a large number of submissions which assisted the officers of the Administration in finalising the drafting of a bill for presentation to the Assembly.
6. At an early meeting of the committee senior officer of the Department of Industry, Employment and Education presented to the committee copies of all the submissions lodged with the Administration.

Establishment of the committee.

7. The Assembly appointed this committee on 25 May 1989 to inquire into and report on, in the widest public context, the Occupational Health and Safety Bill 1989; and the Bill was formally referred to the committee on the same day. The committee was required to report to the Assembly on 27 June 1989.
8. In the course of its inquiry the committee came to the conclusion that it would be unable to fulfil its obligations by that date and an extension of time to report was sought. That extension was granted by the Assembly on 27 June requiring the committee to report by 6 July 1989.

Submissions

9. The committee placed advertisements calling for submissions from interested people and organisations in *The Canberra Times*.
10. In all nineteen submissions were lodged with the committee. (See Appendix 1)

Conduct of inquiry

Number of meetings

11. The committee held nine meetings and examined twenty two witnesses representing twelve organisations (*See Appendix 2 for list of witnesses*).

Site inspections

12. In order to more fully appreciate the work place environment the committee inspected a number of work sites.

13. On 19 June the committee was invited to tour the building site at section 38, Civic, and held discussions with the prime contractor concerning their safety management practices. The committee, on 20 June, also went to the Canberra Southern Cross Club, a different work environment with different needs. And on 26 June the committee visited Pirie Printers, a work environment of large complex machinery and industrial chemicals.

14. At each of those sites members of the committee observed work practices and safety procedures, and talked with workers about specific implications of the legislation.

15. The committee is honoured to present this first committee report to the Assembly.

CHAPTER ONE – GENERAL PROVISIONS

General comments

1.1 Through its public inquiries the committee became convinced of a general acceptance, by all parties, of the need for this legislation. Different groups, of course, each had different concerns about various provisions in the bill; but in the main the committee felt that most of these concerns were a result of misunderstanding or a lack of information about the intent of the bill or provisions in the bill.

1.2 Given that the committee is convinced of broad community support for the legislation, the committee believes the bill should be agreed to in principle.

1.3 However, the committee does have several concerns about the bill, which will necessitate the amendment of the bill at the detail stage. Each of the matters of concern are addressed separately throughout the report.

Recommendations

That this bill be agreed to in principle. (Recommendation 1)

That the amendments set out in the attached schedule to this report be considered by the Assembly at the detail stage of the bill. (Recommendation 2)

Commencement clause

1.4 Whilst recognising the need for the Executive to have the necessary time in which to put in place the appropriate arrangements to administer its legislation, the committee is of the opinion that the Assembly ought to ensure that legislation it enacts does come into operation within a reasonable time after passage through the Assembly.

1.5 The committee believes that a period of six months ought to be a reasonable time within which the Executive can set in place any administrative arrangements necessary to give effect to legislation.

1.6 As a result, the committee recommends to the Assembly that it adopt as a principle that, notwithstanding other commencement provisions in any piece of legislation, every Act passed by the Assembly shall come into operation within, at the latest, six months after the Act was notified in the Gazette as having been passed by the Assembly.

Recommendation

That all Acts passed by the Assembly commence on a day not later than six months following the notification required by section 25 of the *Australian Capital Territory (Self-Government) Act 1988*. (Recommendation 3)

In the schedule attached to this report the committee suggests an amendment to clause 2 of the bill to give effect to this recommendation.

Annual reporting requirements

1.7 The committee was pleased to see, at clause 12, a provision in the bill for an annual report to be presented to the Assembly. However, the committee is somewhat concerned at the open endedness of clause 12.

1.8 Your committees believes that all statutory bodies, authorities, Executive departments and non-statutory bodies of the Territory should be required, either by statute or Executive direction, to report to this Assembly on an annual basis.

1.9 To this end this committee is of the opinion that all bodies established under legislation should have quite specific reporting requirements.

1.10 The committee can see no reason why bodies with reporting requirements cannot furnish their relevant Ministers with an annual report within three months of the end of each financial year, and the committee is further of the opinion that Ministers should be able to table those reports within six sitting days of receiving them.

Recommendations

That those bodies with statutory annual reporting responsibilities furnish those reports within three months of the end of the financial year to which they relate and that Ministers table those reports within six sitting days of their receipt.
(Recommendation 4)

That the Executive give consideration to requiring Executive departments and non-statutory authorities of the Territory to furnish reports within three months of the end of the financial year to which they relate and that Ministers table those reports within six sitting days of their receipt. (Recommendation 5).

In the schedule attached to this report the committee suggests an amendment to clause 12 of the bill to give effect to this recommendation.

Definitions

1.11 In discussions with a number of witnesses, concern was raised about the provision under the definition of "registered union" whereby a body could become a union for the purposes of the Act simply by the Executive Government making a regulation.

1.12 Many witnesses felt that paragraphs (a) and (b) of the definition were sufficient for the purposes of the Act and requested of the committee that paragraph (c) be deleted. The committee agrees with this point of view.

In the schedule attached to this report the committee suggests an amendment to clause 5 of the bill to give effect to this matter.

Appropriate languages

1.13 A number of witnesses expressed their concern to the committee over the requirements, in paragraph 27(2)(d), to provide information, instruction, training and supervision in appropriate languages. Some witnesses felt it was particularly onerous to provide training and supervision in an appropriate language. It was intimated to the committee that such provisions as set out in this particular paragraph could possibly be use as a deterrent to engaging non-English speaking employees.

1.14 However, the committee, in its site inspections, did notice the use of international safety signs on machinery.

1.15 The committee believes that the reference to "in appropriate languages" can be deleted from this paragraph without detracting from an employer's responsibility to provide the necessary information, instruction, training and supervision to employees to enable them to perform their work in a manner that is safe and without risk to their health.

In the schedule attached to this report the committee suggests an amendment to the bill to give effect to this matter.

CHAPTER TWO – DESIGNATED WORK GROUPS

General comments

2.1. No other provisions of the bill gave rise to as greater misunderstandings as did the provisions concerning designated work groups (DWG).

2.2 Those misunderstandings ranged through the number of workers who would be covered by the provisions; what percentage of employers would be involved; the size of the DWGs; the costs involved; to the industrial powers the groups might have; and the opportunities for abuse of powers.

2.3 Information given to the committee by officials of the Department of Industry, Employment and Education was to the effect that, with a minimum requirement of eleven workers to form a DWG, approximately 85% of private sector businesses would not be involved. Therefore, only 15% of private sector businesses will be subject to the provisions of Part IV – Division 1 of the bill; a situation not fully grasped by the business community.

2.4 Several witnesses expressed concern about having to form DWGs for each eleven of their employees. This is another misunderstanding of the provisions of the Bill. Subsections 37(5) and (6) quite clearly provide for employees to be grouped in a manner which "best and most conveniently enables" their occupational health and safety to be "represented and safeguarded"; and employers are to have regard, inter alia, to the number and grouping of their employees.

2.5 These issues and others dealing with the dissemination of information on occupational health and safety will be dealt with later in this report. (*See Chapter seven – Publicity.*)

2.6 The three major items of concern, however, were (a) the role of "involved unions"; (b) the "25% of employees" requirement to seek changes for DWGs and health and safety representatives; and (c) the least number of workers required to form a DWG.

Involved unions

2.7 Many witnesses were concerned about provisions which made it legally binding on employers, when establishing DWGs, to consult with each involved union in relation to their employees.

2.8 The committee feels that, without limiting the legitimate industrial role of unions in the work place, it is an appropriate measure to take to delete from the bill references to "involved unions". Particularly as registered unions are recognised bodies for the purposes of the legislation.

In the schedule attached to this report the committee suggests amendments to the bill to give effect to this deletion.

"25%" of employees

2.9 Concern was expressed to the committee by a number of witnesses that, in some circumstance, a small number of employees, (25%) in any work place, could make demands of the Registrar to:

- (a) establish a DWG in lieu of that established by the employer;

- (b) vary a DWG established by an employer; and
- (c) replace a health and safety representative.

2.10 The committee agrees with the concerns expressed to the effect that a minority is being given legislated power to act in a manner that could be seen to be against the wishes of the majority.

2.11 In the interests of natural justice the committee is of the opinion that the Registrar should only be required to take action pursuant to clauses 38 and 40 on a written request signed by at least 50% of the relevant employees.

In the schedule attached to this report the committee suggests amendments to the bill to give effect to this deletion.

DWG formation

2.12 After giving careful consideration to the minimum number of workers required to form a DWG and the overall percentage of private businesses that are to be effected, the committee can see no reason why the fears of employers cannot be allayed by stipulating that enterprises employing twelve workers or more should establish DWGs.

In the schedule attached to this report the committee suggests amendments to the bill to give effect to this matter.

CHAPTER THREE – PLANT AND SUBSTANCES

3.1 During the examination of witnesses it became apparent to the committee that many in the private sector thought the duties imposed on employers by clause 32 and 35 were unnecessarily onerous.

3.2 In examining this matter, and taking advice from officers of the Department of Industry, Employment and Education, the committee formed the view that the provisions were not onerous in that what is required of a person or a body corporate is that they act with reasonableness. The manufacturer, the supplier and the installer are only required to "take all reasonable practicable steps".

3.3 However, the committee has formed a view that in the interests of clarity the bill should provide that where a manufacturer, supplier or installer has abided by the relevant Australian Safety Standards that should be prima facie evidence that the manufacturer, supplier or installer has taken all reasonable practicable steps.

CHAPTER FOUR – PENALTIES

Penalties

4.1 The committee could see little consistency in the way penalties are provided for in the bill. Whilst acknowledging that some offences are more serious than others and thus require a greater deterrent nonetheless there appears to be some incongruities.

4.2 The disparity seems to occur with penalties ranging up from \$5000. For example there are penalties for a natural person of up to \$20,000 without a custodial sentence; in other instances there are penalties in the nature of fines of \$5000 or imprisonment for one year or both; there are fines of \$10,000 or imprisonment for two years or both; and there are fines of \$10,000 or imprisonment for a period not exceeding two years or both.

4.3 The committee has formed the opinion that there needs to be either guidelines, or a consistent and appropriate policy, in relation to penalties to be imposed by legislation.

4.4 Once such guidelines have been tabled in the Assembly, the committee is of the view that the penalty structure of the bill should be reviewed.

Recommendations

That the Executive, at an appropriate time, table, for the information of the Assembly, guidelines to be followed when establishing penalties to be imposed by legislation. (Recommendation 6)

That following the tabling of penalty guidelines in the Assembly the penalty provisions of the bill be reviewed by the Assembly. (Recommendation 7)

Onus of proof.

4.5 The committee has serious concerns regarding the provisions of clause 87 in the bill.

4.6 The committee believes this clause is badly worded and reverses the onus of proof, and as such should be deleted from the bill.

In the schedule attached to this report the committee suggests an amendment to the bill to give effect to this matter.

CHAPTER FIVE – TRAINING

5.1 Concerns were expressed to the committee by employers, in terms of cost and the provision of services, and by the unions concerning the provision of training. Different groups suggested to the committee different organisations to be the providers of training.

5.2 In a letter to the committee the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees had already commenced negotiations with tertiary institutions in the ACT with a view to including in all courses which have a management orientation, a segment on the role of effective management in the prevention of absences from the work place.

5.3 The committee can see no reason why all apprenticeship and trade training courses should not include a segment on occupational health and safety, nor why the Trade Union Training Authority (TUTA) can not provide similar courses for trade union officials.

5.4 The committee believes that both the ACT Institute of TAFE and TUTA should be accredited to conduct training programs for health and safety representatives and for the members of health and safety committees, and that employers should be able to choose to which organisations they send their employees for training.

5.5 Considering the savings that are expected to be achieved in terms of workers compensation premiums and pay outs, the committee believe, at this time, that the cost of training in health and safety issues should be borne by employers. However, the committee does consider that the question of funding course should be one to be addressed by the Occupational Health and Safety Council.

Recommendation

That the Occupational Health and Safety Council consider, in detail;

- (a) the provision of health and safety training programs by both the ACT Institute of TAFE and the Trade Union Training Authority; and**
- (b) the appropriate means of funding such courses. (Recommendation 8)**

CHAPTER SIX – REGULATIONS

General comments

6.1 In examining the regulation making provisions of the bill the committee was mindful of the fact that the Assembly does not yet have a mechanism whereby it can scrutinise subordinate legislation.

6.2 The committee has no major concerns with the regulation making powers as set out in the bill; but does have the following reservations:

(a) Paragraph 97(2)(a)–(d) – if regulations made under these provisions are only to be of a technical nature then the committee will be satisfied. However, should regulations made under these provision go beyond the technical and be used to enact matters that should more properly be in principal legislation then the Assembly should review these regulation making powers.

(b) Subparagraph 97(2)(s)(iii) – the committee is firmly of the view that provisions which establish what may or may not be used as evidence in a court should be enacted in principal legislation and not left to regulations.

In the schedule attached to this report the committee suggests amendments to the bill to give effect to this matter.

(c) Subparagraph 97(2)(t)(i) – the committee is concerned that this provision will enable the forced establishment of health and safety committees even in work places where there is agreement between employees and employers not to have one. The committee considers that the establishment of health and safety committees should be a matter to be decided between the employees and the employer.

In the schedule attached to this report the committee suggests amendments to the bill to give effect to this matter.

Subordinate legislation

6.3 The substantial regulation making powers set out in this bill have caused the committee to consider the wider question of the scrutiny of subordinate legislation. Whilst being aware of the provision of the Subordinate Laws Act with its tabling provisions and the opportunity for Members to move for disallowance, the committee has come to the conclusion that the Assembly would be well served by the establishment of a standing committee to scrutinise all subordinate legislation.

6.4 A suitable model might be the Senate Standing Committee on Regulations and Ordinances. This committee scrutinises Commonwealth delegated legislation to ensure that it is in accordance with the relevant statute and that it does not unduly trespass on personal rights and liberties. The committee also tries to ensure that delegated legislation does not unduly make the rights and liberties of citizens dependent on administrative decisions which are not subject to review by a judicial or other independent tribunal, and that such delegated legislation does not contain matter more appropriate for parliamentary enactment.

6.5 A similar committee has also been established in the Legislative Assembly of the Northern Territory.

Recommendation

That a standing committee on subordinate legislation be established.
(Recommendation 9)

CHAPTER SEVEN – PUBLICITY

7.1 The committee was most concerned at the amount of misunderstanding apparent in the community in relation to the legislation.

7.2 Major areas of concern in this regard which came to the committee's attention are:

- (a) the role and responsibilities of DWGs;
- (b) the functions and membership of the Occupational Health and Safety Council;
- (c) the responsibilities of the health and safety representatives;
- (d) the role and responsibilities of the health and safety committees;
- (e) the roles of the Registrar and the inspectors; and
- (f) the penalties imposed.

7.3 The committee believes that most of these concerns can be overcome through an effective publicity campaign.

Recommendation

That the Executive, through a major publicity campaign, inform the community of:

(a) the roles and responsibilities of –

- (i) Designated work groups;**
- (ii) the Occupational Health and Safety Council;**
- (iii) Health and safety representatives;**
- (iv) Health and safety committees; and**
- (v) The Registrar and the inspectors;**

(b) penalties imposed by the legislation; and

(c) the benefits to be gained from comprehensive occupational health and safety practices. (Recommendation 10)

CHAPTER EIGHT – COMCARE

8.1 The Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (Comcare) has written to the committee suggesting that there might be some advantages in the ACT Executive and the Commonwealth Government jointly administering occupational health and safety functions in the Territory, either in part or in whole.

8.2 As more than half of the work force in the ACT will not be covered by this legislation, but by Commonwealth legislation, it is possible that there might be considerable advantages in such a proposal. In its letter to the committee Comcare suggested that savings might be achievable in the following areas:

- . the development of uniform codes of practice
- . developing and maintaining an appropriate and effective inspectorate service
- . reconsideration and review of decisions by inspectors
- . developing education and training courses for inspectors, health and safety representatives and employers
- . development of regulations
- . administrative support
- . co-ordinated approach to priority occupational health and safety issues, including research and development
- . effective quality control, including monitoring performance of private consultants

8.3 The committee believes there might be merit in this proposal.

Recommendation

That the Executive hold discussions with the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees concerning the joint administration of occupational health and safety in the ACT.
(Recommendation 11)

CHAPTER NINE – COMMONWEALTH LEGISLATION

9.1 The committee is concerned that more than 50% of the ACT work force will not be covered by this occupational health and safety legislation, including the Executive's own employees (ie the Territory public servants).

9.2 Whilst recognising the right of the Commonwealth to legislate in respect of its own employees, the committee believes the ACT Executive should do all within its power to ensure that Territory public servants, for as long as they remain Commonwealth employees, have the same rights and responsibilities with regard to occupational health and safety as their private sector counterparts.

Recommendation

That the Executive ensure, as far as is practicable, that Territory public servants enjoy the same rights and responsibilities in respect of occupational health and safety as private sector employees in the Territory. (Recommendation 12)

CONCLUSIONS

1. The ACT is the only jurisdiction in Australia without comprehensive occupational health and safety legislation; and all witnesses appearing before the committee supported, to varying degrees, the correction of this anomaly by the introduction of this legislation.
2. The form of the legislation is not new, as the Minister for Industry, Employment and Education said in his presentation speech:
"The format of legislation is well established and follows a form derived from reforms in the UK in the early 1970s based on a report from a committee headed by Lord Robens."
3. The major finding of the Robens report was that work place apathy was the greatest contributor to an appalling occupational health and safety record; and this the legislation attempts to rectify.
4. The committee also agrees with the Minister that both workers and employers must take responsibility for their own safety arrangements.
5. This new Act, which follows similar legislation enacted in each of the Australian States to protect workers and others, will provide a flexible framework in which this can be achieved.
6. The committee believes that the amendments it is suggesting should be considered by the Assembly will go a long way towards ensuring this legislation has the full support of the ACT community.
7. The committee has also taken an opportunity to address some issues which can effect all legislation to be brought before the Assembly.
8. Whilst acknowledging that technically these issues were outside its terms of reference, the committee felt it proper to address them.
9. The committee places before the Assembly a number of proposals:
 - . that all legislation passed by the Assembly should come into operation within a reasonable and defined time
 - . that all bodies with annual reporting requirements table those reports in the Assembly within a reasonable and defined time
 - . that a standing committee of the Assembly be established to scrutinise delegated legislation.

(Bill Stefaniak)
Chairman
4 July 1989

RECOMMENDATIONS

1. That this Bill be agreed to in principle. (para 1.2)
2. That the amendments set out in the attached schedule to this report be considered by the Assembly at the detail stage consideration of the bill. (para 1.3)
3. That all Acts passed by the Assembly commence on a day not later than six months following the notification required by section 25 of the *Australian Capital Territory (Self-Government) Act 1988*. (para 1.5)
4. That those bodies with statutory annual reporting responsibilities furnish those reports within three months of the end of the financial year to which they relate and that Ministers table those reports within six sitting days of their receipt. (para 1.7)
5. That the Executive give consideration to requiring Executive departments and non-statutory authorities of the Territory to furnish reports within three months of the end of the financial year to which they relate and that Ministers table those reports within six sitting days of their receipt. (para 1.7)
6. That the Executive, at an appropriate time, table, for the information of the Assembly, guidelines to be followed when establishing penalties to be imposed by legislation. (para 4.3)
7. That following the tabling of penalty guidelines in the Assembly the penalty provisions of the bill be reviewed by the Assembly. (Para 4.4)
8. That the Occupational Health and Safety Council consider, in detail;
 - (a) the provision of health and safety training programs by both the ACT Institute of TAFE and the Trade Union Training Authority; and
 - (b) the appropriate means of funding such courses. (paras 5.4 and 5.5)
9. That a standing committee on subordinate legislation be established. (para 6.3)
10. That the Executive, through a major publicity campaign, inform the community of:
 - (a) the roles and responsibilities of –
 - (i) Designated work groups;
 - (ii) the Occupational Health and Safety Council;
 - (iii) Health and safety representatives;
 - (iv) Health and safety committees; and
 - (v) The Registrar and the inspectors;
 - (b) penalties imposed by the legislation; and
 - (c) the benefits to be gained from comprehensive occupational health and safety practices. (para 7.3)
11. That the Executive hold discussions with the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees concerning the joint administration of occupational health and safety in the ACT. (Para 8.1)

12. **That the Executive ensure, as far as is practicable, that Territory public servants enjoy the same rights and responsibilities in respect of occupational health and safety as private sector employees in the Territory. (para 9.2)**

APPENDIX ONE – LIST OF SUBMISSIONS

The following people and organisations had submissions lodged with the committee.

ACT Institute of TAFE.

Australian Chamber of Manufactures.

Australian Federation of Construction Contractors.

Australian Small Business Association – Canberra Division.

Building Owners and Managers Association of Australia.

Canberra Accommodation Industry Association.

Canberra ASH Incorporated.

Canberra Association for Regional Development.

Canberra Chamber of Commerce.

Canberra Southern Cross Club Ltd.

Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees.

Confederation of ACT Industries.

Fyshwick Chamber of Commerce.

Housing Industry Association – ACT and Southern NSW Division.

Integrated Construction (Management Services) Pty Ltd.

Mr C. B. Irwin.

Koomarri Association.

Master Builders' Construction and Housing Association of the ACT.

Real Estate Institute of the ACT.

Safety Institute of Australia (Incorporated) – ACT Division.

Trades and Labour of the ACT (Incorporated).

APPENDIX TWO – LIST OF WITNESSES

ARTHUR, R.	Building Owners and Managers Association.
CAMAGE, G.	Australian Small Business Association.
De DOMENICO, A.	Canberra Chamber of Commerce.
FITZGERALD, M.	Housing Industry Association.
FOLSTER, G.	Canberra Southern Cross Club.
GAZLAY, D.J.	TLC
GILLINGHAM, F.	Master Builder's Construction and Housing Association.
GREGG, R.	Government Law Office.
GUILFOYLE, H.	Department of Industry, Employment and Education.
HEAD, P.D.	Canberra Southern Cross Club.
KLEINIG, O.	CARD.
KING, L.	Australian Federation of Construction Contractors.
LUNDY, K.	TLC.
MAILATH, G.	Australian Small Business Association.
McDONALD, C.W.	TLC.
ROWE, W.	Confederation of ACT Industry.
RUMSEY, A.	Department of Industry, Employment and Education.
STREET, P.	Building Owners and Managers Association.
SWANSON, D.	Confederation of ACT Industry.
WILLIAMS, G.	Master Builders' Construction and Housing Association.
WINNEL, B.	CARD.
WOODROW, J.	Department of Industry, Employment and Education.

APPENDIX THREE – ADDITIONAL COMMENTS BY MR STEFANIAK

I have a number of substantive points I shall deal with first.

1. I accept employer concerns and submissions that the number of employees required to form a DWG be no less than 20, as in the case in NSW.
2. I accept employer concerns and submissions that penalties for the abuse of the legislation as on industrial weapon should be incorporated in the legislation. This could be done either in clause 47 or 48. The penalties should be commensurate with others in the Bill.
3. Compulsory training for employees should be done through recognized independent bodies such as TAFE and the CAE.

Other point I wish to raise are

- a) On page 3 of the bill – the definition of "employer" could be improved. I suggest the Contact definition as listed in their submission be inserted.
- b) On page 4 after "employer" in (2) add the words "Where he has been requested to be so present".
- c) Contacts objections to clause 6 should be accepted.
- d) In clause 8 (1) there is need for an affidavit of service to be prepared and sworn by the person serving the document.
- e) In clause 27 the term "welfare" should be deleted. Indeed the term "welfare" should be deleted wherever it appears.
- f) In clause 37 the 14 days should be increased to 21. Likewise in clause 38. In clause 40 (3) change 7 days to 14.
- g) I suggest a penalty provision in clause 43.
- h) Clause 44 (2). Penalty should also apply to safety representative as well as employer.
- i) In clause 50 (4). Here may be problem as the safety representative may not know what period is reasonable. This may be beyond his ability.
- j) On penalties generally, there is so apparent logic to them. For some offences the penalties are far greater than they are for others which are much more serious offences. Aso as already indicated, some additional penalties should be added. For example: I suggest in clause 50 (1) the penalty could be \$1,000, in 52 (a) (b) \$1,000 and \$5,000, insert a penalty in 53 (x); in 58 (2) deleted to be consistent with the current clause 43; in clause 66 (a) \$5,000 or 6 months (b) \$25,000 in clause 67 (c) likewise; a penalty inserted in clause 76 (5) and revised the penalties for clause 84 (2) and 89 (1).

APPENDIX FOUR – ADDITIONAL COMMENTS BY MR WOOD

While there is a recognition in all quarters of the need for the legislation there has regrettably, been a continuing weakening of its provisions.

I do not support the change recommended by the Select Committee which further reduces the number of employees required to establish Designated Work Groups; indeed the argument to remove the restriction of specifying any number remains strong.

The requirement for the use of appropriate languages for information, instruction and training is important.

It is also important to retain the requirement for consultation with involved unions.

There are a number of other matters which need the benefit of debate in the Assembly.

The health and safety of those in the workforce are paramount. The Assembly should provide the strongest possible legislative support.