

OCCUPATIONAL SAFETY AND HEALTH AMENDMENT BILL 2010

Discharge of Order and Referral to Standing Committee on Legislation — Motion

Resumed from 7 April on the following motion moved by Hon Jon Ford —

- (1) The Occupational Safety and Health Amendment Bill 2010 be discharged and referred to the Standing Committee on Legislation for consideration and report.
- (2) The committee is to inquire into and report on the policy of the bill.

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [11.09 am]: When we last considered this matter on 7 April, some interesting contributions were made, not the least of which was by Hon Jon Ford, who discussed a range of safety issues from those dim, dark days and indicated a couple of things. He indicated that the ALP was not prone to supporting this bill. In refreshing my memory of the debate, I noticed at page 2547 of the Council's *Hansard* of Thursday, 7 April 2011, he said in part —

My concern, given the bill's current draft, is that the only people who will make anything out of this will be the lawyers, who will make a lot of money. In the meantime, the workers will still be exposed. The focus will be about backside covering rather than about ensuring the safe operation of a plant.

He had a lot of other things to say besides that. If the government can see the weaknesses in this bill, and they are many and serious, and if the opposition can see the weaknesses in this bill, I do not really think there is much case for the house to consider it. I made some detailed remarks on 7 April about some of the proposals contained in the bill, and they are really quite alarming. In addition to trying to insert a few provisions into the Western Australian Occupational Safety and Health Act, which were proposed at a national level, even though they were rejected by Western Australia, Hon Alison Xamon's Occupational Safety and Health Amendment Bill wants to do a few other things that go quite beyond the pale. I discussed these issues on 7 April, and I do not intend to revisit them, except to summarise them.

Apart from the other things we as a government have already rejected in national proposals, this bill proposes to build in the ability for interested persons to bring prosecutions—a recipe for mayhem, if ever there was one. It proposes a new offence of industrial manslaughter, which, for the reasons given, is rejected. The bill itself does not deserve to be supported. But Hon Jon Ford has proposed instead that it be referred to the Standing Committee on Legislation for examination and report. Why? When we have a piece of legislation that is so ill conceived that it will not pass, what on earth is the point of referring it to a legislation committee for further examination? The weaknesses have already been made apparent and have been discussed. A lot of nonsense is spoken and a lot of chest thumping goes on in the public domain about OH&S issues, with people occasionally trying to score political points. In all the hurly-burly there has been a bit of that lately.

Hon Kate Doust: People actually take this issue very seriously.

Hon SIMON O'BRIEN: Here we go again.

Hon Kate Doust: It is not about point scoring; it is about dealing with the issues.

Hon SIMON O'BRIEN: The member should go back to whatever she is doing. She has not been following the debate; she does not know what she is talking about; she demonstrated that when she raised that in a debate in this place.

The PRESIDENT: Order!

Hon Kate Doust: You're beating your chest now.

Hon SIMON O'BRIEN: What is the point of referring a flawed bill to a legislation committee? Absolutely none whatsoever. But I do note that this matter has not been revisited in non-government business since 7 April. That shows the sort of priority it has. It was brought on as an afterthought on today's notice paper, and there are only a few minutes left.

Hon Ken Travers: Do you want us to make some amendments to the standing orders to allow more non-government time?

Hon Alison Xamon: Hear, hear!

Hon Ken Travers: Is that what you're inviting, minister?

The PRESIDENT: Order! Let us not get distracted from the main part of this debate.

Hon Ken Travers: Cheap points.

Hon SIMON O'BRIEN: I am sorry to wake up Hon Ken Travers if it was me who did it. I am sorry to disturb him and break his concentration. He should go back to reading his *The Phantom* comic or whatever else he was doing, because that was a very silly interjection.

Hon Ken Travers: You're absolutely right; I am reading about phantom issues.

Hon SIMON O'BRIEN: It has just been confirmed by interjection that it is *The Phantom* comic.

Hon Ken Travers: I said it was a document about phantom issues.

Hon SIMON O'BRIEN: While we are on the subject of phantom issues, there are some phantom issues around in connection with occupational safety and health. They concern the lack of progress achieved with the national harmonised package which is proposed by the federal government and to which this state and others have signed up. The lack of progress on that package of bills, which is a debate for another day, demonstrates just how complex these matters are. Hon Kate Doust has now received a briefing, and I am glad she has, about where we are at with this. In a previous recent debate when an attempt was made to browbeat the government into getting on with passing legislation prematurely, I was able to point out some of the shortcomings of the federal government's approach. Basically, in summary, some of the shortcomings were these: the federal government guaranteed that it would provide us with the model bill, and that did not arrive until about 18 months after it was proposed. I think we got it in about June this year. The mining regulations, of course, were not provided to regulators just for comment until 6 October this year, while the general draft regulations for review were received about mid-September. They were hopelessly late to then allow a package of legislation to go through all processes in our Parliament, including reference to the Standing Committee on Uniform Legislation and Statutes Review and have a system passed for 1 January. It gets worse. Also under the package are some model codes of practice that provide a further stratum of subsidiary legislation under the regulations to underpin it. Eleven model codes of practice will be released in four stages; the first stage has actually been released, which is fairly desirable, one would think. If one is about to sign up to this package, one would like to know what is in them. The second-stage codes, of 15 sets, are currently in the consultation process, which closes this month, December, and we are supposed to have passed legislation already. The third and fourth-stage codes, of which there are 35 industry codes of conduct, are still under development and will be released for public comment at some stage in 2012. This is the ramshackle approach being followed by those who are meant to be introducing this harmonised system. There is no doubt that Victoria and Western Australia have good reason to question publicly whether the federal government is serious about having us legislate on this incomplete package.

Other states have also got the collywobbles. New South Wales, which would have introduced legislation, has now introduced an amending bill to delay commencement. Apparently in Tasmania there is a delay in the implementation until March next year. It is against this backdrop that we now have the honourable member sponsoring this bill saying, "Hang on, Western Australia, you've got it wrong! The feds must be right! Let's put in those things which we've previously seen cause to disagree with and which the other jurisdictions are quite happy for us to take exception to." In addition, the honourable member wants to add some other provisions that are so loopy that even the crowd who have done this federally sponsored package would not touch it. It is so loopy that the ALP in this house—the official opposition—will not support the bill. This then leaves us with the question of whether we should refer this bill to the Standing Committee on Legislation. I think it would be an absolute waste of time to do that. The best thing we can do is to reject the motion to refer the bill, which is the immediate question before the house, and then we should reject the second reading of this bill. It has no future and it does not seem to have much enthusiasm shown for it even amongst those who have brought it forward, because it appears the last 18 minutes of the debate is being resumed on the last day of sitting for the year, and the last time they brought on the debate was on 7 April earlier this year. This bill has no future.

Hon Alison Xamon: You were promising that harmonised laws would be in by now.

The PRESIDENT: Order!

Hon SIMON O'BRIEN: I think I have just —

Hon Alison Xamon: I heard what you said.

The PRESIDENT: Order! I think it is best to ignore the interjection and for the Minister for Commerce to continue with his remarks.

Hon Alison Xamon: Sure; you can ignore it, but back in April that is what you were saying.

The PRESIDENT: And I would think it is best to stop the interjections.

Hon SIMON O'BRIEN: Mr President, I will get away from the dopey interjection and return to planet Earth. Several members interjected.

Hon SIMON O'BRIEN: Hon Ken Travers should tell that to the miserable piece of work sitting next to him.

Hon Alison Xamon: That is nasty. You take a different tone when you do not have your notes in front of you, don't you?

The PRESIDENT: Order!

Hon SIMON O'BRIEN: Mr President, I had to sit here and listen to this sort of bitchiness earlier today.

The PRESIDENT: Order! I think I have said before that I try to make a judgement from the chair when the tone of the debate crosses the line and drifts away from the content of whatever the question is before the house to personal issues. I think we need to get back to the content of the motion before the house.

Hon SIMON O'BRIEN: Thank you, Mr President; you are quite right of course, although I regret the tone that was set right from the start of non-government business when some quite extraordinarily stupid and disparaging remarks were directed at Hon Donna Faragher. But I must not allow myself, in my anger and irritation, to emulate that sort of pathetic behaviour and I will not do so.

Hon Ken Travers: You have, but we acknowledge that you are not going to any more.

Hon SIMON O'BRIEN: The interjection by Hon Alison Xamon just now shows that the Greens (WA) are so disinterested that this matter could not be brought on; that the Greens are so disinterested in this matter that when they do get the chance to bring it on, they do not give it any sort of prominence; that the Greens ignore the reality of how the harmonised system has been let down by the very federal government that is promoting it; and, that the proponents are incapable of recognising all the evidence that has already been put into the public domain about how that is happening. Given all that, the honourable member even comes up with some silly remark saying, "You said you would have harmonised legislation in." You have no understanding —

Hon Alison Xamon: Why? It was not brought on. What absolute rot!

Hon SIMON O'BRIEN: Hon Alison Xamon has no understanding of how the legislature works and she has no understanding of how the occupational health and safety system works.

Hon Alison Xamon: I've got a far more comprehensive understanding than you, sunshine!

Hon SIMON O'BRIEN: Look at the sort of standards of legislation that the honourable member would propose with this bill; it is even rejected by her mates in the ALP, who will not support it.

Hon Alison Xamon: You take a very different tone when you don't have your ministerial notes, don't you? You take a very different tone when you don't have the Department of Commerce giving you your written comments.

Hon SIMON O'BRIEN: What are you talking about?

Hon Alison Xamon: I'm talking about that tone you're choosing to take now as opposed to the tone you chose to take back in April. Read the *Hansard*.

The PRESIDENT: Order! I would like to talk about the motion before the house, which is that a particular bill will be read a second time.

Hon Ken Travers: Aye!

The PRESIDENT: It was not a question, but that is the question before the house!

Hon SIMON O'BRIEN: I agree that we ought to get on with this. There is plenty more I could say about this issue, but I will not hold things up any more. I want to get to see Hon Ken Travers cross the floor on this bill. He has already indicated that he wants to vote aye to it, whereas the lead speaker for the Labor Party, Hon Jon Ford, has indicated that the opposition opposes the bill.

Hon Ken Travers: I tell you what, if you sit down now, I might just give you your pleasure of seeing me cross the floor! If you sit down now!

Hon Nick Goiran: Oh yeah! All talk and no action.

Hon Ken Travers: I might just do that for you, minister. If I don't have to listen to any more of this rubbish, I might even do it.

Hon SIMON O'BRIEN: Mr President, there is too much unruly interjection, so I will sit down now. The government opposes the bill and we oppose the immediate question of referring this bill to the legislation committee.

HON ALISON XAMON (East Metropolitan) [11.27 am]: Mr President, if I can quickly get your guidance —

The PRESIDENT: Hang on.

Hon Simon O'Brien: No; she has not spoken on this motion to refer.

Hon ALISON XAMON: No, I have not. Can I quickly get the President's guidance. I obviously wish to reply to the second reading debate, but if I rise now to speak on the referral motion, do I also need to do my entire reply to the second reading debate now or can I speak to the referral and then speak to the second reading debate later?

Hon Simon O'Brien: See, I told you you didn't know anything about how the legislature works.

The PRESIDENT: No, Hon Alison Xamon, you are only speaking on the referral if you elect to speak now.

Hon ALISON XAMON: In that case I say that the Greens (WA) are happy to see this bill referred to the Standing Committee on Legislation. I think there have been some really interesting comments made, particularly about industrial manslaughter. I would like to say that I have also sought legal advice and the legal advice on this is actually quite mixed; therefore, I think the idea of being able to have hearings and to look into that issue in particular would be quite useful. I know there have been calls for the offence of industrial manslaughter in the past and I think it would be useful issue for us to be able to look at in particular.

Point of Order

Hon NICK GOIRAN: I seek a point of clarification, if I could, Mr President. Hon Alison Xamon indicates that she will support this particular motion, but I note that she is actually a member of the Standing Committee on Legislation.

Hon Alison Xamon: I am a member of that committee.

The PRESIDENT: Order!

Hon NICK GOIRAN: If I could finish the point of order, Mr President —

The PRESIDENT: Yes; finish the point of order.

Hon NICK GOIRAN: I just need clarification about whether the member would be a member of the committee, given that she has conduct of the bill. That is the only point of clarification I seek.

Hon Kate Doust interjected.

The PRESIDENT: The clarification of that point is: yes, Hon Alison Xamon would still be a member of that committee, and that has happened on many occasions in the house.

Debate adjourned, pursuant to temporary orders.