**DANGEROUS SUBSTANCES ACT AMENDMENT BILL 1988**

**Legislative Assembly, 10 November 1988, pages 1455-6**

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 keep, convey, etc., dangerous substances and authorises the making of regulations which, in the main, adopt various standards of Standards Australia to provide detailed requirements.

One of the Act’s principal features is a licensing system that permits the Director of the Department of Labour to grant a person a licence to keep any dangerous substance that has been declared by regulation to be a dangerous substance for the purposes of the Act.

A licence is required where dangerous substances are to be kept in quantities exceeding prescribed amounts. This ensures that prescribed health and safety measures are in place relevant to the particular substance or substances kept. The Act’s present licensing provisions are such that the Director is not permitted to grant a licence unless the premises in which it is to be kept complies with prescribed requirements.

This Bill seeks to alter the conditions under which licences are issued to overcome administrative difficulties that have arisen from subsequent amendments to regulations made under the Act. These difficulties arose following the introduction in 1987 of regulations requiring licences for the keeping of class 6 and class 8 dangerous substances, being of a toxic and corrosive nature respectively.

Persons required to be issued with a licence were those already operating businesses or establishments. There were two stages to the operation of the regulations, the first stage being the requirement to be licensed followed six months later by the second stage—compliance with the prescribed physical safety requirements. This lead-in time was to give licensees the opportunity to carry out any necessary improvement work.

In some instances compliance could not be achieved within the six month period. This had the effect of placing the Director in the situation of having issued a licence for premises some of which do not meet all prescribed requirements, contrary to the Act’s licensing provisions.

The proposed amendments to the Act include an administrative discretion that will enable premises to be licensed even though they may not fully comply with prescribed safety requirements, providing there is no immediate danger to health or safety. In such cases improvement conditions will be attached to the licence which will ensure that the licensee receives positive directions as to the action or measures to be taken to meet the requirements of the Act and regulations and a date to be set by which the work must be completed.

To compound the problem outlined, the Act does not authorise inspectors to issue improvement notices requiring compliance work to be carried out within a certain period.

This Bill proposes that inspectors appointed under the Act be provided with powers to issue improvement notices and prohibition notices similar to the powers of inspectors under section 39 of the Occupational Health, Safety and Welfare Act 1986. Improvement notices will serve to direct industry to attend to deficiencies which do not constitute an immediate danger to health or safety or the safety of any person’s property. In the case of immediate danger situations a prohibition notice can be issued.

These amendments will not only allow for the proper and effective administration of the Act but also provide uniform procedures where appropriate between Acts with similar inspectorial functions. The opportunity has also been taken to upgrade the penalties provided by the Act, to express them in terms of divisions.

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 makes a consequential amendment to section 3 of the principal Act.

Clause 4 strikes out subsections (3) and (4) of section 9 as the powers contained in these subsections are to be replaced by new powers under the provisions relating to improvement notices and prohibition notices.

Clause 5 amends section 12 of the principal Act to provide that a person keeping, handling, conveying, using or disposing of a dangerous substance must take steps to avoid endangering a person’s health as well as a person’s safety.

Clause 6 enacts a new section 14 in order to clarify the operation of this provision.

Clause 7 amends section 15 of the principal Act in two respects. Firstly, the provision that prevents the Director from granting a licence with respect to premises that do not comply with the regulations is to be replaced with a provision that will enable the Director to grant a licence in such a situation provided that the Director is satisfied that the keeping of prescribed dangerous substances on the premises does not constitute an immediate danger to health and safety. Secondly, the penalty for failing to comply with a condition of a licence is to be included in section 15 (instead of under section 14).

Clause 8 enacts a new section 18 in order to clarify the operation of this provision.

Clause 9 includes a penalty for failing to comply with a condition of a licence in section 19 of the principal Act (instead of in section 18).

Clause 10 provides for a new Part III A relating to improvement notices and prohibition notices. An improvement notice may be issued where an inspector believes that a person is acting in contravention of the Act. An inspector may include in the notice directions as to the measures to be taken to remedy the contravention and specify a day by which the relevant matters must be attended to. A prohibition notice will be available in cases involving immediate danger to health or safety. An inspector may include directions as to the measures to be taken to avert, eliminate or minimise the danger. A person to whom a notice is issued may apply for a review of the notice.

New provisions will also empower an inspector to take action if a person fails to comply with a notice, or if there is immediate danger to health and safety and there is insufficient time to issue a notice.

Clause 11 makes an amendment to section 24 that is consistent with other amendments that are intended to protect a person’s health as well as his or her safety.

Clause 12 and the schedule alter the penalties under the Act so that they become divisional penalties under the scheme recently introduced into the Acts Interpretation Act 1915.

Mr S.J. BAKER secured the adjournment of the debate.