

Agreement in Principle

Mr BARRY O'FARRELL (Ku-ring-gai—Leader of the Opposition) [10.01 a.m.]: I move:

That this bill be now agreed to in principle.

In the week in which Bernie Banton died the issue of occupational health and safety again has captured attention. There is no better week to remind this House and the public that only through a combined commitment and acceptance of responsibilities by employers and employees will we have good and safe workplaces. As I said in this place when speaking about Bernie Banton, rogue employers and rogue workers are in the vast minority in this country but, regrettably, it takes only one of each to give a bad name to all those who work tirelessly to earn a living and provide business places in which people can work.

Behind this bill is the fundamental importance of ensuring a balance of responsibility in workplace safety issues. Indeed, this bill followed an extensive 10-month review by the Lemma Labor Government of the State's Occupational Health and Safety Act 2000. That was a statutory review required by law. Over that 10 months and following consultations with unions, employees and employers, a series of proposals were developed to improve the balance of workplace safety matters to ensure a more practical approach that guaranteed workers and employers understood their responsibilities and sought to provide an environment in which both worked together in order to improve safety within our workplaces.

The changes proposed by the bill I have introduced are designed to clarify what is expected of employers and employees, and to focus all parties on actual improved safety results we all should seek. By requiring employers and employees to consult on workplace safety matters the Act can successfully develop a spirit of cooperation across New South Wales workplaces. Such a spirit of cooperation can further improve the rate of injuries and fatalities in workplaces across the nation. The key changes proposed within this legislation involve the inclusion of legally binding agreements between employers and WorkCover. These enforceable undertakings would focus on better safety results rather than costly legal action. Other key changes include a requirement for employees to take reasonable care for their own safety, and clarification to recognise that people with a duty of care must do what is "reasonably practical" to ensure health and safety in the workplace.

This legislation provides a far more practical approach to managing workplace risk—an approach used in most other States. Further key changes in this bill include the introduction of new fraud offences for making false representations or for obtaining financial advantage by deception, and adding an advisory role to the statutory functions of WorkCover. This reflects a new approach from that authority to place greater emphasis on the provision of advice, systems and education, which ultimately hold the keys to delivering better safety records in New South Wales workplaces.

One example of why businesses big and small across this State are seeking these reforms—reforms that provide employer ease as well—is the case highlighted more than a year ago by the *Australian*. Rob Partridge used to run a small plumbing company on the New South Wales Central Coast. In 1998 there was a dreadful accident in which an elderly resident at a retirement village was killed after a thermostat failed and she was scalded in the bath. WorkCover prosecuted Mr Partridge over the accident. This case demonstrates the extraordinary level of duty of care imposed under the existing New South Wales Occupational Health and Safety Act.

Despite that he had not installed the thermostat and was rarely at the retirement village, Mr Partridge was deemed to be "in control" of the premises for plumbing purposes. It did not matter that he had strictly followed the manufacturer's instructions in servicing the thermostat. He had tested the device only three months before the accident. The internal fault it developed could be detected only with the aid of stereo microscopic magnification—not something usually done by the average plumber. In the article Mr Partridge said the following about this case:

It wrecked my life. I had a good business, a lot of clients; mentally it's devastated me. I had to plead guilty. The barrister said, 'It's going to cost you \$50,000 to fight it, and WorkCover only has to find one minor thing you did wrong, remotely connected to it'.

The article continued:

The most serious fault the industrial court could attach to Partridge was that he failed to gather information regarding the expected lifespan of the mixing valve and consequently failed to advise [the retirement village] as to the need to replace the mixing valve when the valve's lifespan had expired.

I repeat: This was the result despite the device having been tested three months earlier and having been found to be acceptable. That is why the current Act is flawed: it demonstrates a one-sided approach to workplace safety and puts enormous responsibility on employers like Mr Partridge and others across the State. The Act fails to place any requirement for responsible action on workers. There are employers who do the right thing by providing a safe workplace and encouraging their employees to work safely. Situations arise when a worker is

foolish—we have all been foolish at times—and disregards advice, training and everything. At the end of the day, instead of that foolishness being recognised as the cause of the problem, injury or, God forbid, death, the responsibility is laid at the door of an employer regardless of the employer's record or efforts to ensure better workplace safety outcomes.

Employers and employer groups across the State support the legislation. I have received an enormous amount of correspondence, and I want to mention some of those who have contacted me. Robert Bushby, the President of the Ingleburn Chamber of Commerce and Industry, supports the proposals. Greg Farrow, the President of the Maitland Business Chamber, also supports the proposals. Michael Broekman, the Director of Namoi Valley Bricks, one of the companies in Gunnedah, who has direct experience of these issues, supports the proposals. I have received correspondence from representatives of Namoi Gas and Steel, who also support the proposals.

Whether in city or in country, whether in regional areas or in remote areas, employers across this State understand the extraordinary obligations imposed upon them by the current occupational health and safety legislation in New South Wales. They understand the risks they face every day when they open their workshops, their shops or other workplaces. These are not risks they can foresee but risks they cannot foresee, risks that have nothing to do with their efforts to ensure, as is the fact, that the great bulk of workplaces across New South Wales are run appropriately and with everyone's safety in mind.

I regret that I have had to introduce this legislation as a private member's bill. Before the State election the State Government promised these identical reforms. I repeat: The legislation I have introduced in the Legislative Assembly this morning is the bill prepared by the Minister for Industrial Relations, the Hon. John Della Bosca. This bill came out of the consultations that the Hon. John Della Bosca undertook with all those involved in workplace safety. It is the bill that the Hon. John Della Bosca wanted to introduce to Parliament before the State election campaign and the bill that the Premier, Morris Iemma, promised would be introduced to Parliament before the State election campaign.

One may well ask why there has been no initiative from the State Government in this area. Despite 10 months of consultation, despite a consultative process that the Minister himself described as constructive when thanking all those who contributed to the important review process, nothing has happened. Despite describing the proposals put forward in the legislation as "ensuring that the legislative framework is effective and responsive to the changing needs of the New South Wales workforce", and despite committing that "Together, we will continue to further reduce the incidence of injuries and fatalities in New South Wales workplaces", nothing has happened.

The reason nothing has happened is that the New South Wales union movement has nobbled the process, has stymied the process, and has stopped this reform legislation dead in its tracks. The union movement of New South Wales, for reasons best known to John Robertson and his cohorts, is stopping sensible legislation that seeks to ensure that workplaces across the State provide an environment for greater safety results and less costly legal actions. The union movement is stopping workplaces across the State from having a more co-operative environment in which everyone who works in them, employer and employee alike, accept their responsibility to improve workplace safety.

We have just gone through a Federal election campaign where union influence was at the centre. I certainly accept the result of that election campaign. As I said in my remarks about Bernie Banton's passing on Tuesday this week, I will never seek to deny a union due credit when it acts appropriately on behalf of a worker or workers, or the community. Equally, I would say the same in relation to employer groups. I will not hold back in my criticism of a union or a union movement, or an employer or an employer group, if they act contrary to the public interest. It is clear that in relation to this matter Unions New South Wales, led by John Robertson, is acting contrary to the interests of the public. The interests of the public are acknowledged and recognised by two of the three most powerful members of the Iemma Government, Treasurer Michael Costa and Industrial Relations Minister John Della Bosca, both of whom support this legislation, both of whom want the practical, sensible reforms outlined in this legislation to be put in place in New South Wales.

At least two members of the Iemma Government understand that the consequences of not introducing these changes are having a devastating impact upon the business investment climate in New South Wales. Those who have businesses in this State clearly have to try to work through and around the existing occupational health and safety laws. They want change, they want reforms and they want a balancing of the system. However, other people, on a daily and a weekly basis, are looking to see whether they should invest in New South Wales, or Queensland, or Victoria, or elsewhere. We have the worst regulatory regime that exists anywhere in the nation. The Rob Partridge story is enough to stop most people picking up tools in New South Wales for their own benefit, to create employment for others, or to create a greater wealth for society.

We as Liberals and Nationals well understand that the State and Federal governments do not have enough resources to maintain our living standards into the future. The people who determine our living standards are those in the non-government sector, which makes up about 85 per cent of the employment of the State and national economy. They are the people who create wealth, the people who create employment, and the people who ultimately are responsible for the living standards that we enjoy today and that we want our children and future generations to enjoy. That is why this legislation is essential.

I am disappointed that, despite repeated promises, this Parliament has not passed this legislation before now. Only on 4 August this year the Premier of New South Wales said, "There will be reform and in my view it will be a balanced package." The Premier went on to say, "The process is before Cabinet and will be legislated when the Parliament returns in September." I understand that the Parliament will sit next week; indeed, I understand that there is a possibility it might sit the following week. There is no sign of the State Government introducing the changes needed to make our workplaces safer. There is no sign of the State Government introducing the changes needed to ensure a better balancing of workplace safety obligations and responsibilities. There is no sign of the State Government introducing these reforms, which would, in the words of the Minister for Industrial Relations, "demonstrate practically that New South Wales was genuinely open for business", if that was not just another slogan put out there to win a campaign and not provide any results.

It is simply outrageous that the Premier can mislead the public both before the election and after the election. We know that one of the reasons that bills were introduced last night was to ensure that we could debate them next week and that they could get through the upper House before the end of this year. That is why the Liquor Bill was read at great length last night. If the Premier was going to introduce these reforms, his time is up. These reforms cannot now be introduced and cannot be passed by both Houses of Parliament in order to be effective by the end of the year. The Premier has again, after the election, lied to the public and failed to deliver on a core promise that he was hanging out for the business community before the election.

I will cite a couple of other examples of how our system fails. New South Wales has the largest number of prosecutions, the highest fines and the largest number of occupational health and safety inspectors in the nation. However, according to the Australian Bureau of Statistics, the State has injury rates worse than the Australian average. Despite the enormous regulatory regime that exists within New South Wales, despite an army of inspectors and a phalanx of prosecutions, despite an enormous growth in the fines that are imposed upon people like Rob Partridge, we are not seeing in this area, any more than in other areas, the achievement of the types of results we want.

Where is the focus of the State Government? The Minister for Industrial Relations, John Della Bosca, argued in May last year when proposing these reforms: Should there not be a focus on the production of better safety outcomes in workplaces, rather than on what has been described as a costly legal process? Approximately 32 per cent of the Australian workforce works in New South Wales. New South Wales WorkCover has undertaken 34 per cent of all workplace inspections. While the inspectors have issued only 31 per cent of improvement notices and only 18.7 per cent of prohibition notices, a massive 63.4 per cent of the nation's prosecutions have been commenced in New South Wales. We have seen reforms take place in other areas when the State Government said that too much money had been spent on legal processes and on lawyers and not enough money was being spent on those who have responsibilities in this area or the victims. This is another incidence of the entire legal process soaking up too much money but not producing better results.

New South Wales WorkCover recorded 66 per cent of the nation's convictions with an 88 per cent success rate, with the remainder recording an 80 per cent success rate in prosecutions. I remind the House again of Rob Partridge's plea of guilty on the advice of his barrister. He was told that WorkCover had only to find a minor infraction, not even directly related to the incident, for him to suffer an even bigger penalty than previously. The system is flawed, unbalanced, unfair and not delivering better workplace safety results. The system should be reformed. I am pleased to introduce this important legislation that should have been introduced by a State government that is focused on the needs of employers and employees in New South Wales. However, this State Government is too focused on the needs of its Unions New South Wales mates, too open to influence from John Robertson and the union hierarchy, and is not really focusing on the interest of workers, union workers and non-union workers across the State.

The State Government is not focused on the needs of the wider State in terms of attracting investment in New South Wales and is certainly not focused on the interest of employers who currently face unreasonable imbalance in their attempts to run businesses in New South Wales, especially regarding workplace safety laws. I commend this bill to the House. I encourage members opposite to have the strength of character to support this legislation—John Della Bosca's legislation, the legislation supported by Michael Costa, the legislation that is required to create better workplace safety outcomes, the legislation that the State's employers demand.