

OCCUPATIONAL SAFETY AND HEALTH LEGISLATION AMENDMENT BILL 2007

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Minister for Child Protection)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan - Minister for Child Protection) [10.07 pm]: I move -

That the bill be now read a second time.

The Occupational Safety and Health Legislation Amendment Bill 2007 clarifies amendments made to the Occupational Safety and Health Act 1984, which I will now refer to as the OSH act. The amendments were made by way of the Occupational Safety and Health Legislation Amendment and Repeal Act 2004 and arose from recommendations made in a comprehensive statutory review of the OSH act in 2002. The amendments mostly strengthened or improved existing provisions. During implementation some issues were identified relating to the potential for provisions to be interpreted other than originally intended. The amendments in this bill clarify interpretation.

Alternative labour arrangements: A significant area of change in the 2004 amendments was the expansion of the general duties in relation to alternative labour arrangements largely to close gaps, with provisions relating to principals and contractors clarified. Principals who hire contractors and their employees, people who engage labour and control the work in a manner similar to an employment relationship, and labour hire organisations were deemed to be employers and consequently have commensurate general duty obligations for occupational safety and health. Workers in working relationships with these parties were also deemed to have the general duties of employees. This bill does not change those deeming provisions; it simply makes the links with the penalty provisions in the OSH act clearer and more direct.

Safety and health representatives: Under the OSH act, representatives have a pivotal role in bringing safety and health hazards and concerns to the attention of their employer. With the recent amendments, appropriately qualified and accredited representatives were given the power to issue provisional improvement notices, referred to as PINs. A PIN may be issued, after consultation, when a representative is of the opinion that a person is contravening the OSH act or regulations or has contravened them in circumstances that make it likely that a contravention will continue or be repeated. PINs require that the contravention be remedied. Questions have been raised about whether the provisions of the OSH act relating to the functions of representatives and the employer's obligation to provide them with facilities and assistance extend to the issuance of PINs. Amendments in the bill ensure that all parties at the workplace can have confidence that the responsibilities, rights and protections afforded representatives, when exercising their functions, extend to the issuance of a PIN. They also ensure the discretionary nature of decisions on whether to issue a PIN is retained.

The Occupational Safety and Health Tribunal: The 2004 amendments established, in conjunction with the Industrial Relations Act 1979, the Occupational Safety and Health Tribunal, under the auspices of the Western Australian Industrial Relations Commission, to exercise jurisdiction and hear appeals and determine administrative matters under the OSH act. Previously, these were dealt with by a safety and health magistrate. During implementation, it was identified that referral of decisions and determinations by the WorkSafe Western Australia Commissioner provided for similarly under the regulations, had not been addressed and remained with the safety and health magistrate. Additionally, there was no head of power in the OSH act to change the reference of the decisions and determinations in the regulations from the safety and health magistrate to the Occupational Safety and Health Tribunal. The bill contains a new provision, new section 60A, which provides for the referral of these matters to the Occupational Safety and Health Tribunal, while allowing for process and procedural issues in the Industrial Relations Act 1979 to apply. It fully realises the government's intent that all non-prosecutorial matters be referred to the Occupational Safety and Health Tribunal. The intent in inserting new section 60A is that the powers of the Occupational Safety Health Tribunal, upon reference of a decision or a determination for review, will be those previously held by the safety and health magistrate. That is, the Occupational Safety and Health Tribunal can affirm the WorkSafe Western Australia Commissioner's decision, set it aside, or substitute for it any decision that the Occupational Safety and Health Tribunal considers the WorkSafe Western Australia Commissioner should have made in the first instance.

The Occupational Safety and Health Act 1984, in conjunction with the Industrial Relations Act 1979, also provided for a commissioner of the Western Australian Industrial Relations Commission, with knowledge of or experience in occupational safety and health and knowledge of the OSH act and the Mines Safety and Inspection Act 1994, to exercise jurisdiction of the Occupational Safety and Health Tribunal. Uncertainties with the appointment provisions have been identified. The bill clarifies that only one designated commissioner can

exercise jurisdiction. He or she can finish hearing a case if his or her designation to the tribunal ends, and his or her designation may be ended or varied. The status quo is maintained in that the designated commissioner may carry out other functions of a commissioner under the Industrial Relations Act 1979.

Police officers: The recent amendments contained provisions providing for the prosecution of the Crown and clarifying issuance of notices to it. The intent was that, for the purposes of the OSH act, the Crown would have all the duties as though it were an employer, and notices could be served on government agencies and prosecution action taken against them. Subsequent to implementation, it was identified that earlier provisions extending coverage of the OSH act to police officers might prove unclear. They state that a police officer is to be treated as an employee of the Crown but make no mention that the Crown is to be treated as his or her employer. The bill clarifies that, for the purposes of application of the OSH act to police officers, including issuance of notices and prosecution action, the Crown is considered to be their employer, with the Commissioner of Police vested with the task of ensuring delivery.

Consultation: The government consulted extensively during implementation of the 2004 amendments to the OSH act. These proposed amendments seek only to maintain their intent. The tripartite Commission for Occupational Safety and Health, the Western Australian Industrial Relations Commission and the State Solicitor's Office were consulted in the development of this bill.

Conclusion: In summary, the bill contains clarifying amendments to ensure the provisions in question will apply as originally intended, thus maintaining the government's original policy intent. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.