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MINISTER FOR LABOUR, PRODUCTIVITY AND EMPLOYMENT

SECOND READING SPEECH

OCCUPATIONAL HEALTH, SAFETY AND WELFARE AMENDMENT BILL

I move that the Bill be now read a second time.

In 1983 the Government released a public discussion document outlining the Government's policies in respect of forthcoming occupational health, safety and welfare legislation. The proposal enunciated was preventive, with the aim being to develop ways and means of reducing or eliminating hazards in the workplace, through the participation of employers and employees in both the formulation of policy and its implementation on the shop floor.

Essentially, this policy represented a combination of the principles espoused by Lord Robens in his report to the House of Commons in the early 1970s and more recently the ILO Convention 155 and recommendation 164.

This legislation represents the second stage of the two-tiered approach foreshadowed in 1984 on the passing of the *Occupational Health, Safety and Welfare Act* of 1984. That Act was an enabling Act in that it

- set objectives;
- provided for the appointment of a tripartite commission;
- established the Department of Occupational Health, Safety and Welfare;
- provided for the transfer of laws;
- and, allowed the commission to establish advisory committees to address specific health and safety issues.

The department, which evolved from the merger of the Department of Industrial Affairs with the occupational health branch of the Health Department, commenced operations on 5 March 1985.

The tripartite Occupational Health, Safety and Welfare Commission established on 4 April 1985 has established advisory committees to address specific aspects of occupational health, safety and welfare, including the previously-constituted Factory Welfare Board and the Construction Safety and Machinery Safety Advisory Boards. This move, apart from the merger, represented the first major initiative towards the rationalisation of existing adminstrative and legislative procedures.

DEVELOPMENT OF THE COMPREHENSIVE ACT

This Bill has been developed in accordance with the commitment given in 1984. During the second reading debate of the *Occupational Health, Safety and Welfare Act*, the Government gave the commitment that it would not proceed with the legislation until 1986 or upon re-election, whereby it was further proved that it had a clear mandate to proceed with the policy initiatives at that time. Also, the Government gave a clear commitment that the comprehensive Act was to be developed within the tripartite forum of the Occupational Health, Safety and Welfare Commission.

This has occurred with that commission establishing a tripartite working party at its second meeting on 5 June 1985. Indeed, I can say with some satisfaction that the proposals now before the House represent, with few exceptions, the consensus viewpoint of that working party and the commission.

COMPREHENSIVE ACT

The introduction of this Bill is of great significance as it recognises the growing importance being attached to the development of preventive health, safety, and welfare policies.

Recognition of the need for new initiatives in matters of health and safety at the workplace has been slow. However, the realisation of the costs attached to each fatality, injury, and misery inflicted upon workers and their families has increasingly focussed attention on the need to develop preventive practices.

The Government's initiatives in the occupational health and safety area have been made necessary by the failure of the traditional prescriptive approach to safeguard the health and safety of workers.

The present system, which had its origins in the nineteenth century British legislative structures, focused almost exclusively on four areas of industry: Factories, construction, machinery, and mining.

In today's industrial environment this has the effect of excluding many workers from the most basic of occupational health and safety protection. In Western Australia between 50 and 60 per cent of workers are not covered by the present legislation.

The proposed legislation aims to rectify this basic flaw by extending coverage to all workers in all workplaces. Not only is the coverage of the present legislation limited, but in many instances the Acts and regulations contain provisions which are outmoded or irrelevant to the work practices and equipment of the 1980s. Attempts to amend Acts and regulations in an ad hoc manner to keep up with change in industry have not been successful and have often resulted in complex and impractical requirements being placed upon industry. This Bill seeks to place more emphasis on the responsibilities of employers and employees in securing safe and healthy work environments.

In adopting this self-regulatory approach, the Government is recognising that regulations and statutory requirements cannot hope to cover the range of hazards likely to be experienced in the diverse workplaces of the State. Rather than attempting to prescribe minimum standards for all possible hazards, the Government - along with Governments in other nations and other States of Australia which have faced this issue - is shifting the responsibility for making the workplace safe and healthy back to the employers and employees in each workplace.

This self-regulatory focus does not mean that responsibilities can be ignored. The new legislation places an unavoidable duty of care on both employers and employees to take all practicable steps to secure health and safety in their workplace. These duties of care are supported by provisions for consultative and participatory mechanisms in the form of safety representatives and safety committees to ensure that responsibilities are not avoided and that realistic and practical solutions to occupational health and safety are developed which are relevant to the needs of each workplace.

In seeking to cover all Western Australian workplaces, the Government recognises that the mining industry has extensive legislation to cover health and safety. Our approach for the mining industry will be to incorporate the self-regulatory principles and practices faithfully into the mining legislation. The amendments to the mining legislation should be before the House later this session.

GENERAL DUTIES OF CARE

The Bill establishes in detail duties on employers, self-employed persons, and occupiers. The provisions clearly establish that each employer has a duty to his employees to provide a working environment in which his employees are not exposed to risk of injury or harm to their health. It requires an employer to consult, to provide information, instruction and training, and to take reasonable care to avoid acts or omissions which it can be reasonably foreseen may cause injury.

There is a duty on those who design, manufacture, import, or supply plant - as defined - for use at the workplace to ensure the article is designed, manufactured, and marketed so that persons when using it as directed are not exposed to risks of injury or harm to their health. Equally, there is a duty on those who erect or install the plant, etc., to ensure it is erected and installed so that persons who properly use the plant are not subjected to any hazard.

The duty imposed also extends to those who manufacture or import chemical substances or materials containing then. It requires that they ensure that any new chemical substance made available is safe when used under the conditions recommended and that adequate toxicological data is provided when the substance is supplied and thereafter when requested.

In all cases the duty of care is limited to what is practicable as defined in the legislation. In practice, this will mean that account must always be taken of the seriousness and knowledge of a hazard and the availability of methods for removing or minimising it.

In imposing the duty-of-care requirements for employers we have relied on the provisions espoused in ILO Convention 155 and recommendation 164, a document that the Federal Opposition and the Confederation of Western Australian Industry have expressed agreement to in the past.

The duty imposed on employees prescribes that they are required to take or exercise reasonable care to protect not only their own health and safety, but also that of other persons. They have a duty to consult, to use appropriate devices and protective equipment, and to not interfere with anything provided in the interests of health and safety. Again, the measures for employees provided in the Bill reflect very strongly the provisions in both the ILO Convention 155 and recommendation 164.

HEALTH AND SAFETY REPRESENTATIVES AND COMMITTEES

Part 4 of the Act deals exclusively with workplace consultative structures.

The legislation places a major responsibility for improvement in workplace conditions with those who have the greatest interest in reducing or minimising hazards - the employees who are the potential victims. It is no longer tenable for a "them and us" attitude on safety at work.

Therefore, this Part allows for the establishment of mechanisms which will provide for consultation and participation by employers and employees on health and safety matters. This is central to the notion of self-regulation. The strategy being developed is twofold in that it provides a mechanism for both the election of a health and safety representative who is to represent employees in all matters relating to occupational health and safety at the workplace, and for the appointment of health and safety committees. In some workplaces there will be a combination of both.

HEALTH AND SAFETY REPRESENTATIVES

The requirement to elect health and safety representatives is not mandatory. I assure members this provision is activated only upon a request from an employee or employees of a workplace. The important question of the number of health and safety representatives to be elected is to be determined by either union or employee consultation with the employer.

To be appointed a health and safety representative an employee must first satisfy eligibility criteria specified in the Act. Essentially, a health and safety representative can be appointed only where he or she has had training, been employed by the employer for a continuous period of two years, in the event that this is not possible, to have worked within the industry for two years or where approved by the Commissioner.

Some members may consider these provisions restrictive. The Government is firm in its resolve that such provisions are required to ensure credibility of appointment.

Under this Bill all workers at a workplace will have the right to participate in the election of health and safety representatives. Where the workforce is partly or wholly unionised the selection process has been designed so as not to undermine existing union structures. This is in recognition that unions have in the past played key roles in promoting safety in the workplace. Where no union is involved an election may be conducted by either an employee so appointed by employees at the workplace, or the Commissioner for Occupational Health, Safety and Welfare when a matter is so referred.

In respect of the election process, if there is a disagreement between the parties involved it is to be determined by reference to the Commissioner in the first instance who may, if he is unable to resolve the matter, direct the matter to the Industrial Relations Commission for determination.

The Bill provides that a health and safety representative will be elected for two years. Provisions have also been included specifying when a person shall cease to operate as a health and safety representative. An employer, the Commissioner, and any trade union whose members work at the workplace may apply to the Industrial Relations Commission to have a health and safety representative disqualified on specified grounds. The disqualification provisions afford redress to an employer as the Industrial Relations Commission may disqualify the health and safety representative for a specified period or permanently.

HEALTH AND SAFETY COMMITTEES

The second phase of the consultative mechanism is provided in the form of health and safety committees. Unlike the other states where a health and safety representative has a statutory right to demand that a health and safety committee be established, we have provided some flexibility to cater for those employers who have already in place a satisfactory committee arrangement. It is also a recognition, owing to a predominance of small business places, that not all enterprises lend themselves to this mechanism.

Essentially an employer will be required to establish a health and safety committee within three months of -

- the coming into operation of relevant regulation;
- a request from the Commissioner;
- upon agreement to a request from a health and safety representative.

These committees are to have equal numbers of employee (non-managerial) and employer representatives with the employee representatives being elected by the employees they represent.

The major functions of heath and safety committees have been included in the Bill. Specifically, the committees should aim to keep under review the measures being taken to ensure the health, safety and welfare of employees at work. This review process will involve contribution to the development and formulation of policy applicable to the workplace.

This activity should not be seen in isolation as an erosion of management prerogative. In the context of the Bill, which emphasises consultation and co-operation, it must be viewed as a joint attempt to resolve hazards or potential hazards as they relate to a particular workplace; that is, a sharing of responsibility for health and safety at work.

Where disputes arise as to the establishment or composition of a health and safety committee, these matters are to be resolved by reference to the Commissioner for Occupational Health, Safety and Welfare in the first instance and, where there is a continuing disagreement, by reference to the Industrial Relations Commission.

In adopting this mechanism the Government has ensured that any industrial relations issue is resolved within the established and accepted jurisdiction.

RESOLUTION OF HEALTH AND SAFETY ISSUES

Obviously, when we talk of resolving any issue we acknowledge that there is a problem or possible conflict of some description.

It has been difficult to accommodate the respective employer and employee organisations' approaches in negotiations within the context of government policy, a policy clearly enunciated and reinforced upon re-election.

In justifying our approach I refer members to Article 19(F) of the ILO Convention 155, a Convention which in 1982 the then Federal Minister for Employment and Industrial Relations, Mr McPhee, and the shadow spokesperson, Mr Hawke, both confirmed the need for Australia to ratify as both saw it as providing impetus in developing a national strategy on occupational health and safety.

Article 19 (F) states that -

> A worker reports forthwith to his immediate supervisor any situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health; until the employer has taken remedial action, if necessary, the employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health.

To give implementation to the above, the draft Bill provides that where any health, safety and welfare issue arises at a workplace the employer or his representative shall attempt to resolve the issue by consultation with the health and safety representative, the health and safety committee, or where there is no representative or committee, the employees themselves. This provision reinforces the underlying self-regulatory principle of this Bill that the employers and employees have an obligation to themselves to ensure that the workplace is both healthy and safe.

In acknowlegment that situations can arise where there is an immediate and serious threat to the health and safety of workers, the Bill recognises the worker's common law right to cease work. In addition, and only upon the adherence to strict procedures as detailed, the Bill will enable a health and safety representative to direct that work shall cease.

The Bill provides that where work is halted as a result of a direction from a health and safety representative or by the employee exercising his common law right the employer is able to assign the employees involved to reasonable alternative work with the same pay and benefits applying as if he or she had continued in their normal work. Any dispute in respect to such entitlements is to be referred to the Industrial Relations Commission.

Where a direction that work cease has been given an inspector of the Department of Occupational Health, Safety and Welfare will be required to attend the site forthwith to take such action as is considered appropriate in the circumstances. The cease work directive has no further effect once the inspector has attended and determined on the matter.

I stress that if a cease work directive is given frivolously or mischievously by a safety representative then either the employer, Commissioner or union could initiate disqualification proceedings.

The right of the safety representative to direct that work cease in the face of imminent danger has received some criticism from employer organisations in Western Australia.

Victorian employers responded similarly to this aspect of their legislation prior to its coming into operation in October 1985. By the end of 1986, in excess of 7 000 safety representatives had been elected by employees in Victoria, yet fewer than 30 cease-work directives had been given. Of these, only two had been considered unnecessary by the attending Government inspector. The fear that the Victorian employers had of this aspect of the legislation before it was introduced had not come to fruition in practice.

In the Bulletin of the Australian Chamber of Manufactures last December it was reported.

So far, the worst fears which many employers had about the operation of the *Occupational Health and Safety Act* and in particular the role to be played by safety representatives, have not been realised.

Indeed, the Victorian Congress of Employer Associations stated in the 1986 Annual Report of the Victorian Occupational Health and Safety Commission that:

> The responsible initiatives taken by employees through safety committees and safety representatives in addressing health and safety issues have been well received by employers and in most cases these issues have been resolved by mutual agreement.

During a recent trip to Sweden, I was impressed that the right of safety representatives to direct that work cease in the face of imminent danger was a vital component for an effective

self-regulatory occupational health and safety system. There are 4.4 million workers in the Swedish labour force, yet during 1984 only 70 cease work actions were initiated by safety representatives and reported to the labour inspectorate. It was rarely used, but the worker safety representatives submitted that it was a vital component of their functions under the legislation. None of the Swedish employers or Government officers that we discussed this provision with had a problem with it.

That right, and its attached responsibility, provides an all important balance in the co-determination system. If an employer inadvertently generates a system at work which constitutes an imminent danger to the health of employees, then the hazard must be met by an appropriate response from the persons at risk.

I am pleased to see that the Industrial Foundation for Accident Prevention supported this principle in its 1983 submission in response to the discussion paper for the West Australian legislation. IFAP also noted that overseas and Australian experience with power to cease work provisions indicated that it was unlikely that they would be abused in Western Australia.

IMPROVEMENT AND PROHIBITION NOTICES

Only an inspector is to have the power to issue improvement and prohibition notices. This aspect is not to be confused with the power to cease work as explained earlier.

These provisions are not new. Currently the *Construction Safety Act and Machinery Safety Ac*t provide the power for an inspector is issue such notices.

An improvement notice is essentially a device to advise an employer of his legal obligations and requiring conformity with these obligations within a specified period. To assist, an improvement notice may be accompanied by directions as to the measures to be taken to comply.

Prohibition notices go a stage further than improvement notices. They will be issued, as is the case now, where an inspector forms an opinion that an activity will involve an immediate risk to the health and safety of any person.

Adequate appeal provisions against the issue of these notices and their terms have been included in the Bill. Appeals on improvement notices will be to the Commissioner for Occupational Health, Safety and Welfare. Appeals on prohibition notices will be to the Industrial Relations Commission.

Additionally, the Industrial Relations Commission will have access to an expert or panel of experts if it so desires to assist it in its determination on prohibition notices. These experts are to be appointed by the Minister responsible for the portfolio. I believe this will ensure that the Industrial Relations Commission has the necessary expertise to determine matters before it.

INSPECTORS

The Bill provides inspectors with comprehensive powers to enable them to adequately enforce the measures contained within the proposals. The powers provided are commensurate with their current powers contained within the *Factories and Shops Act*, *Construction Safety Act*, and the *Machinery Safety Act* respectively. A consequential amendment Bill will soon be introduced for the repeal of the current provisions.

LEGAL PROCEEDINGS

The Bill seeks to rationalise the penalty structure prevailing at present. The Bill contains penalties which are realistic in today's terms and which have been designed to provide an effective deterrent to the intransigent employer or employee. An employee is liable to a penalty of up to $5 000 and, where there is a continuance of the offence, $50 per day. In every other case the fines provided are up to $50,000 and $250 per day.

In moving away from the structured approach, the Government would expect the magistrate to take into account the frequency and severity of the offence when assessing the penalty.

It is still intended for breaches of the Act to be heard before a stipendiary magistrate and standard evidentiary provisions have been included to facilitate the proving of complaints.

Unlike other States it is not intended to provide that codes of practice can be used in evidentiary proceedings. The Government has taken the view that a code of practice is to be considered an optimum. To include a provision allowing for the code to be used in evidence has the effect of introducing prescriptive minimum standards. Evidence in the UK suggests that for this reason employers have shown some reluctance in participating in the establishment of industry codes of practice.

Substantial regulation-making powers have been included and as foreshadowed earlier a consequential amendment Bill will be introduced soon to repeal any inconsistent legislation which might impinge on the adoption of this approach.

OPERATION OF THE NEW SYSTEM IN WESTERN AUSTRALIA

I would like to speculate briefly on how we envisage the new self-regulatory system for occupational health and safety operating in Western Australia.

Health and safety policies negotiated between unions and employers are expected to play a major role.

A number of large employers in Western Australia already have such agreements with their employees. Industry-wide policies covering both large and medium-size workplaces may also be achieved. The Government is highly supportive of such policies with which both social partners can live and would be keen to avail the resources of the Department of Occupational Health, Safety and Welfare in an advisory capacity in the formulation of such policies. In medium-size workplaces we envisage the health and safety committee playing an important role. Codes of practice formulated within the advisory committees of the Commission for Occupational Health, Safely and Welfare, and having the imprimatur of the Commission, would provide important guidelines for such committees to deal with issues at their workplace.

There then remains the problem of small workplaces. The problem should not be underestimated in Western Australia. By far the majority of employees are employed in small workplaces.

The Government anticipates that under the new self-regulatory system its inspectorate would have a lesser role in large and medium-size workplaces and could be applied more effectively on an audit basis to smaller workplaces.

CONCLUSION

All members will agree that a safe working environment is an essential prerequisite to productive output at work. The Government submits that this legislation will lead to improved productivity in WA both in the short and longer term.

In the short term, conflict on health and safety issues should be diminished through employers and employees sharing responsibility for health and safety at work and co-determining appropriate issues.

In the long term, time lost from work due to injury and disease should diminish. At present in Australia, time lost from work due to injury is two to three times greater than time lost through strikes. In 1984/85, over 31 500 Western Australians were involved in some form of compensable lost time accident at work. The average time lost for each accident was seven weeks, while the average cost of each claim was $3 921. Total cost for all claims exceeded $123 million.

I reiterate that this new approach focuses on the benefits to be obtained from the participation of both employers and employees in occupational health and safety. From policy setting in the tripartite commission to shop floor decision-making on occupational health and safety problems, participation will be encouraged and fostered. In essence, the new legislation recognises that the best people to make decisions about occupational health and safety issues are the employers and employees that share the work environment.

Employees and employers through their respective peak organisations, have been consulted fully in the drafting of the new legislation.

At this stage the Government expresses a great deal of gratitude and thanks to the representatives of the employer and union organisations and the Government officers who put hundreds of hours into the consultative and deliberative processes in order to achieve what is largely a matter of consensus now appearing in the legislation before us.

The Government believes that the overwhelming majority of Western Australians place a high priority on a healthy and safe work environment. This new legislation will give all Western Australian employers and employees the opportunity to participate in achieving this goal.

I commend the Bill to the House.