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WORK HEALTH AND SAFETY AMENDMENT BILL 2013

Second Reading

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.20 a.m.], on behalf of the Hon. Duncan Gay: I move:

That this bill be now read a second time.

I am pleased to introduce the Work Health and Safety Amendment Bill 2013. The purpose of the bill before the House is to place beyond doubt that the District Court has jurisdiction to hear prosecutions under the former Occupational Health and Safety Act 2000. The bill also confirms that a legal practitioner acting on behalf of an inspector or the regulator in proceedings under the former Occupational Health and Safety Act, or the Work Health and Safety Act 2011, may sign initiating process on behalf of a prosecutor.

As members are aware, the New South Wales Work Health and Safety Act implements a nationally harmonised scheme for work health and safety legislation, and has been implemented by most Australian jurisdictions. The passage of the Work Health and Safety Act by the New South Wales Parliament in 2011, and its commencement on 1 January 2012, demonstrated the commitment of the New South Wales Government to full participation in a nationally harmonised system of occupational health and safety.

On its commencement on 1 January 2012, the Work Health and Safety Act repealed and replaced the former Occupational Health and Safety Act 2000. Transitional arrangements under the Work Health and Safety Act allowed for prosecutions to continue to be brought under the Occupational Health and Safety Act in relation to incidents that occurred while that Act was still in force, as is usual when a new regulatory regime replaces a former one.

One area of variation that was permitted under the nationally harmonised scheme is that of the court in each jurisdiction that hears proceedings brought under the Act. Taking into account the recommendations of the National Review into Model Occupational Health and Safety Laws, on which the national model legislation was based, this Government decided to confer jurisdiction to hear more serious Work Health and Safety Act matters in the District Court, rather than the Industrial Court which had previously heard such matters. In the interests of consistency and fairness, transitional arrangements applied the new court arrangements to proceedings brought under the former Occupational Health and Safety Act from 1 January 2012.

Recent legal challenges in the matters of *Empire Waste Pty Ltd and Dean Baldwin v District Court of NSW and Inspector Steven Brock* and *Australian Native Landscapes Pty Ltd v Inspector Nathan McDonald and District Court of NSW* have sought to challenge the jurisdiction of the District Court to hear prosecutions under the former Occupational Health and Safety Act proceedings on technical legal grounds. In order to put the matter beyond doubt, the bill makes it clear that the District Court and the Local Court have jurisdiction—and have had jurisdiction since 1 January 2012—to hear proceedings brought under the former Occupational Health and Safety Act. The bill also places beyond doubt the validity of the Work Health and Safety Regulation 2011, addressing another argument in these proceedings.

The bill also addresses a further technical argument concerning the filing of prosecutions, in *Attorney General for the State of NSW v Built NSW Pty Ltd and Air Conditioning Engineering Services Pty Ltd*, making clear that a legal practitioner may sign initiating process on behalf of a prosecutor, and validates such actions from 1 January 2012. The bill generally will not affect decisions of the courts made before the bill receives assent. The bill will allow prosecutions to be recommenced, which are terminated because of the technical issues addressed by it. The bill validates a decision of a court that would have been valid had the amendments in the bill been in force when the decision was made, which will prevent matters that have already been decided by the courts from being challenged or reopened on technical grounds.

The proposed amendments in the bill are supported by public interest considerations. Many of these prosecutions concern workers who have been severely injured or even killed. Injured workers and their families, and the families of workers who have died, often follow closely the progress of work health and safety prosecutions. The impact on workers and their families of allowing defendants to escape prosecution based on a legal technicality

would be severe and would undermine public confidence in the work health and safety legislation. The prospect of the Government standing by and doing nothing pending the outcome of an appeal is unacceptable, given the uncertainty that would arise from a possibly lengthy appeals process.

In that regard this House needs to understand the raw nature of the statistics involved in this critical matter. Eighteen cases involving fatalities that are before the court will be affected if this bill is not passed. The cold hard reality is that 18 families are seeking justice which will be delayed and possibly denied to them if the Opposition proceeds with its amendments to refer this matter to the Industrial Court. The Opposition needs to think carefully about the justice of this issue, the inconvenience that will be caused and the families that will affected by these amendments. I ask Opposition members, in particular, the Deputy Leader of the Opposition and shadow Minister for Industrial Relations, to reconsider those amendments in the light of their impact on families and the administration of justice in this State.

It is worthwhile reflecting on some of these cases. I refer to the tragic loss of life in the Waugh family of which I am sure the Deputy Leader of the Opposition is aware, given its recent publicity. The defendant is the New South Wales South-West Institute of TAFE which is currently before the court. The family seeks justice in relation to that fatality. If the Opposition's foreshadowed amendments were successful it would throw that case into confusion, it would be delayed and potentially undermined by the institution of fresh proceedings in the Industrial Court. It is simply unacceptable to allow a potential miscarriage of justice in that matter and in the 17 other cases involving fatalities where this Government is prosecuting employers to ensure that the rights of victims and their families are protected.

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That is what is at stake. I give one more example which is equally damning: one of the Australian Labor Party's great protagonists, which, perversely, the Opposition would be assisting to avoid prosecution, the Patrick corporation. An occupational health and safety case against Patrick involving a fatality is presently before the courts wherein the company is being prosecuted to ensure justice for the person and the family involved. The amendments proposed by the Opposition have the potential to delay and subvert justice in that case. That is what is at stake here. Nobody should be in any doubt about the possible implications for the 18 people who have lost their lives in workplace accidents. Opposition to this technical bill—which does not change policy, it simply perfects minor technicalities in the process before the courts—will cause injustice and delay very serious cases presently before the courts. Not only 18 cases involving fatalities will be delayed but also another 52 cases involving injuries to workers.

Time and again we have heard members opposite say that they are the champions of workers and working-class people in this State. It has been the obiter from that side for many years. There is no more pressing situation than this for them to show their true colours, to protect workers and to make it abundantly clear that they will support workers in litigation relating to the death of people in 18 cases and 52 cases of people injured at work. They can ensure that they have a proper trial and justice is served for them and their families. That is what is at stake in this bill.

I ask all members to clearly understand that this bill is essential to correct technicalities in the prosecution of very serious offences in this State. To stand against it, to refer it to another court or to delay it is to subvert potential justice in this State. Whether or not we like it, delays will impact upon witnesses and the carriage of those cases. It is not good enough to say, "The Industrial Court should be dealing with this" when these matters are already on foot. The protection of those people and their families should be paramount in the minds of members opposite and they should not play political games over technical issues about jurisdictions.

In conclusion, I ask the Opposition and crossbench members to reflect upon their intended course of action. I ask them to think very carefully about the Waugh family, Patrick and other employers who are being prosecuted for accidents in their workplaces. I want them to think carefully about the families and victims who will be affected and the tragedy of those 18 people who will never go home to their families. In this place they may be statistics on a piece of paper, but at home they are real people and their families want justice. They do not want delays or technical argument that another court is a better fit for hearing the case. They just want justice.

The Government's policy position is abundantly clear. The bill confirms its policy position that these matters should be dealt with in the District Court. Nothing has changed in the Government's policy position; we have been consistent throughout the process. We ask the Opposition and crossbench members to understand the gravity of the situation, to sympathise, to represent and to be advocates for those workers and their families affected by this technical problem that we now seek to correct with this bill. Accordingly, I strongly commend the bill to the House. I ask the Opposition and crossbench members to seriously consider their position.