OCCUPATIONAL SAFETY AND HEALTH REGULATIONS 1996

Motion

HON ALISON XAMON (East Metropolitan) [2.08 pm]: I move —

> That, pursuant to section 42(4)(a) of the Interpretation Act 1984, the Occupational Safety and Health Regulations 1996 are amended by inserting the following after regulation 3.62(b)(ii) —
>
> (iii) if the person holds a certificate of competency in the use of a portable appliance tester—the person's certificate of competency number.
>
> and, if so resolved, the Legislative Assembly be requested to pass a similar resolution.

I suspect that much of the substance of what I will be covering today will be revisiting much of the debate that we had 16 months ago when I brought in a disallowance motion for the Occupational Safety and Health Amendment Regulations (No. 5) 2010. When we had that debate, I alluded to this motion, which had been put on notice. This disallowance was negatived at the time, but I note that the Leader of the House indicated in his response that he had some sympathy with the position I put and the concerns I raised. The Leader of the House encouraged the matter to be brought up for resolution through particular channels, specifically the Commission for Occupational Safety and Health. I agree with the Leader of the House that it would have been a really good opportunity if this issue had been able to be resolved through that particular committee.

During the debate I alluded to the fact that this motion would sit on the notice paper. I indicated that I was really keen to see resolution of the matter and that at some point in the future I hoped that this motion would be unnecessary and withdrawn because the issue had been resolved. It is disappointing that the issue has still not been resolved and the need for the motion remains. I effectively have to use this mechanism to keep the issue on the agenda.

As I said in the disallowance motion debate, this issue is about the tagging of electrical equipment and how the competency of those who undertake the tagging is able to be tracked. The Leader of the House at the time of the disallowance debate identified that this issue was of particular concern to the Electrical Trades Union; he is absolutely correct. I have made no secret of my history with the ETU or, more accurately, the Communications Electrical Plumbing Union where I worked as a lawyer before I took my seat in this place. The CEPU is an ALP-affiliated union and has never played a role in my election to Parliament. Nevertheless, I am very proud of the work I was doing in the union. An important part of my role was to assess the impact of various regulatory regimes on the electrical trade and other trades. When I found out about the anomalies that the changes to these regulations had raised—I believe they are quite serious anomalies that emerged—I felt compelled to take this up as an issue because it was an area that I had been working on prior to taking my seat.

Apart from my professional background in this area, I have a couple of personal reasons why I have been unwilling to let this one go and why I keep trying to raise this issue to achieve, hopefully, an amicable resolution. They are both quite personal reasons. The first is an experience that I had dealing with the wife of an electrician who had been killed on the job. She had young children who were around the same age that I was when I lost my father. I found that dealing with their grief and trying to support them was really difficult, particularly as we knew that the circumstances of this father and husband's death had been completely avoidable. It really had a profound impact on me and I found it very distressing. That particular incident became quite a defining one for me. They are by no means the only family members I have had to deal with who have lost loved ones on the job, but the point is that working with electricity is potentially quite dangerous work; it is really important that we do not become complacent about that. It is easy for us to forget how difficult it can be, because we have had a very good electricity safety regime in this state, which means ordinarily we can live with electricity quite safely. Those experiences have seriously informed my desire for stronger penalties and regulatory regimes surrounding occupational safety and health. That is one of the reasons I introduced the Occupational Safety and Health Amendment Bill 2010 to create the offence of industrial manslaughter, and why I have been pushing for stronger penalties.

The second reason I cannot quite let this go is even closer to home. My daughter's dad is a qualified sparky and he specialises in working on large-scale construction projects in Perth. He works closely with non-electricians who have obtained the portable appliance tester competencies. He has personally expressed concern to me about the quality of the work of a couple of them—not all of them, but a couple. If people are incompetent—I am not delusional about this; I recognise that we can get people who are not fully competent in any industry—we need to ensure that those people can be easily identified and have their incompetence addressed. At the end of the day, we are talking about an area that is potentially quite dangerous. My daughter's dad needs to come home alive. His life is important, and I do not want anything to happen to him.

During the disallowance motion debate, the Leader of the House encouraged the Electrical Trades Union in particular, with whom I share this concern, to continue to pursue this issue through the tripartite Commission for Occupational Safety and Health. As I mentioned, this was a reasonable suggestion. I reported that back to the ETU and it advised me that it did just that. It has attempted to continue to have this issue raised through that particular commission, but it has reported that although there seems to be a shared understanding that the existing situation is a problem, unfortunately—perhaps it is because there has been a change of membership of that particular group—the issue still has not managed to be progressed. I want to make it clear that it is not as though it has been through a process and knocked on the head. People want this to be resolved, but it just does not seem to be getting anywhere. Therefore, here I am again trying to progress it.

For those members who have no idea what this motion is about or did not follow the previous debate, I will quickly summarise. OSH regulations require electrical equipment on construction sites to be tested and then tagged by the individual who tested it. However, testing and tagging of portable electrical equipment on construction sites no longer needs to be done by a licensed electrician. The requirement is now for it to be done by a competent person, which is a defined position. I want to be absolutely crystal clear: this motion does not seek to revisit the debate that occurred in the tripartite commission about the wisdom of enabling competency-based training as opposed to the comprehensive training ordinarily undertaken in a trades apprenticeship. Inherent potential risks for such an approach were well outlined by Hon Jon Ford in the disallowance debate when he described, for example, the capacity for a competency-trained individual to test equipment but fail to recognise more complex underlying safety hazards. I acknowledge that the unions lost that debate, so this does not attempt to revisit that. This attempts to ensure that the new competency framework that we now have still engages in the best occupational safety and health practices that it can. Working within that framework, two problems need to be addressed. Firstly, competent persons do not have to record identifying numbers on tags. This problem is addressed directly by this motion. The second one is that competent persons are not usually given ID numbers to identify themselves on construction sites. I acknowledge that this motion will not address that. If this motion were to get up, that second issue would still need to be resolved.

In his reply to the disallowance motion, the Leader of the House asserted that part of the problem preventing resolution was that the Australian Qualifications Framework does not require registered training organisations to put such numbers on their statements of attainment of competency. Certainly, it is correct to say that if the AQF were to require that, it would be one step towards being able to pretty easily resolve the situation. However, I would argue that despite the limitations of the AQF, there are still ways to introduce a fairly simple regime to ensure that competent persons are able to be identified and, therefore, that the tagging process can be followed through. The risks in failing to address this issue are the potential to create a lack of accountability and to enable individual workers to deny personal responsibility. It also removes the ability to make adequate checks of the workers and of the electrical equipment brought onto a construction site. Obviously, this is unacceptable and needs to be addressed. I do not think this was ever intended to be the effect of the change.

This motion touches on a small proportion of the workforce—that is, electrical workers on construction sites. It is a small workforce but one that has huge responsibilities because of the massive implications of accidents involving electricity. In 2009–10, there were 1 060 reported electrical shocks, 14 serious electrical accidents and two fatalities. We all agree that safety around the electricity regime is absolutely paramount. Electrical safety is really important for all construction workers on a site. In 2011, the construction industry made up 11 per cent of WA's workforce. During 2009–10, the construction industry recorded 1 292 injuries and diseases resulting in time off work—the most recorded of all industries. This industry also recorded the highest number of severe injuries and diseases resulting in time off work during that same period. I would argue that a significant number of workers are potentially put at risk by the possibility of inaccurate testing, and that underqualified electrical workers present a particular risk.

Occupational safety and health regulations require electrical equipment on construction sites to be regularly tested. Testing ensures that the electrical equipment used at construction sites is safe so that construction industry workers are not exposed to dangerous electrical hazards. WorkSafe recognises that the testing of electrical equipment requires specific expertise and therefore can be carried out only by appropriately qualified or trained people who are able to recognise electrical hazards or potentially unsafe conditions.

Two types of testing are distinguished, requiring different levels of expertise: firstly, when a licensed electrician with electrical qualifications uses electrical test instruments to test circuits, insulation and equipment; secondly, when a person tests portable electrical equipment and certain other devices used on site by construction workers. This type of testing uses a device known as a portable appliance tester—a PAT—which is what we are talking about today. In the latter case, testing no longer needs to be done by a licensed electrician. The requirement now is for it to be done by a competent person. A "competent person" is defined as someone who has completed the relevant unit with a training provider. This includes qualified electricians as well as other people who have

completed a single training unit with a training provider. As at the end of 2010, there were at least 204 persons deemed competent but who were not trained electricians.

Hon Kate Doust: Sorry, what was that number?

Hon ALISON XAMON: It is 204, Hon Kate Doust. This was provided in tabled paper 3624 in answer to a question I asked. I reiterate that was by the end of 2010. These were trained by state training providers. There are another six private training providers in WA, and seven private training providers in other states that can also certify someone's competency. Importantly, the number of persons deemed competent by these providers is unknown, but there are obviously more than 204 people trained in these competencies. That was an agreement with industry made at a national level when the Australian and New Zealand standard was rewritten. Again, I do not intend to contest that for the purposes of this motion. As I said, that battle has been lost and we are moving on. However, I want to consider the implications that flow on from that decision that have still not been resolved.

Once any equipment is tested on a construction site it must be tagged by the person who tested it. In the industry, this process is known as tagging. The process of tagging does two things: keeps an up-to-date record of the testing that has been carried out so that construction workers can be assured that the equipment is safe to use; and tells us who carried out the test so that each person working on site is responsible for their actions, and any faults can be traced back to the individual worker responsible. The problem is we have a double standard for tagging. When a qualified electrician tags, they are required to write down their name and licence or permit number on the tag so that they can personally be held responsible. We can always identify who is the person responsible for that tagging when they are testing and tagging complicated electrical systems or the portable electrical equipment that a competent person can test.

When a competent person who is not an electrician tags, they must write down their name, but there is no requirement for that person to write down any number uniquely identifying them or even their employer. We have two standards at the moment: one for electricians, which is a higher standard; and another for competent persons. The amendment proposes that a certificate of competency number be recorded on the electrical tag. That is a fairly simply request. It aligns the practices of competent persons with those of qualified electricians. We do not want the government to resolve this inconsistency by reducing the standards for electricians, who also do not record an identity number on the electrical tag.

Hon Simon O'Brien: That had not occurred to me until you just mentioned it!

Hon ALISON XAMON: Oh, God! Do not horrify me!

Clearly, we should not be aiming for the lowest common denominator. We have a good regime currently in place for qualified electricians. As I mentioned, there are really good reasons tagging is done in a particular way so that we can identify the individual. I believe that not only maintaining that standard but also raising the standard of a "competent person" is absolutely necessary.

There is an additional problem that makes this motion more complicated; that is, persons who complete the required qualification and are deemed competent are not being given an identifying number that they can record. This is one of the issues that the Leader of the House alluded to in his response to the previous disallowance motion. Until September 2011, WorkSafe advised that the main contractor on a site should be able to check that the so-called competent person had been issued with a statement of attainment or certificate from a registered training organisation and that they had an identifying number unique to the holder. That was in the WorkSafe "Guide to testing and tagging portable electrical equipment and residual current devices at workplaces" dated November 2008. But there is no requirement to issue an identifying number and no database of those numbers, if they existed. When I pointed this out to the minister, WorkSafe promptly removed the references from the guide. I became aware of that through an answer to a question on notice, which is actually really frustrating because the original intent of having an identifying number and the capacity for employers to check it was a sound one. It was originally in the guide because it was recognised as important, and it was not a solution to the problem for WorkSafe to remove the references. The offending sentence is not in the guidelines anymore, and this has removed one of the important safety frameworks that had been recognised as needing to occur.

I understand that during discussions in the tripartite committee, the occupational safety and health regulations were amended on the understanding that competent persons would be identifiable. Now we realise there is no identity number and, rather than fix that problem, the reference to needing one has been removed because that was deemed easier; however, the original decision to allow unlicensed competent persons to test and tag electrical equipment has not been reassessed. That decision stands on an incorrect understanding of the responsibility and accountability of these competent persons.

I would like to give members a potential scenario, which is not an uncommon one, and I have certainly dealt with this. An individual, supposedly an electrician from Ireland, could come to Australia under the supplementary labour scheme. That person holds no electrician's licence in Australia, but rather than get

Australian accredited training or testing, they decide to obtain a certificate of competency and become a competent person. Let us say this person's name is Michael. On site, Michael attaches two plugs to the same lead, one on either end. Someone plugs in one end, not realising the other end is now live and exposed, and a third person grabs hold of the plug and gets an electric shock to the hand. Michael has tagged his equipment but he has since left the building site and is not traceable solely on the basis of his name, because Michael is a very common name and not everyone has a surname like Xamon. For all we know, Michael could still be working in Western Australia.

This scenario, which could easily happen, highlights three issues, the first of which is traceability. Because the regulations ask for a name, this assumes that competent persons will be traceable by their name, but I would argue that that is not the case. It is not sufficient to rely just on the name of a person on a construction site that has potentially hundreds of employees. How many J. Smiths might there be on a building site the size of the huge BHP Billiton Ltd tower that was just completed on St Georges Terrace? Once an individual leaves the worksite it becomes almost impossible to look for J. Smith all over Perth or even further afield. The second issue is responsibility. Responsibility is the reason we need to be able to trace an individual. Frankly, if something does go wrong, action needs to be taken against that individual. They could be threatened with losing their licence and means of livelihood if they perform their work inadequately. I think that is a pretty strong incentive for people to do the right thing and for workers to make sure that they are being thorough and diligent. If we locate an individual, we also need to check that person's skills and ability before they are allowed to continue to work. It would also be a good way to identify whether there appears to be a systemic problem with particular registered training organisations or even TAFEs. The third issue is competency. The need to check someone's competency arises when people are hired so that we know they definitely are competent to perform those tasks. We also need to know that the electrical equipment that is brought onto a construction site has been previously tested and tagged offsite and we can check that the test was conducted by a competent person. I sent a letter to the Minister for Commerce, Hon Simon O'Brien, who responded by saying that he believed the responsibility to ensure that equipment has been properly tested lies with the employer, main contractor or self-employed person at the construction or demolition site where the equipment is to be used. I believe that it is also the responsibility of individual employees. We need to know who is personally responsible for ensuring that each person working on a site is competent in practice and that all the electrical equipment used on the site is safe. I think that the new regime actually makes it harder for quality employers—there are plenty of them—to also make sure that their employees are competent. Importantly, the Minister for Commerce also assures me that a record of the testing data for all equipment on site is given to the main contractor when the equipment is brought on site. The Minister for Commerce has stated that this is so the contractor can satisfy himself of the duty to ensure that all electrical equipment is safe to operate. All these checks and inquiries are important, but in the circumstance I have described, what exactly can the contractor check? The names on the records are not the people who are on site and therefore cannot be checked against the list of employees. Unlike the registered numbers of qualified electricians, these cannot be checked against the registration numbers or identification numbers on a central record, so the tags are essentially anonymous. Also, no guarantee can be given that either the names on those tags are the names of people who have been deemed competent or that the equipment has been properly tested and that any faults or incompetency can be traced back to the person who is actually responsible.

Western Australia's Training Accreditation Council keeps a permanent register—the Client Qualifications Register—which records information on the qualifications issued by registered training organisations. Hon Simon O'Brien said in his letter that employers can access this information to verify a person's qualification. However, access to information on this register is available only with the approval of the person concerned. Therefore, it is not available to the contractor who checks the tagging record for the equipment that is brought on site. In addition, this is a cumbersome and restrictive process and I am not convinced that it is fair on employers. By comparison, electrical contractors and restricted electrical workers can be searched online through EnergySafety's licensing information system, although that is not the case for competent persons who are less qualified.

The regulators have not been unaware of this issue; this motion has been on the notice paper since 24 November 2010. The Minister for Commerce and the Minister for Training and Workforce Development have corresponded with me and have had an opportunity to rectify this small, but I think potentially quite dangerous, gap in the occupational safety and health framework, but here I am still asking for it to be rectified. All workers have the right to be protected from work-related dangers, including those created by their less-qualified fellow workers, and governments have a clear responsibility to appropriately regulate industries, particularly dangerous industries, to ensure the protection of workers. There are gaping holes in the regulatory regime and I am concerned that they are holes through which workers' safety might be able to fall. I do not want to wait until a horrible accident occurs or hear about another family suffering as a result of this, because this is avoidable. We can see that this is a potential danger and do something about it now. Every 30 minutes, one worker in Western Australia is injured seriously enough to take one or more days off work. On average, a person is killed every 18

days as a result of a traumatic work-related accident. In 2010–11, 21 traumatic work-related fatalities were recorded in Western Australia. That is 17.1 work-related fatalities per million workers, which is a sharp increase from the 7.7 fatalities per million workers that was recorded in 2008–09.

Our system of OSH laws, licensing requirements and regulations are designed to protect workers in their workplaces and stop, or as far as possible prevent, these accidents from occurring. However, this particular regulatory regime is flawed and inadequate. I am again asking for WorkSafe WA and EnergySafety to get together and to please sort out this issue. I am asking for it to be put back on the agenda. There can be all sorts of creative solutions to this problem. I do not think it has to be about trying to change the Australian Qualifications Framework. Maybe the Minister for Commerce could reclassify portable appliance testing as requiring a high-risk work licence, which means that it would require an identifier. As I said, perhaps that is a way to get around the AQF. Another solution may also include the Minister for Training and Workforce Development ensuring that those who achieve a certificate of attainment also have an identifier, which was always the original intention. I recognise that we now have a cohort of people with these competencies and that it would be very difficult to retrospectively apply that provision. However, if the minister were able to do something along those lines, even it were just a matter of dealing with the regime from here on in, either the Western Australian Office of Energy or the Department of Commerce could administer it. I do not think that is complicated or difficult. Plenty of regimes require a person to get a qualification and a licence. Since the integration of high-risk work in vocational education and training, people can do units of competency in whatever the high-risk work area is and then apply for high-risk work licences. If the regulators are happy with the training and assessment provide by the TAFEs and the RTOs, an assessment would not be required to give people a unique identifier upon receiving a statement of attainment; they would need to do only the administrative work. It is not too hard and does not have to involve the AQF.

This issue can be resolved administratively and I am calling on the minister to see whether there is a way in which this can be progressed fairly quickly. Certainly, it would be good to bring this matter back to the tripartite committee as a matter of urgency and ask its members to put their heads together and figure out how best to do it. I do not want to understate the potential for serious accidents to occur as a result of this. We need to make sure that those who are trained as competent go through the same type of regime as our electricians. We deserve to know that that will happen and I think the families of the workers who work with them also deserve to know that that will happen. Time is marching on and I am asking for this matter to please be resolved.

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [2.39 pm]: I note that a previous debate about this matter in the form of a disallowance motion was had in this place on 25 November 2010. This motion was placed on the notice paper on 24 November 2010, so, in fact, since the motion appeared on the notice paper, it has already been debated once. Now here we are doing it again. I agree with the mover of the motion that we need to deal with this matter once and for all.

On the previous occasion, the honourable member put forward some propositions that are identical in intent to what she has put forward today. If members wish to refer to that debate, they will see it contained on pages 9628–9630 of the Council *Hansard* of 25 November 2010. I have had the benefit of perusing that brief debate and examining some of the claims made by the honourable member in that debate, and that helps inform me about the information that the house needs to consider on this matter. I want to briefly bring members up to date on what this debate is about and provide a brief version of the history surrounding it, because it is a very narrow matter, and my advice on how the house needs to respond to this motion.

The motion proposes to amend regulation 3.62(b)(ii) of the Occupational Safety and Health Regulations 1996 by adding the following —

> (iii) if the person holds a certificate of competency in the use of a portable appliance tester—the person's certificate of competency number.

It is as simple as that. An existing regulation requires, in effect, that when someone carries out a test on electrical equipment as provided for by the regulations, they have to, amongst other things, put a tag on the equipment that confirms that the test has been done, that the equipment in question is compliant with the required standards and, indeed, that the competent person affixing the tag and attesting thereto is identified. Regulation 3.62 requires that in the case of a test that is required to be carried out under an electrical worker's licence or permit, the particular licensed electrical worker has to put their name and their licence or permit number as identifying marks on the tag. Regulation 3.62(b) provides that in the case of a test that need not be carried out under an electrical worker's licence or permit—in other words, a lesser standard of test and one that does not require the same level of technical expertise—the person doing that test, who still must be a competent person, as defined, so it might well be a licensed sparky, but at the very least a competent person, has to put their name on the tag. Why? It is to identify themselves. Let us face it; our primary identification is our name. If the person holds an

electrical worker's licence or permit because they are a licensed sparky, they have to put that licence or permit number.

The honourable member is proposing in the case of the second category, which is those forms of equipment that do not need as high a standard of technical examination as in subregulation (a), that a competent person performing that test should, if they hold a certificate of competency—that is, the person is a competent person but not a licensed electrician—also record their certificate of competency number on the tag. It is as simple as that. I think I am fairly representing what the mover is proposing in substance; that is, at the moment, if a person who is a licensed electrician puts a tag on equipment that they have tested, that person will put down their name and their number. If the person has a certificate of competency, that person is required to put down their name. The honourable member is saying that the second category should also have some sort of unique number to go with it. So it is as simple and as narrow a prospect as that.

Having spent some time and energy, including emotional energy, on this, I want to acknowledge the honourable member by informing the house about how it has come to this point now in trying to determine where we want to go next. In November 2008 some amendments were made to this regulation to remove the requirement that only licensed electricians may test and tag low-voltage portable electrical equipment and low-voltage portable residual current devices—RCDs—used on construction and demolition sites. That change took effect on 1 January 2009 and was in line with similar changes that had been made to the Electricity (Licensing) Regulations 1991—the electricity regulations—in July 2008. To go back to the Minister for Commerce who approved these regulations, we have to go back to the former government. Whoever that former minister was, I do not take issue with them so approving those changes. So there is no argument there. I think the member said in her remarks that she did not want, as part of this debate, to revisit that decision. That is one that was discussed, and perhaps some people might have had some misgivings about it at the time. I was not involved; I am looking at it from the point of view of history. But we are not talking about that today. However, for the benefit of members here who are not familiar with it, that is what happened.

I go back to the amendments to OSH regulation 3.62. They were developed and endorsed by the tripartite Commission for Occupational Safety and Health that we have in this state, and they had the strong support of the Master Builders Association. I understand that the Electrical Trades Union was opposed to the changes then, and continues to be so.

Following its scrutiny of the November 2008 amendments, the Joint Standing Committee on Delegated Legislation raised its concerns about a perceived conflict between regulation 3.62 and the electricity regulations. The joint standing committee sought, and subsequently received, an undertaking from the then Minister for Commerce that regulation 3.62 would be amended to remove that conflict. Those amendments were made, and they were contained in the Occupational Safety and Health Amendment Regulations (No. 5) 2010 that were tabled in this place on 21 September 2010. On 12 October 2010, Hon Alison Xamon gave notice that she intended to move that the amendment regulations be disallowed. That debate was duly had and decided on 25 November 2010—the day after she gave notice of this motion that we are currently dealing with.

Hon Alison Xamon: Minister, by interjection, can I explain that the reason I put the motion in was actually on advice from parliamentary counsel. I have the correspondence here. They had advised that that was a way in which I could deal with that, considering that I did not want to disallow the entire regulatory regime; I really wanted to deal with only a very small element within the regulations that had been proposed. So I thought I should clarify for the house that that was the reason that was undertaken. It was because of the advice that I received.

Hon SIMON O'BRIEN: My point is that this narrow debate that we are having today was previously had on 25 November 2010. Hon Alison Xamon put today's motion on the notice paper the day before that, so we are re-visiting it. I think I am characterising it fairly when I say that the intended effect of the proposed amendment is to ensure that there is parity between the information requirements for licensed electricians and those for other, albeit unlicensed, competent people by requiring that the unlicensed person also records their certificate number on the tag. It is as simple as that. That is what it boils down to.

Before I get on to the relative merits of that amendment, I want to note a couple of points about comments that arose during the previous disallowance debate in November 2010 that might help clarify some matters. The first relates to the honourable member's words when she said, as reported on page 9628 of *Hansard* —

> When this regime was put in place, there was an understanding that the competent person would be issued with a statement of attainment or certificate from the registered training organisation. There was an understanding that people would then be issued with an identifying number that would be unique to the holder and indicate the registration number of the registered training organisation.

It is not clear whose understanding we are talking about.

Hon Kate Doust: I have been given some advice and I understand that Nina Lyhne, who was at WorkSafe, gave that undertaking to the ETU.

Hon SIMON O'BRIEN: In trying to establish this, I am advised that while the first statement regarding the issuing of a statement of attainment or certificate of competence is correct, the WorkSafe policy officers involved in the development of the amendment regulations have no recollection of any discussion on the issuing of a unique identifying number to people holding such statements. I am advised that there is no reference to that particular matter in the minutes of the commission or its two advisory committees involved in the approval process. People have obviously gone back to the records to check. Again, we are talking about a series of potential understandings. I do not know what makes it so difficult for such a number to be issued. I do not know what makes it so hard, but they are the facts as recorded to me.

The second item relates to the information requirements on tags, as we have already identified and discussed. I am advised that when the commission's legislation advisory committee endorsed the proposed approach for drafting the 2008 amendments to regulation 3.62, it did so on the basis that the tag would bear only the name of the person who had performed the test, regardless of whether it was a licensed electrician or an unlicensed competent person. That was in line with the relevant Australian standard, AS/NZS 3012:2010, "Electrical installations—construction and demolition sites". Parliamentary Counsel's first draft of the amendments to that regulation was consistent with that approach and proposed that regulation 3.62 be amended to read —

> A competent person who conducts a test … must ensure that …the tag bears the person's name.

That would have complied with the Australian and New Zealand standard and would have applied in any situation. It would just have the person's name because that identifies them. However, I am advised that when reviewing that draft, the employee parties on the legislation advisory committee requested a change in the wording to make it clear that this type of testing work could be done either by a licensed electrician or a competent person. This was supported by the Construction Forestry Mining Energy Union representative on the commission's construction industry safety advisory committee, who was of the view that it was not clear from the draft that a licensed person would always be considered a "competent person". The CFMEU therefore requested that Parliamentary Counsel amend the draft to read —

> A competent person or a licensed electrician who conducts a test … must ensure that the tag bears the person's name.

Anyone following this debate closely can probably see the potential hazard there. Parliamentary Counsel certainly picked it up, and so did WorkSafe. They advised against that change on the grounds that making a distinction between a competent person and a licensed electrician in this way would imply that a licensed electrician was not otherwise a competent person and that special provision needed to be made to ensure they could carry out the testing. Parliamentary Counsel felt that the term "competent person", as defined in regulation 1.3, was sufficiently broad to include a licensed electrician and therefore saw no legislative need to draft the changes requested. However, the legislation advisory committee was not persuaded by those arguments and so, in an effort to resolve matters, Parliamentary Counsel suggested that a solution might be to amend regulation 3.62 to provide that if the tester is a licensed electrician, the tag should include the person's licence number as well as their name. That is about where we have ended up. That alternative drafting approach was supported by the legislative advisory committee and subsequently endorsed by the commission at its July 2008 meeting. The minutes for that meeting record that UnionsWA commented that the issues that it had raised with regard to numbers on tags had been addressed.

These matters were canvassed in this place on 25 November 2010. There has been a lot of talk about a very narrowly focused matter. We have gone away and researched what actually happened that led us to this space. What did we find out? We found out that we had parity when we started. When a competent person, whether that person is licensed or certified or both, tests equipment, they put a tag on it to identify that the equipment has been tested and put their name on it along with their reputation. I might add that other regulations then require certain things to happen when the equipment is brought on site. Contractors have to take note that equipment has been tested and duly tagged. That is what we could have had. We could have had the parity that the honourable member used as part of her argument. That is where we started from until well-meaning people wanted to say, "Hang on, let's do something different; let's change it around. Let's throw something else into the mix." Ultimately, the compromises that I have outlined saw us arrive at the position that we are at today. Who has been involved in all this? Successive governments have been involved in it. The tripartite Commission on Occupational Safety and Health has been involved in it, together with its advisory committees. A number of suggestions have been canvassed and solutions reached. The Joint Standing Committee on Delegated Legislation considered this matter and sought amendments to our regulations, and the government provided those amendments. It was moved that those amendments be disallowed in a debate back in November 2010, a motion that this house did not carry. Now we are back again debating a proposal to insert a couple of lines into a

regulation in the terms of the motion before us. I think that fairly describes the journey we have been on and what has brought us to where we are today.

In summary, members can see that the history I have outlined demonstrates that the events that have brought us to this place have not happened just by accident or by simple oversight. A couple of different levels of requirement have been considered and deliberate decisions have been made on the types of equipment that require examination and testing by a licensed electrician because of the technical requirements, and on perhaps the lesser type of testing for certain low-voltage appliances that do not require a licensed electrician but do require the attentions at least of a competent person. A competent person, of course, has to be properly trained.

It is ironic—I have already drawn attention to this fact—that if the changes that were made in the course of the history that I have described had not been made, the problem that in part drives the mover of this amendment would not have arisen in the first place, because there would be parity and there would be the same details on both types of tags, and there would be a name, because a name is an established thing that identifies somebody.

Turning now to the amendment before us, I want to provide the house with one further piece of information, which I think was brought to the house's attention back on 25 November 2010. To be able to carry out the type of testing work that is contemplated by occupation safety and health regulation 3.62, an unlicensed person must as a minimum have successfully completed the unit of competency UEENEEP008 from the electrotechnology training package. This training must be done through a registered training organisation accredited to deliver the training under the vocational education and training system. Under the Australian Qualifications Framework, RTOs must issue a statement of attainment—this is a national standard—to each person who successfully completes a unit of competency from a training package. Section 6 of the Australian Qualifications Framework sets out the form that all statements of attainment must take. Notably, there is currently no requirement for a statement of attainment to have its own identifying number. That is a key point, because this little amendment is seeking detail to be shown on electrical safety tags that does not exist. If we adopt this amendment, therefore, and it works itself successfully through the other house and what have you, we will have ourselves amended regulation 3.62, which requires something that basically does not exist, because a person's certificate of competency or certificate of attainment—it is called certificate of competency in the proposed amendment—need not carry this number, unique or otherwise. That is the Australian standard that applies under the Australian Qualifications Framework, which we cannot just unilaterally decide to change.

To finish then—hopefully on a conciliatory note and one that members of other parties in the house might be able to associate themselves with—the most appropriate vehicle for having this issue considered further is the Commission for Occupational Safety and Health Western Australia. That is something that Hon Alison Xamon said herself just now, and I was pleased to hear her say it. That is the appropriate forum for dealing with this matter, rather than proposing an amendment—given how long it has been on the notice paper, I hesitate to call it an amendment on the run—that in all good faith we may propose as a way of addressing any problem we perceive but that we might find does not do that and might complicate things a bit more. Again, we have seen examples, as I have just recited, of how that might happen when all the well-meaning stakeholders become the many cooks attending to the broth. That is probably the point where we need to finish up; that is, a reference to the Commission for Occupational Safety and Health might be a way forward for this matter. I say with the greatest respect that I do not think we should agree to this amendment. Accepting the amendment would be very premature, and I have explained in some detail why. I also note that we have pursued this avenue a couple of times now, and each time it seems to come straight back to the Commission for Occupational Safety and Health.

With that in mind, I respectfully advise the house that we should not agree to the proposed amendment, but in good faith I can undertake—if that be the will of the house and without the need for any further resolution—to again refer this matter to the Commission for Occupational Safety and Health together with the debate and see what progress we make thereby.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [3.07 pm]: I rise to say some words in support of the motion moved by Hon Alison Xamon. I note, and I agree with the minister, that this is an extremely narrow debate on a very small aspect of a regulation, and I agree with him in his earlier statement that he does not understand why a number could not have been applied to a certificate of competency. There seems to have been quite an extended and convoluted debate within WorkSafe Western Australia on the pros and cons of why a number should not be applied to a certificate of competency. The minister jokingly said that he picked up on Hon Alison Xamon's comment about lowering the standards required for electricians. I know he was jesting, but perhaps we need to consider tightening up the standards for electricians and for who can perform that work. That is why raising these issues is important, albeit the debate may have been had in WorkSafe back in 2008 and was resurrected here in 2010. It is useful sometimes to go back and reflect upon these aspects, because the labour market in WA is changing, and we note the influx of workers from overseas and the differing requirements for the qualifications of those working in this area. Whilst workers from overseas may have recognition of prior learning for their previous work experience, that recognition may not necessarily

be up to the same standards required of electricians in Western Australia to perform certain tasks. Picking up on the comment that the minister made, it would be very useful to refer this matter back to WorkSafe and for it to reconsider this component of the regulations. It is not good enough to have just a name for identifying materials. Names are not necessarily unique. Numbers are unique. Names and numbers probably work better together.

I note that a series of electricians have been passing through my home in recent months doing quite significant work. Also, Western Power took a power pole down opposite my house last week. Unfortunately, they have not put the wire back properly, so I will be speaking to the relevant minister and seeking his advice and assistance about that.

Hon Simon O'Brien: He'll be around at six o'clock this evening; don't you worry about that.

Hon KATE DOUST: Thank you very much; I am quite concerned about the quality of work. I note that the electrician who came onto my property could not speak English when I put some questions to him. I note also that the electricians who have been in my house have raised with me their concern about the standard of people performing work and that they are not completing the required paperwork for work done and the necessary follow-up is not being done. I know we are focussing on construction today, but across industry there are some concerns about the follow-up requirement. I think the amendment proposed by Hon Alison Xamon is about accountability and follow-up, so that if something is not done correctly, the relevant individual can be tracked down to ascertain whether they were working according to the required standards we expect of people in that industry in Western Australia. I think it is quite significant.

I pick up on the number of people who have been injured and the number of fatalities that Hon Alison Xamon quoted. It is a high-risk industry. It is different from working in the white collar sector or in plumbing or even brickmaking. There is a different risk factor, if we like, that we all acknowledge, and the potential for harm is greater. We need to try to make sure we reduce that risk as much as possible. If that is about tightening the requirements around the competencies and skill levels required to make sure people are appropriately trained and being checked, I think that is essential.

From my experience through WorkSafe as a health and safety trainer and health and safety officer for an extended period, I know that WorkSafe does an excellent job checking and ensuring that courses are accredited appropriately. I sat for a couple of years on WorkSafe's accreditation board for its safety training course. I know how diligent WorkSafe is in going through that. But I would hate to think that, in light of this influx of workers, and the fact that we are relying only on names, standards may decline. I agree with the minister. I do not understand why we cannot attach a number. I take on board the minister's comments about having to deal with national standards. I know it is complicated but maybe we in WA like to set our bar higher. If there is some way that WorkSafe can reconsider this issue, that would be good.

Hon Simon O'Brien: I don't know how many certificates of attainment there are out there. There are probably quite a few in a whole range of disciplines that aren't primarily electricians. They are the ones, presumably, who have been properly trained, so we wouldn't want to cut them off, as it were, without a number.

Hon KATE DOUST: I think, minister, there are a range of specialist organisations. I am sure the National Electrical and Communications Association, which has an office in Osborne Park, would be quite happy to provide information. NECA also has a concern about the level of competency or the standards being met in the industry. It is probably a good exercise for WorkSafe. Every once in a while it is probably a good thing to ascertain what sort of certificates are out there, whether they have been reviewed and updated or whether they meet the appropriate standards. If people are given a number, it will allow WorkSafe to follow up with individuals to make sure that they have been required to do follow-up training or are performing their tasks to the required standard.

Hon Simon O'Brien: Are we not talking here about the low-level worker on machinery? We are not talking about the higher-level technical tests; we are talking about fairly simple appliances.

Hon KATE DOUST: We may be but we are still dealing with electricity. I do not know whether Hon Simon O'Brien has ever stuck his fingers in the light socket but, having done that, I know that it damn well hurts. I do not know whether it is a matter of the difference between low or high level; I think people still need to be appropriately trained according to whatever the standard is. If mechanisms need to be put in place to allow full accountability and follow-up, that should be done. I do not understand why we are relying only on a name.

Hon Simon O'Brien: People are either trained or they are not, you know.

Hon KATE DOUST: Yes; but that is a separate issue. I do not want to debate that today because there are times when we have concerns about the standards and types of training provided in some of these areas, and that is a whole separate issue.

I want to come back and comment on the discussion the minister raised about WorkSafe checking its records, and about commitments being given or not being given. The minister said that WorkSafe says it has no record of any commitments being made about numbers being provided. I received an email today from the assistant secretary of the Electrical Trades Union, Jim Murie, who has had extensive engagement in the industry; he sits on a range of boards. I think he is on one of the EnergySafety committees or boards. I know he has had extensive engagement with WorkSafe over the years in response to his members' issues. In this email he has provided to me he says —

> When the legislation was changed to remove portable appliance/tool testing for being licensed work and enabling the work to be performed by a competent person, the union was assured by Nina Lyne from Worksafe —

I think at that time she was in a very senior position at WorkSafe.

Hon Simon O'Brien: Nina Lyhne.

Hon KATE DOUST: Lyhne, sorry. I always pronounce her surname incorrectly, unfortunately.

Hon Simon O'Brien: So do I.

Hon KATE DOUST: Jim Murie continues —

> that a competent person would need to have completed compulsory training of about 80 hours for 240 volt work, on successful completion would then be issued with a unique personal number which would be the number as recorded on their certificate of competence, this never happened.
>
> Numbers of people are performing the work in workplaces without any certificate of competence, there is no regulation or discipline that determines how the status of "competent person" is obtained.
>
> Controllers of premises are not keeping record of identification, the electrical regulations cannot compel the employers of these people to record and keep details as an electrical employer is bound to do because it is no longer electrical work. There is no equivalent regulation in the Worksafe act or regulations.
>
> The union wants Worksafe to make good their original proposition that persons who test and deem portable electrical appliances/tools to be safe shall be compelled to undergo structured training delivered by an RTO and be certified competent and that certificate be allocated a unique number that need be recorded as does an electricians license number on any tool tag declaring the equipment tested and safe.

I am happy to provide the minister with that part of the email if he likes, but at some point in time the ETU was given a commitment by the Commissioner of WorkSafe that these things would happen—a number would be issued and people would be compelled to provide that number. I do not understand whether that was a verbal commitment from the commissioner and never recorded or, for some reason, WorkSafe does not have a record of it. I do not know. All I am saying to the minister is that, as of today; that is the information I have been provided by the assistant secretary of the ETU. I have no reason to doubt it. This is a particular hobby horse; an issue the union has been pursuing for a period, and I wanted to share that information with the minister so that he can take that back.

Hon Simon O'Brien: As you can see by the history I have outlined, by the time it got to Nina Lyhne, the tripartite commission, which includes UnionsWA representation, it had clearly moved on from that. These matters were considered but not proceeded with. It is not necessarily that we are covering up history or anything like that. It was obviously considered but, for good reason presumably, not pursued.

Hon KATE DOUST: I think it is useful to have that on the record; as I said, these things evolve over time. I think it is a significant issue, albeit very narrow, and we all know that safety regulations are sometimes a difficult beast to work through or interpret. I have my own particular favourite safety regulations that have been burnt into my brain over time; I will perhaps raise them on another occasion. Although the minister may feel that this is repeating an earlier debate, it is a healthy debate to have. It is always useful to review it. I think that if there is still concern about the quality of work, the accountability, or a potential follow-up to make sure that people are meeting standards, this is a useful debate. The minister has given a commitment to take the issue back to WorkSafe, and I thank him for that. I think it will be very useful to take it back, so that that tripartite organisation can perhaps review this matter. I think Hon Alison Xamon is indicating that she is satisfied with that.

The Australian Labor Party supports, in principle, Hon Alison Xamon's motion. I hope that when the minister takes the matter back to WorkSafe, it is able to review it in a fairly expeditious manner so that we are not going through the same debate in 12 months' time.

Hon Simon O'Brien: I don't think we need to do this all over again.

Hon KATE DOUST: No.

In due course I look forward to hearing feedback from the minister on how WorkSafe has actually reviewed this issue. I am sure that the Electrical Trades Union, in particular, and organisations like the National Electrical and Communications Association would be interested in hearing how the process has worked. It is always better to have the best standards possible for workers in that type of environment, rather than them being watered down.

HON ALISON XAMON (East Metropolitan) [3.22 pm] — in reply: In summary, I thank the opposition for its support, but I also want to thank the Minister for Commerce for the suggestion that this issue go back to the Commission for Occupational Safety and Health for further discussion.

As my motion indicated, I was not suggesting that the proposed amendment would resolve the entire issue. During my contribution I flagged that I recognised that even if the amendment was passed, related issues would still have to be resolved. I think that the undertaking that this will go back to the commission is a very positive step forward, and I was very pleased to hear that, particularly because it seems that there are no shared understandings of the history and how we got to this point. The advice I have is that the ETU has never felt that this issue has actually been resolved—even in the negative—and it is very strongly of the view that it has simply fallen off the agenda somehow. The ETU also feels that when this was revisited by the commission after the disallowance motion, which was the undertaking also given by the government at that time, again it did not get resolved; it just fell off. I hope this will be the final time it needs to be revisited by the commission; hopefully it can be resolved.

I think it was useful for the minister to put the understood history, certainly from the department's perspective, on the record because that means that the other parties, if they have a different understanding—I understand that some do—know exactly what they are dealing with. I think that is very useful.

I reiterate that I want to see parity, but, again, not in terms of the lowest common denominator. I absolutely agree with the opposition that we should be looking to tighten up standards, particularly around electricity, not lessening them. It is my understanding that some issues have arisen, particularly in Victoria, as a result of the new national regime. It is certainly my fervent hope that we do not replicate the mistakes that are starting to emerge there.

I do not agree that the name is a primary identifier. As I said in my contribution—Hon Kate Doust agreed—I think the only unique identifier will be a number, which is why it is very important that we try to come up with a regime. As I said in my contribution, I accept and agree with what the minister said in that the Australian Qualifications Framework cannot be unilaterally changed. It would have been good if some regime had been put in place at the time that the statement of attainment regime was, but that did not happen. That is why I was suggesting that there may be other ways to resolve this issue so that there can at least be an identifying number for people who have achieved these competencies.

As I say, I appreciate there is a difference in the shared understanding of how we got to this point. It had been my intention to withdraw this motion. I was expecting that this would have been resolved in the preceding 16 months; it has not been, and that is why it has continued. But I remain hopeful, given the minister's undertaking that this will be revisited, that there will be a positive resolution to this issue so that we can make sure that the safety regime in this state is the best of all states.

Question put and negatived.