

**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Greg Pearce.**

**Second Reading**

**The Hon. GREG PEARCE** (Minister for Finance and Services, and Minister for the Illawarra) [11.10 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Work Health and Safety Legislation Amendment Bill 2011. The purpose of the bill is to make consequential amendments to New South Wales legislation that are necessary to allow the Work Health and Safety Act to operate effectively on its commencement on 1 January 2012.

**The PRESIDENT:** Order! I ask the Minister to speak slightly louder for the benefit of Hansard. I ask members to resume their seats and to ensure that there is no audible conversation in the Chamber. If members wish to conduct private conversations they should do so outside the Chamber.

**The Hon. GREG PEARCE:** The New South Wales Work Health and Safety Act implements a nationally harmonised scheme for work health and safety legislation and is to be implemented by all Australian jurisdictions. On 3 July 2008 New South Wales and the other States and Territories entered into the Intergovernmental Agreement for Regulatory Reform on Occupational Health and Safety. The development of the model laws followed a comprehensive review of Australia's occupational health and safety laws by a review panel of independent occupational health and safety experts, chaired by Mr Robin Stewart-Crompton, former chief executive officer of the National Health and Safety Commission, and including Mr Barry Sherriff, then a partner of Freehills, a national law firm, and Ms Stephanie Mayman, Commissioner of the Western Australia Industrial Relations Commission and chairperson of the Occupational Health and Safety Tribunal of Western Australia.

The national review into occupational health and safety laws consulted widely with business, employer and union groups, took submissions from the public, and made a number of detailed recommendations. Following this review and its endorsement by Ministers, Safe Work Australia commenced the development of the model Work Health and Safety Act. The resulting national consultation process concluded with the finalisation of the national model Work Health and Safety Act, endorsed by the Workplace Relations ministerial councils. Members will recall that the Work Health and Safety Act 2011 was introduced into this place and passed in June 2011. The passage of the Act was a key achievement for the first 100 days of Government. The Work Health and Safety Act represents the commitment of the New South Wales Government to full participation in a nationally harmonised system of occupational health and safety.

The Work Health and Safety Act will be supplemented by model regulations and model codes of practice. The Work Health and Safety Act is intended to be commenced by all Australian jurisdictions on 1 January 2012, although there may be delays in some jurisdictions. Members will also recall that the New South Wales Government acted immediately to ensure that the current occupational health and safety laws in New South Wales reflect the national position. The Occupational Health and Safety Amendment Act

2011 implemented some key reforms to reflect changes in the Work Health and Safety Act 2011 so that the important aspects of the New South Wales law were made consistent with the nationally agreed position on work health and safety, with immediate effect.

These were removing the reverse onus of proof in work health and safety prosecutions by requiring the prosecution to prove what "reasonably practicable" steps a defendant could have taken to avoid breaching the general duties to maintain a safe and healthy workplace; requiring duty holders, in complying with the proposed Act, to ensure health and safety "so far as is reasonably practicable"; and replacing the existing provision that deems directors and managers of a corporation to be guilty of offences committed by the corporation with a positive duty that officers of the corporation should exercise due diligence to ensure compliance by the corporation with health, safety and welfare duties.

I now turn to the bill before the House. The Work Health and Safety Legislation Amendment Bill 2011 makes some minor amendments to the New South Wales Work Health and Safety Act. One of these is an amendment to section 252 to clarify that a Minister is not in that capacity an officer of a public authority. It also amends the Work Health and Safety Act to reflect the position in New South Wales of having two regulators, WorkCover in respect of workplaces generally and the Department of Trade and Investment in respect of mining workplaces. These amendments clarify the relationship between the two regulators and ensure that information may be exchanged between the two New South Wales regulators for the purposes of the Work Health and Safety Act, with appropriate limitations.

Minor amendments are also made in respect of the delegations power and notification of incidents to the regulator. Such provisions are permitted under the national model Act in that it allows for limited jurisdictional variations from the national model scheme in order to allow jurisdictions to provide for limited local matters. The Work Health and Safety Legislation Amendment Bill also makes consequential amendments to industry-specific safety schemes which regulate specific industries and to other New South Wales legislation which refers to occupational health and safety duties. The amendments will ensure that arrangements which are consistent with the Work Health and Safety Act apply in the mining and rail industries and to the road and rail transport of dangerous goods. These amendments have been developed in consultation with relevant Ministers and agencies.

The industry-specific schemes that are amended by the bill include the mine safety legislation, being the Coal Mine Health and Safety Act 2002 and the Mine Health and Safety Act 2004. The amendments to the mine safety legislation maintain the current position in relation to the Occupational Health and Safety Act that in the event of an inconsistency between the mine safety and work health and safety legislation the Work Health and Safety Act prevails, and that there is no double jeopardy for matters constituting an offence under mine safety and work health and safety legislation. Similar changes are made to the Road Transport (General) Act 2005, which will continue the current position that ensures that there is no double jeopardy in relation to an act or omission constituting an offence under the work health and safety legislation and the Road Transport (General) Act.

The bill amends the Dangerous Goods (Road and Rail Transport) Act 2008, which is administered jointly by the Office of Environment and Heritage and WorkCover, to provide for WorkCover inspectors exercising powers under that Act to exercise appropriately modified powers under the Work Health and Safety Act. Similarly, amendments to the Explosives Act 2003 will ensure that WorkCover inspectors exercising powers under that Act will exercise powers under the Work Health and Safety Act but with appropriate modifications. The Work Health and Safety Legislation Amendment bill 2011 also amends

the Rail Safety Act 2008 to bring that Act into line with the Work Health and Safety Act, as the Rail Safety Act has been drafted based on the occupational health and safety legislation model. The amendments proposed to be made by the bill include removing the reverse onus of proof provision in section 11 of the Rail Safety Act, applying a new duty of officers of corporations to exercise due diligence rather than deeming them to be liable for a contravention by the corporation, and including definitions of the key concepts of "reasonably practicable" and "management of risks". These amendments will ensure that the Rail Safety Act is as consistent as possible with the Work Health and Safety Act.

I understand that there is a proposal that in 2013 the regulation of rail safety in New South Wales will move to a nationally consistent scheme with the establishment of a national rail safety regulator and rail safety national law. The rail safety national law is drafted so as to be as consistent as possible with the national model Work Health and Safety Act. Making these relatively minor changes to the Rail Safety Act now will assist in the transition to the proposed new rail safety national law. The Work Health and Safety Legislation Amendment Bill also makes some amendments in relation to prosecutions for Work Health and Safety Act offences. The right of the prosecution to appeal against an acquittal under section 197A of the Industrial Relations Act 1996 in an Occupational Health and Safety Act matter has long been the subject of criticism and is unusual in criminal law. The bill therefore repeals section 197A of the Industrial Relations Act, bringing appeal rights for Work Health and Safety Act matters into line with the appeal rights applicable to the general criminal law.

On commencement of the Work Health and Safety Act, the Occupational Health and Safety Act and its supporting regulations will be repealed. The bill therefore makes minor consequential amendments to other New South Wales legislation, such as substituting "Work Health and Safety Act" for "Occupational Health and Safety Act" where appropriate. Part 3 of schedule 1 to the bill provides for some transitional provisions which set out how the consequential amendments will apply. It is also proposed that transitional regulations will be made that will provide for the detail of the transition from the occupational health and safety legislation to the work health and safety legislation.

These transitional provisions will be based on nationally developed transitional principles which will allow jurisdictions to achieve consistency in their transitional arrangements while allowing for differences in existing arrangements. The Work Health and Safety Act needs to be supported by detailed regulations and codes of practice. The New South Wales Government is currently reviewing the model Work Health and Safety Regulations and stage one priority codes of practice with a view to implementing them by the 1 January 2012 commencement date. WorkCover has continued to work with stakeholders to ensure that industry and workers will be aware of and understand their responsibilities under the new legislation. This work includes communication strategies, a range of support material and workshops and the allocation of funding to help employers, unions and not for profit group training organisations prepare for the new legislation.

At the request of my colleague the Minister for Resources and Energy the bill also provides for amendments to the mine safety legislation to establish a single mining competence board under the Mine Health and Safety Act 2004. Currently the Coal Mine Health and Safety Act 2002 and the Mine Health and Safety Act both establish two separate boards for the administration of competence qualifications. A competence qualification is a specified degree of skill and/or experience that a person must have in order to perform a specified function under the mine safety legislation. Some of these competencies are obtained through the issue of a certificate by a competence board. The amendments in the bill will create a single competence board for the coal, metalliferous and extractive sectors of the mining industry.

That board will establish the competence standards and undertake assessment for the whole of the mining industry. Those amendments will benefit employers and workers in the mining industry by ensuring consistency in the way that competency standards are applied, reducing administrative costs and streamlining and clarifying the roles and responsibilities of the mining competence board.

In conclusion, the Work Health and Safety Legislation Amendment Bill seeks to make necessary consequential amendments to the New South Wales legislation in order for the Work Health and Safety Act to commence on 1 January 2012. The bill will assist in maintaining our strong work health and safety framework, keep business accountable, reduce red tape for employers and mean that once adopted by all jurisdictions, no matter where you work or do business in Australia, the same laws will apply. I commend the bill to honourable members.

**Debate adjourned on motion by the Hon. Adam Searle and set down as an order of the day for a future day.**