

OCCUPATIONAL SAFETY AND HEALTH — PROPOSED LEGISLATION

Statement by Minister for Commerce

HON MICHAEL MISCHIN (North Metropolitan — Minister for Commerce) [3.09 pm]: I rise to inform the house of the government's intentions surrounding the continuing quest to improve occupational safety and health in Western Australia's workplaces. The enhancement of occupational safety and health is a matter of national as well as state concern. Accordingly, since 2008 Western Australia has participated in the harmonisation process implemented under the Council of Australian Governments' Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety.

The fundamental objective of the intergovernmental agreement was to produce the optimal model for a national approach to occupational safety and health regulation and operation, one that would enable the development of uniform, equitable and effective safety standards and protections for all Australian workers; address the compliance and regulatory burdens for employers with operations in more than one jurisdiction; create efficiencies for governments in the provision of OSH regulatory and support services; and achieve significant and continual reductions in the incidence of death, injury and disease in the workplace.

The intergovernmental agreement committed each state and territory to the development by the commonwealth of national model work health and safety legislation supported by model WHS regulations and model codes of practice. Certainly, uniformity of safety standards is an important initiative that should assist all workplace participants, from large and small employers to contractors and workers, to understand what is required of them. However, while acknowledging this, it became clear, as was noted by the former chair of Safe Work Australia, Mr Tom Phillips, that as the harmonisation process progressed, it had become more about consistency across jurisdictions rather than rationalisation or reform.

It is fair to say that the progress of the development of the model legislation and the regulations and codes of conduct supporting and implementing it has been plagued by delays and controversy. Despite the commonwealth government devoting enormous resources, supplemented by funding from the states and requiring the commitment of considerable resources by the states, the commonwealth repeatedly demonstrated that it was incapable of meeting the time limits it set for itself; set unrealistic time limits within which the states were required to respond to its proposals and draft legislation and supporting instruments; and was unable to formulate a uniform set of laws that would demonstrably improve work health and safety regulation in a cost-effective way. Indeed, since the signing of the intergovernmental agreement, events have moved on. Not only has there been a change of federal government, but some jurisdictions have legislated. This is of significance not only for the question of whether harmonisation as originally envisaged is possible; it also allows Western Australia the opportunity to observe their experience, to measure the costs of any changes that have been implemented and to consider the advantages and disadvantages of their having made them.

In particular, what has been lacking in the national approach has been a comprehensive and robust regulatory impact assessment to determine whether what had been proposed and formulated would be not only viable but worthwhile. A national decision regulatory impact statement, or RIS, was prepared but had only a national rather than a jurisdictional focus. It eschewed separate detailed assessments for each state and territory, which might have taken into consideration specific geographic and industrial differences and needs. It did not meet the requirements of Western Australia's regulation impact assessment process and did not address the potential impact on our state and its commerce or workplaces.

Both Victoria and South Australia have published their own RISs. The Victorian RIS is uncomplimentary of the model WHS scheme and presumably informed that state's decision not to adopt the model WHS laws. The South Australian RIS supported the implementation of the model laws. However, of late South Australia has ended a number of construction codes due to their detrimental impact on that industry.

Western Australia commissioned its own RIS, which was conducted by consultants Marsden Jacob Associates. It reported its findings in December 2012. However, Marsden Jacob performed its assessment assuming that harmonisation was to occur and used the model WHS bill as its starting point, focusing not on the desirability of harmonisation through the adoption of the bill but on the advisability of adopting the proposed regulations and codes of practice. Despite its focus, the RIS reflected generally on the model WHS regime overall, including the model legislation, regulations and codes of practice. Among its findings, based on research evidence, was that WHS regulation and regulatory activity suitable for large businesses is not equally suitable for small businesses; a big business regulatory approach is much more likely to fail small businesses and potentially lead to a decline in safety; and the benefits and costs of harmonisation will differ across types of business. The report states —

The benefits of harmonisation *per se* are therefore often not directly relevant to small businesses which operate the 96 per cent of workplaces and account for 49 per cent of employment across WA.

It also found that some of the model WHS regulations would present challenges for employers in small businesses and those in regional areas, which is obviously not a desirable outcome of a process established to create optimal legislation. It concluded —

Between the two extremes of complete rejection or complete acceptance —

Of the model WHS regulations —

finer consideration is required.

Accordingly, I table the Marsden Jacob Associates RIS, which will also be published this week on the website of the WorkSafe division of the Department for Commerce.

While the WA government continues to support the idea of occupational safety and health consistency across jurisdictions in principle, it does not support entering into uniform schemes for their own sake or consider that harmonisation is a desirable end in itself. The state government takes the view that the paramount consideration is that any changes made to our occupational safety and health regulatory regime should be in the best interests of Western Australian workers and workplaces. There is a serious and well-founded concern on the part of the government that implementation of the proposed model WHS scheme has the potential to be detrimental to workplace safety in Western Australia. Western Australia's OHS regime has been and continues to be a sound one. Its effectiveness is clearly evidenced by the statistics for lost time, injuries and diseases and traumatic work-related fatalities, which, since the commencement of the Occupational Safety and Health Act 1984, continue to decline, notwithstanding the increase in WA's population and workforce and the increasing complexity of our work environments. Nevertheless, it is important that we review our current legislation to ensure it continues to be appropriate for a modern and developing working environment, and strives for the best achievable practices. Further, as I have acknowledged, there are advantages in having some uniformity in standards across jurisdictions to promote understanding of what is required at the workplace by those who operate over jurisdictions.

In view of the lack of a sound case for blanket uniformity and the failure of the harmonisation process, the state government's view is that the best approach is to develop a version of the model WHS legislation that is tailored to Western Australia's environment. As I have indicated, we are not alone in this respect, as other jurisdictions have also made adjustments to their model WHS legislation to suit their local conditions. Accordingly, I propose to introduce a Western Australian version of the model WHS bill, based on the model WHS law and reflecting its core provisions, but refined to reduce red tape and to maintain the compliance burden at an acceptable level. I intend it to be a green bill, inviting public comment for a period of three months.

In May this year, the Council of Australian Governments agreed to investigate ways in which the model WHS laws could be improved, with a particular focus on reducing red tape. This review is underway and is due to be completed by the end of the year. It will look at whether the model WHS laws are evidenced-based, cost-effective and proportional to the WHS risks they seek to address; are simple and streamlined; and, when possible, allow duty holders flexibility in how they comply with their obligations. The outcome of this review, together with the comments submitted on the green bill and the Western Australian RIS, will provide a foundation upon which the government can consider the best WHS regime for Western Australia. This will also meet our requirements for a statutory review, as required under section 61 of the Occupational Safety and Health Act 1984. Taking this approach, I am confident that the state government can craft the best version of the model WHS legislation, and one that will be adapted to and suitable for the Western Australian working environment.

[See paper 1680.]