



Speech by

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Hansard 29 April 1999

COAL MINING SAFETY AND HEALTH BILL

MINING AND QUARRYING SAFETY AND HEALTH BILL

Mr PAFF (Ipswich West—ONP) (3.34 p.m.): This Coal Mining Safety and Health Bill causes me some serious concerns. Coal constitutes about half of Queensland's mining output. Approximately 87% of coalmining is open cut and 13% is underground. The new safety and health legislation before the House will maintain the positions of industry health and safety representatives in the coal industry and district workers' representatives for the metalliferous mining industry. How does the Government justify its actions? There are certain provisions in this safety legislation that the industry is not happy with but that the Government has included because it says it is also part of the Workplace Health and Safety Act. However, there is no union controlled inspectorate in the Workplace Health and Safety Act, so why should the mining industry have one?

The proposed legislation is based on the doctrine of duty of care, with the responsibility of the safety and health of miners being transferred to management and employees at the site, but this will be hampered by the presence of a union-dominated inspectorate. The Government has a role to provide an inspectorate to ensure that mines are complying with the rules and, as a last resort, to prosecute those found in non-compliance, but there is no role for a union-controlled pseudo inspectorate.

The key to safety excellence is to have employees and employers working together on safety. The safety legislation has been developed to facilitate this, with employees provided with greater powers and involvement than that offered to employees under the Workplace Health and Safety Act. On the other hand, for the unions to retain their power base and relevancy, they must perpetuate the myth that the safety of personnel depends primarily on them, rather than management or other employees. It is obviously in the unions' interests to maintain a culture of confrontation on safety issues between the employer and the employee and to promote the union as the crucial middleman between the employer and the employee on safety matters. One of the primary tools for the union to keep employers and employees apart on safety has and will continue to be the union inspectorate.

With changes in industrial relations, there are now mines that have minimal or no union members on site, or a range of unions represented at the mine. This legislation does not reflect the reality. In the coal Bill, only members of the CFMEU have the right to vote for and appoint industry safety and health representatives. Under the mining and quarrying Bill, only industrial organisations can nominate individuals to be district workers' representatives. These positions are supposedly to represent all employees, but in the case of the coal sector in reality only members of the CFMEU are given the right to select them.

We have seen legal advice that, while these provisions have been drafted to get past anti-discrimination and industrial laws, the same may not apply to the practical application of the legislation. In his news release of 15 March 1999, the Minister proudly boasted, "The mining inspectorate has been considerably strengthened from 33 to 44 positions in preparation for this legislation." Why then is there the need to maintain an additional union inspectorate? Perhaps the Minister has no faith in his newly strengthened inspectorate to effectively administer the law.

The proposed district workers' representative positions will be funded from the public purse. The legislation provides that the district workers' representatives will be employed under the safety legislation and not under the Public Service Act 1996. These union-nominated inspectors will be fully remunerated

by the taxpayer but will not be subject to the appropriate onerous responsibilities and accountability. The legislation also states that the remuneration and allowances of the inspectors will be decided by the Minister. What magnitude of publicly funded package does the Minister have in mind for the union appointees? The legislation also provides that the Minister establishes the conditions for holding office. What sort of conditions will they be?

The CFMEU has the sole right to select and appoint the industry safety and health representatives. Furthermore, it is left to the union to determine what sort of competency above the minimum of deputy's certificate stipulated in legislation and experience it deems appropriate for such powerful positions.

Industry safety and health representatives have the power to enter any coalmine, regardless of whether or not there are any CFMEU members on site, and suspend part or all of the operations if they believe the action is warranted. I am concerned at the amount of power that this provision gives to these people. I believe this will lead to numerous strikes in the industry. If an industry safety and health representative acts inappropriately, causing financial loss to a mine, will it be the CFMEU or the Government that has to wear the resulting liabilities?

There are no minimum qualifications for the position of district workers' representative stipulated in the Bill. It is left to the Minister to determine the appropriate degree of competency or experience. As is the case with industry safety and health representatives, district workers' representatives have the power to suspend operations at a mine.

The existing legislation is very prescriptive and it is therefore easy to define compliance. The proposed performance-based legislation is much more subjective, requiring a higher degree of competency to ensure effectiveness and fairness. Therefore, I believe that both industry safety and health representatives and district workers' representatives may be insufficiently qualified to operate in this environment and that the possibility of wrong decisions by these officers will be significantly increased.

One other area of concern to me relates to chapter 5 of the Queensland Criminal Code Act, which deals with criminal responsibility— specifically sections 23 and 24. The question of onus is dealt with in these sections. It is a fundamental principle of criminal law that it is for the Crown to establish that an offence has been committed and not for an accused individual to establish his or her innocence. This principle is enshrined in the Legislative Standards Act 1992. This Act establishes as a fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals. Whether or not this is achieved by legislation depends on a number of prescribed matters, including that the legislation does not reverse the onus of proof in criminal proceedings without adequate justification. The structure of the CSMH effectively does partially reverse the onus of proof in criminal proceedings. I do not understand why the Government would want to exclude the application of sections 23 and 24, which deal with mistake of fact and intention/motive.

Clause 34 is completely out of step with clause 7, which specifies how objects are to be achieved. In my view, clause 34 is detrimental to achieving the objects of the Bill. It can reasonably be argued that clause 34 should not be included, for technical and legal reasons, when proper attention is paid to clause 7. However, the situation created by clause 34 is much more serious than that. It will severely hinder the task of the Mines Inspectorate and that of any inquiry held into what may appear to be a breach of the legislation. Clearly it is counterproductive and the only outcomes, in my opinion, would be wasted energy and unnecessary legal expense. Such energy and moneys would be best applied to managing risk to safety and health. It will not facilitate an inquiry into the cause of an accident, nor will it help in preventing a recurrence. Significant experience suggests that this clause should be removed.

I repeat what I said at the outset. Mining output of coal in Queensland is 87% open cut and 13% underground. I do not understand why the provisions of the Criminal Code relating to criminal responsibility should be removed in relation to the Coal Mining Safety and Health Bill.
