

OCCUPATIONAL SAFETY AND HEALTH LEGISLATION AMENDMENT BILL 2009

Introduction and First Reading

Bill introduced, on motion by **Hon Barry House (Parliamentary Secretary)**, and read a first time.

Second Reading

HON BARRY HOUSE (South West — Parliamentary Secretary) [7.36 pm]: I move —

That the bill be now read a second time.

The Occupational Safety and Health Legislation Amendment Bill 2009 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 in the statutory review of the OSH act in 2002. During implementation of the 2004 amendments, some issues were identified relating to the potential for provisions to be interpreted other than originally intended. The amendments in this bill clarify interpretation.

Police officers: The 2004 amendments contained provisions providing for the prosecution of the Crown and clarifying issuances 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 the officer's employer. The bill clarifies that for the purposes of application of the OSH act to police officers, including prosecution action and issuance of notices, the Crown is considered to be their employer, with the Commissioner of Police vested with the task of ensuring delivery.

Alternative labour arrangements: The 2004 amendments clarified that employers and workers involved in labour arrangements and labour hire organisations have the general duties for occupational safety and health of employers and employees as applicable under the OSH act. General duty provisions relating to principals and contractors were also rewritten and reintroduced. This bill makes the links between the cited general duties and the relevant penalty provisions clearer and more direct.

Safety and health representatives: Under the OSH act, safety and health representatives have a role in bringing safety and health hazards and concerns to their employer's attention. With the 2004 amendments, appropriately qualified and accredited safety and health representatives were given the ability to issue, after consultation, provisional improvement notices referred to as PINs. Questions have been raised about whether the provisions of the OSH act relating to the functions of safety and health representatives and the employer's duty to provide them with facilities and assistance extend to the issuance of PINs. Amendments in the bill ensure all parties at the workplace can have confidence that the responsibilities, rights and protections afforded safety and health 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, in conjunction with the Industrial Relations Act 1979, established the tribunal under the auspices of the Western Australian Industrial Relations Commission to exercise jurisdiction and deal with non-prosecutorial matters including appeals and determinations under the Occupational Safety and Health 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 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 these decisions and determinations from the safety and health magistrate to the tribunal.

The bill contains a new provision, proposed section 61A, which provides for the referral of these matters to the tribunal, while allowing for process and procedural issues in the Industrial Relations Act 1979 to apply. The intent with section 61A is that the tribunal's powers, upon reference of a decision or a determination for review, will be those previously of the safety and health magistrate; that is, it can affirm the WorkSafe Western Australia Commissioner's decision, set it aside or substitute for it any decision that it considers the WorkSafe Western Australia Commissioner should have made in the first instance.

The 2004 amendments, 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 mine safety and certain petroleum legislation, to exercise the jurisdiction of the tribunal. Uncertainties with the appointment provisions have been identified. The bill clarifies that only one designated commissioner can exercise jurisdiction. Their designation may be ended or

varied and they can finish hearing a case if their designation to the tribunal ends but they continue to be a commissioner. The status quo is maintained in that they may carry out other functions of a commissioner under the Industrial Relations Act 1979.

Consultation: Extensive consultation took place during implementation of the 2004 amendments. These proposed amendments seek only to clarify their interpretation. 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, this bill contains amendments to the OSH act to clarify interpretation of provisions. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.