

PHARMACY BILL 2010

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Hon Jon Ford) in the chair; Hon Simon O'Brien (Minister for Transport) in charge of the bill.

Progress was reported after clause 1 had been agreed to.

Clauses 2 to 70 put and passed.

Clause 71: Liability of certain officers of body corporate: offences —

Hon GIZ WATSON: During my second reading contribution I noted a fundamental problem with the removal of the presumption of innocence. It is similar to a provision that was in a bill that we dealt with in this place relatively recently; that is, the Major Events (Aerial Advertising) Bill 2009. I make the point that the Greens (WA) believe that the reversal of the onus of proof is highly problematic and out of proportion also in this legislation. I have, therefore, a number of amendments, including the one I am about to move, standing in my name on the supplementary notice paper. I move —

Page 41, line 4 — To delete “, subject to subsection (5)” and insert —

if the officer knowingly authorised or permitted the contravention

This amendment provides a moderated approach rather than the approach taken in the bill. The bill basically says that the officer of a body corporate will be deemed guilty of an offence unless the officer can prove otherwise. This amendment basically says that the officer would be subject to this provision only if the officer knowingly authorised or permitted the contravention. It therefore softens that approach.

I would argue that it is the state's obligation to prove the case, rather than reversing the onus of proof. A reversal of the onus of proof—which requires a defendant to prove that he or she did not do something—is a fairly fundamental principle in law. I note that the Standing Committee on Uniform Legislation and Statutes Review also addressed this issue in its report. I would be interested to hear whether members of that committee would accommodate this amendment. I believe the amendment addresses some issues that the committee also raised. With those comments, I put that amendment before the house.

Hon SIMON O'BRIEN: There are several amendments to clause 71 on the supplementary notice paper, all dealing basically with the same issue in principle. The government stands by clause 71 as printed. I am tempted to ask members of this chamber to contemplate this: when is an officer or owner of a company required to accept responsibility for what that company does? Someone has to be responsible when offences are committed, because it is people who ultimately run companies, or “bodies corporate” as they are described.

Hon Kate Doust: That's the line that we run when people die in workplace accidents: somebody is ultimately responsible.

Hon SIMON O'BRIEN: I am glad that Hon Kate Doust shares the sentiment and is prepared to ask that question—in fact demands that it be asked. That is what clause 71, in effect, does. The clause has been responded to by the honourable member and by some questions raised by the committee. It has been described as a reversal of the onus of proof.

Progress reported and leave granted to sit again, pursuant to temporary orders.