**DANGEROUS SUBSTANCES (COST RECOVERY) AMENDMENT BILL 1991**

**Legislative Assembly, 27 August 1991, pages 483-4**

Second reading

**The Hon. R.J. GREGORY (Minister of Labour)** obtained leave and introduced a Bill for an Act to amend the Dangerous Substances Act 1979. Read a first time.

The Hon. R.J. GREGORY: I move: That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it. Leave granted.

Explanation of Bill

The Dangerous Substances Act provides for the keeping, handling, packaging, conveyance, use, disposal and quality of toxic, corrosive, flammable or otherwise harmful substances. The Act places a duty of care on persons who undertake these activities and authorises certain actions to be taken by persons appointed as inspectors under the Act. Where action taken by an inspector incurs an expense to the Government, the Act empowers cost recovery of that expenditure.

However, dangerous substance spillages are subject to the Cabinet approved guideline, ‘Emergency Response to a Leakage/Spillage of a Dangerous Substance’, which allocates control of the incident site to the Metropolitan Fire Service or Country Fire Service as appropriate in accordance with the legislation governing those bodies. The aforementioned emergency response plan also involves all relevant Government agencies and allocates responsibility for the provision of specialist advice, staff, equipment or materials to assist the fire service combat the emergency. Within this activity an inspector under the Dangerous Substances Act is not able to issue a directive in accordance with the powers currently established by the Act (because the fire service is in control), and accordingly the existing cost recovery powers in the Act cannot be applied.

In the past, cost recovery by Government for actions undertaken to combat a chemical spillage has not been undertaken to any significant extent, but in recent legislation examples of legislative provisions for cost recovery for actions initiated by Government agencies may be found, for example, the South Australian Metropolitan Fire Service Act. Although these initiatives will allow some agencies to recover their costs, there remains a number of agencies which do not have such a power and are unable to undertake cost recovery.

In the current economic climate it is essential that all persons and groups accept their responsibilities, and in this context industry can no longer expect the general community to bear the cost of emergency response to chemical incidents. Emergency services are funded from insurance levies for fire insurance, but they have responsibility to respond to all forms of emergency. In respect of chemical spillages, the diverse range of skills and knowledge within Government has proved to be an effective resource which provides the various expertise needed to ensure public safety in incident control, product containment and disposal, and to minimise environmental consequence. The staff of those agencies may participate within their primary role, or may act in an advisory role to the fire service to assist them undertake their duties. In both cases those persons must stop their planned activity or normal work to take part in an emergency, or to participate in a call-out roster for events which occur outside normal business hours.

Government expenditure occurs every time the Emergency Response Plan is used. The proposed amendment to the Act provides a general power for all State and local government agencies to undertake cost recovery for expenditure resulting from a dangerous substances incident. This provision does not oblige any group to undertake such action if it is not appropriate under the circumstances, nor will the legislative provision of any other Act be affected, but it will give those agencies concerned the ability to apply the Government’s policy on cost recovery.

It is important to understand the allocation of responsibility in this amendment and the deliberate avoidance of the concept of prosecution-based cost recovery. In many cases action based on identifying the persons who cause the event leads to an individual or group who is unable to pay the clean-up cost, and in all cases if the cost recovery action is dependent on a prosecution extreme delays will occur, and some events for which there is insufficient evidence will be missed since no prosecution will be undertaken. Accordingly, the application of this amendment has been given a broad base in that the owner, person in charge and person who caused the event are jointly and separately responsible for the clean-up cost. It must be remembered that the Government may only recover reasonable costs and may only recover the cost once. Hence, if there is a dispute between, say, the owner and the transporter, and neither will cover the clean-up cost, then it is expected that the Crown will take them both to court for a ruling.

This amendment, to some extent, follows the common law applied to negligence, especially in relation to the application of principles of vicarious liability. However, cost recovery action will not be restricted to ‘damages’. All relevant items can be addressed, ranging from the cost of neutralising material, heavy machinery and other equipment which may be purchased or hired, call-out of specialist advisers, chemical analysis of contaminated areas and ongoing monitoring for public safety or environmental evaluation. The potential cost for all these as a consequence of a major incident can easily run into millions of dollars. Fortunately, this has not yet occurred in this State.

Clause 1 is formal.

Clause 2 provides for a new section relating to cost recovery. The provision will apply to any incident that is constituted of, or arises from, the escape of a dangerous substance, or the danger of such an escape, and that results in a Government authority (defined to include a council) incurring costs or expenses. The provision will allow the Government authority to recover those costs or expenses from the owner of the substance, the person who was in control or possession of the substance at the relevant time, or the person who actually caused the incident. Accordingly, the provision is based (to an extent) on a concept of strict liability. Furthermore, consistent with the principles of vicarious liability in negligence, an act or omission of an employee or agent will be taken to be an act or omission of the relevant employer or principal. However, such liability will not arise if the employee or agent has been guilty of serious and wilful misconduct. The provision will be in addition to any other right of recovery that exists under any other law (but double recovery will not be permitted).

The Hon. D.C. WOTTON secured the adjournment of the debate.