

## HOUSE OF ASSEMBLY

THURSDAY 19<sup>TH</sup> MARCH 2015

### WORK HEALTH AND SAFETY (PROSECUTIONS UNDER REPEALED ACT) AMENDMENT BILL

*Second Reading*

**Mr PEDERICK ( Hammond ) ( 16:42 ):** I rise to speak to the Work Health and Safety (Prosecutions Under Repeal Act) Amendment Bill 2015. I do so after the exemplary words spoken by the member for Schubert. I think he gave a very apt description of how you cannot keep making it equal for individuals, whatever the situation is, because then you will have chaos. I must admit I have never watched *Peppa Pig*, but I am inspired.

**Mr Knoll:** Your children are a bit old.

**Mr PEDERICK:** My children are a bit older.

**The DEPUTY SPEAKER:** It sounds like they should be watching it anyway.

**Mr PEDERICK:** Yes, exactly. The minister informed the house last year that this bill would be introduced to extend the time to commence proceedings for an offence under the now replaced Occupational Health, Safety and Welfare Act 1986. The minister was working on the fact that the bill would allow two prosecutions under the recent act to proceed. In regard to this legislation we are discussing now, the sad thing is that one of these workplace incidents resulted in a fatality and the other resulted in serious head injuries to the worker.

We have already expressed our position on this side of the house that we will not be supporting this legislation, but in saying that I certainly have a great deal of sympathy for the families and the people involved with these two cases. As has been so well put today by the deputy leader and the member for Schubert, we just cannot keep changing laws to suit ourselves because someone has made a mistake; someone has made a technical error, someone in government has made an error and missed out utilising what powers they would have had under the previous act that has been repealed. As I said, certainly my sympathies go to the families in both these cases, but as has been expressed by other members on this side of the house, we just cannot go changing legislation to suit ourselves or to make up for an error, no matter how it was made.

The minister did indicate that there was a technical error in the filing of the complaints, which means that prosecutions will now be unable to proceed because the statutory time limit for prosecutions has expired. Technical errors get down to the fine nub of the law. We have seen it in

various cases, and I include a case against a large landholder in the South-East from the RSPCA. Someone got something wrong in the filing of the reports and so the whole case was pulled.

You just cannot go back and change the legislation. There was no call to change legislation then because someone—I think it was more than a technical error, but it is history now—made a very grave error in some of the evidence that was put up for that supposed judgement on the pastoralists involved, and it caused a lot of grief and a lot of pain for that person, Mr Tom Brinkworth, and his family.

Laws are not something to be trivialised, and it is why we are in this place, to make laws, amend laws and occasionally repeal laws. Some would say we should repeal a lot more, to take a lot of the red tape out of life. We have been told by SafeWork SA that there are no other proceedings under the Work Health and Safety Act impacted by the technical error. Certainly, a range of stakeholders have indicated that they do not like the idea of this legislation. There has been a diversity of views, but most of them have been against passing this bill, because essentially most, in fact nearly all, stakeholders have expressed concern at the retrospective nature of the bill.

I think that is the biggest issue here. We just cannot keep playing with legislation as if it is the parliament's plaything, because someone has made a mistake. It is up to the government, it is up to the bureaucrats, to make sure that items are done in due course. I can assure you that if anyone has a problem in their workplace, SafeWork SA is on the case. That is as it should be; you should be able to expect to go to work, whether you are working for someone or whether you are self employed like many of my friends are as farmers, and you should be able to expect to go home so that you can see your family at the end of the day and start again the next day.

I certainly know from talking to some of my friends who have had workplace accidents. One friend several years ago was very lucky to survive a hay bale coming over the front of a front-end loader. If it had not been for a roll bar and some other things on the tractor, it probably would have killed him; it damn near did. It was certainly their right to be there and it was the right thing to do, and SafeWork SA was down there like a shot to investigate. I commend them for that because, unless we have safe workplaces, perhaps there will be times when sadly people do not get home to see their families and kiss their kids goodnight and that kind of thing.

It makes me wonder when you have an efficient group like SafeWork SA and we see some fundamental errors being made in regard to the previous legislation. As I indicated before, I have my sympathies with the two families involved in these two cases and many people who have put

their case to us about this bill. They acknowledge the potentially emotional prospect of grieving families criticising the fact that allegedly—and I repeat, allegedly—'guilty' companies and individuals could escape prosecution because of what the minister describes as a technicality.

The simple thing is in all these things, especially in workplace accidents, is that you have to get it right. Business SA is strongly opposed to the bill, and their argument is supported by a number of the stakeholders. I quote from the Business SA commentary:

Statutes of limitation exist to protect defendants (who are innocent of any offence until proven guilty) from the threat of protracted proceedings and to ensure that proceedings are pursued diligently while evidence and witness accounts are still available and relatively fresh.

The principle of protecting a defendant's rights until they are proven guilty is a fundamental pillar of our legal system. The Government's proposed amending Bill is therefore implying that the Parliament is being asked to reduce the defendant's rights in order to fix a blatant administrative error by the prosecution.

It also implies that the defendants' rights are considered to be inferior to the need and the power of the Regulator to prosecute.

Retrospective legislation is rarely good policy. It should only be considered in relation to criminal matters in the most extreme circumstances as it is well recognised in jurisprudence to be a fundamental human right which should not be abrogated by retrospective legislation in order to achieve a criminal conviction.

As stated early, we empathise with the family that want justice to be done by way of a proper legal process. Frankly, however, the only one that arguably has denied the family justice is the Government because of what appears to be the inexplicable error of the Regulator and/or the Crown Solicitor. Accordingly, it is those agencies that should be held to be accountable.

In addition, there are secondary issues. In our view the proposed Bill does not limit potential prosecutions to just the two cases that have been cited. Also if the amendment Bill was passed it would set an unacceptable precedent where the Government, or indeed a future Government, could argue that as this Bill has been passed to fix a blatant administrative error then any other legislation should also be amended on similar grounds. That's a slippery slope the Opposition must not support.

For all of the reasons detailed above we strongly oppose the Government's amendment Bill.

In the light of legal judgements that are made all the time, there is always talk about precedents. A precedent is the thing we really need to look at here. I am not a lawyer but I have seen enough legal cases and I am sure that at least some of the TV programs are close to the truth. A precedent is something that judges look at in a very defined manner because once a precedent has been set, it makes it far simpler for a judge looking at a similar case, whatever the case may be, to say, 'We have the precedent of such-and-such a case. This is a very similar proceeding,' and they judge accordingly imposing any penalties or fines as they see fit.

I think it would be extremely dangerous to set a precedent in this house, otherwise we would be in here all the time. If someone had thought they were severely wronged, we would have to change the law just to suit them, and I just do not think that would be right. In regard to groups and some of the stakeholder views in regard to the bill—and we have already indicated Business SA, NECA, MBA, AHA, AIG, HIA, lawyers for defendants who are opposed to the bill—the MTA has significant concerns with the bill, and SAWIA, SISA and AMIC have significant concerns with the bill. It is noted that at the time of this briefing no responses have been received from VOID and SA Unions, but it is thought that they would probably generally support the bill.

When I compare the summary of events by Business SA and how it thinks this bill, if turned into an act within law, might bring other proceedings apart from the two proceedings that have been cited in the discussion, I note that the Attorney states he believes he has received advice from SafeWork SA that there are no other proceedings under the OHS & W act that have been impacted by the technical error. Well, there are two sides of the argument already from two groups involved in this; the Attorney and his department and Business SA are already in a conflicted position over whether this will impact on other cases. I am not talking about whether there was grievous harm done or damage done, or whether someone should have been held to account; for the simple reason that they were not held to account when the law was in place is why I believe this bill should not be passed.

We pay lots of money to very good people in departments—lawyers, bureaucrats, etc.—to make sure that these things are right, and it is up to the government to make sure that these things are right as well. It will be interesting to watch the passage of this bill once it goes through this place and see how the debate goes in the other place. I certainly agree with members on the Liberal side of the house not to support the bill on principle. Again, I do extend my sympathies to the families involved, but we must remember that we have laws in place to work for the whole community. We must make sure that the people who look over these laws, and, hopefully, make them work in their proper manner, do so in a diligent way and that, basically, we do not have a major stuff up like we have here.

