Speech by

Mr ROB MITCHELL

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COAL MINING SAFETY AND HEALTH BILL
MINING AND QUARRYING SAFETY AND HEALTH BILL

Mr MITCHELL (Charters Towers—NPA) (12.30 p.m.): Mr Deputy Speaker, I am pleased to see you in the chair because I wish to take this opportunity to apologise for misrepresenting what you said in Parliament on Thursday, 15 April during the debate on the WorkCover Amendment Bill.

Mr Hamill: Is that why you resigned?

Mr MITCHELL: No, it happened before that. Mr Deputy Speaker, I was misinformed as to the content of your speech. I hope that you accept my apology.

Mr McGrady: You're a gentleman, Robbie.

Mr MITCHELL: When I am wrong, I take it on the chin.

While I was the shadow Minister for Mines and Energy and I was studying these Bills, an article appeared in the Courier-Mail on 25 March headed "Miners blast government cave-in". In that article, the Queensland Mining Council was quoted as saying—

> "The whole of the mining industry, including every single chief executive, has implored the Mines Minister and the Premier not to proceed with these industrial changes which wreck cutting edge legislation. Our pleas have fallen on deaf ears because of the Government's willingness to abide by the trade union's agenda."

When I looked at both Bills, I was left with no doubt that the criticisms of the Mining Council were very accurate and that this Government has presented the Parliament with two Bills based on draft legislation of the previous coalition Government, but with a raft of changes designed mainly to appease the AWU and the CFMEU.

There is no need for me to outline the various positive elements of both Bills as these have already been discussed. However, I acknowledge that in moving away from a prescriptive, bureaucratic and legalistic approach to safety and moving towards the development of a duty of care culture at all levels of the industry, the general thrust of these Bills is positive and should have unanimous support.

It is worth while for me to sum up my philosophy towards workplace health and safety in the mining industry. Workplace health and safety should be based on best standard practices that are appropriate and relevant to each individual work site. There should be a devolution of authority to workers and management at each site to develop site specific safety management systems, with on-site management of risks. Responsibility for safety should lie primarily with trained workers on site, with ongoing supervision and enforcement being the responsibility of inspectors appointed by the Department of Mines and Energy. Much in the Bills is consistent with that philosophy and deserves general support. However, despite the Government's stated desire to introduce modern and best practice legislation, what we are now debating are Bills that retain a range of redundant legislatively mandated positions and, in the case of two of these, with a number of wide-ranging police powers that have the capacity to impede workplace safety reforms and jeopardise the operations of mines.

Before I discuss these serious drawbacks, it is important to highlight the fact that mine safety has shown quite significant improvements over the past four years. The lost time injury frequency rate

for the mining industry as a whole, including all coal and metalliferous mines as well as quarries, has dropped from 27.7 in 1993-94 to 24.7 in 1994-95, to 22 in 1995-96, to 20.2 in 1996-97 and to 15.5 in 1997-98. That is a good reduction. In other words, there have been consistent improvements in this key safety indicator for each year over that four-year period. Of course, when one studies the figures more closely, one sees that the most dramatic improvements have been in underground coalmines, with a drop in that period from 73 to 39.4, which is well under half, and in open-cut coalmines from 24.9 to 7.8. That is tremendous work and the figures are improving all the time. There were also good improvements in quarries, with a drop from 23.7 to 13.7. The improvements in the metalliferous sector were not as dramatic, with surface metalliferous improving from 18.6 to 11.8 and underground metalliferous from 21.8 to 19.3. There has been an improvement all the way across the mining sector. Nevertheless, there were slight improvements in this sector.

It is patently clear that the greatest risks to miners are posed to those working underground. Despite the tremendous improvement in underground coalmine safety, underground coalminers remain those who are most at risk. In fact, figures for the period to December 1998 would indicate that there have been further improvements in both coal and metalliferous areas in the order of 35% to 40%. As these figures are not from official sources, I do not rely on them for the purposes of this speech. However, I record in Hansard that the mining industry—and I include everyone involved in it—has ensured that workplace health and safety is now significantly better than at any time in this industry's history.

For this industry to have a lost time injury frequency rate that is now better than those of the manufacturing, transport and storage industries is a development that few would have believed possible even a decade ago. That fact has been mentioned by previous speakers.

Mr Pearce: They're putting them in store rooms in back offices—injured workers. They're not letting them go to work.

Mr MITCHELL: I am outlining how well the industry is doing, which is a credit to the mine workers and everybody on site. Everything is improving and that is a credit to all involved.

These figures are important because they highlight that the mining industry has already taken significant strides in recent times. I would have liked to have spoken on Bills that consolidated this trend. Instead, these Bills place roadblocks to the reform passage and are a testament to the type of trade-offs with the union movement that the Labor Party has become associated with over the years.

The Queensland Mining Council has pointed out that both Bills contain penal provisions and argues that these provisions will have exactly the opposite effect of what is intended by the Government. The argument of the council is that both Bills are designed to maximise the opportunity for the State to obtain information about accidents so that preventive strategies can be quickly and decisively put in place. However, inserting penal provisions virtually guarantees that people whose evidence may well be vital in determining the cause of an incident will automatically be seeking legal advice and will be advised to seek legal immunity. The Mining Council concludes that this will completely undermine the stated objective of the Government to focus on improving safety, and instead will slow this process down in a legal and confrontational mire.

Finally, the council points to the fact that the New South Wales industry has operated with penal provisions since 1983 yet Queensland, which has not had them, is twice as safe. The logical implication is that penal provisions themselves do not promote safety or have any effect, except possibly a negative one, on achieving a safe working environment for our miners. It has also been pointed out that not one person has been imprisoned as a result of the penal provisions in the general Workplace Health and Safety Act and that there are already ample opportunities for people whose actions have endangered others to be dealt with under the general criminal law.

There is no doubt that the penal provisions in both of these Bills are drafted in a very wide manner. People who are potentially liable to be prosecuted range from all people on site to a designer, manufacturer, importer or supplier of plant used at a mine, an erector or installer of plant at a mine, a manufacturer, importer or supplier of substances used at a mine or a person who supplies a service at a mine. Liability also attaches potentially to the holder of an exploration permit, mineral development licence or a mining lease for the mine. Those people are liable to a maximum penalty, if successfully prosecuted, of two years' imprisonment or a fine of $60,000.

Mr McGrady: That's a decision for the court.

Mr MITCHELL: But the Bill states that that is what it is. I might add that in Alert Digest No. 4 the Scrutiny of Legislation Committee has usefully set out in tabular form the types of penalties that the Coal Mining Safety and Health Bill prescribes, and the matters criminalised are interesting reading. I will deal with one or two of these before I conclude.

The Bill compounds the matter by specifically excluding people caught up in the penal provisions web by relying on sections 23 and 24 of the Criminal Code, which include general defences of accident, events occurring independently of the exercise of a person's will and a mistake of fact. As

the Scrutiny of Legislation Committee pointed out, these defences may be critical for some alleged breaches, and the committee gives as an example the obligation on a coalmine operator to appoint a site senior executive for the mine. It is totally unacceptable that these core defence provisions of our criminal law are being deleted from this Bill, and this action only compounds the situation.

In assessing the relative merits of the cases put forward by the Government for having penal provisions and by the Mining Council for opposing them, one fact above all else stands out, that is, the retention of statutory positions in general, but in particular the retention of the industry safety and health representatives in the coalmining industry and the district workers' representative in the metalliferous and quarrying sector.

Both of these Bills require the mine operators, in consultation with employees, to develop safety and health measures on site to address potential risks at the mine. Both Bills require the establishment of site safety and health representatives and committees. Both Bills require a position of site senior executive and impose on that person duties to provide help to the representatives and the committees, to exchange key information with a site representative and to display information about the identity of each site representative for the relevant mine.

The site safety representatives are elected by mine workers directly and are empowered to carry out inspections, review procedures, detect unsafe practices and conditions and investigate complaints—all in all a responsible and powerful position. A person holding the position must have the relevant safety and health competencies determined under both Bills.

Both of the Bills contain very extensive inspectorial powers. As we would expect, inspectors appointed by the Crown need to be given wide powers to properly enforce legislation such as these Bills, which are critical to our State's economy and which, if not properly enforced, could result in potentially disastrous loss of life. Yet under both Bills, union nominated officers are superimposed over inspectors and site safety officers. In the case of the Coal Mining Safety and Health Bill, the CFMEU is actually named in the legislation as the union from which these persons are selected. In other words, this Bill attempts to give the CFMEU sole coverage of the whole coalmining industry. Although the general mining bill is less obvious in its bias, it is clear that the AWU will be the union that will be nominating district workers' representatives in the metalliferous area.

The duties and powers of these officers are very wide. They are appointed to inspect mines, review safety procedures at mines, detect unsafe practices and conditions at mines, participate in investigations into serious accidents, investigate safety or health complaints and generally help in relation to safety and health initiatives designed to improve mine conditions.

To give effect to these wide duties, the Bills empower these union-nominated people to make inquiries, to enter any part of a mine, to examine any relevant documents, to take copies of relevant documents, to issue directives and to require a person in control of a mine to help the union officer in exercising these powers. Any failure to help or to hand over documents will result in a fine of 100 penalty units, or $7,500.

As I mentioned, the Bills give these union officers the power to issue directives. If these union officers form the view that the risk from particular mining operations is not at an acceptable level, they may give a directive to any person to suspend operations in all parts or a part of a mine. The Bills even provide that this directive can be given orally. I believe that is too much power.

In other words, a union officer can walk into a mine and, on the spot, close down all or part of it. The Bills provide a mechanism for the review of these directives by the chief inspector, but I would suggest that it is plainly academic and attempting to close the gate after the horse has bolted. As soon as a mine is closed down, the damage is done. By the time that such a directive is reviewed and revoked, the costs and dislocation caused would be enormous.

It is even more troubling when we consider that both Bills protect union representatives who close down a mine from civil liability, provided that they have acted honestly and without negligence. In this event, it is the taxpayers who can be sued by a mine operator who has suffered possibly enormous damages. These Bills even provide that a person must not disadvantage an industry health and safety representative or a district workers representative from exercising their powers. If they do, they are liable to a fine of 500 penalty units, or $37,500.

The term "disadvantage" is not defined in either Bill, but having this sort of sword hanging over our head is a totally untenable and unacceptable situation, especially when "disadvantaging the union representative" might involve not wanting to close down a mine at a cost of millions of dollars when mine management know that the direction is wrong.

Honourable members should think about those powers. Here we have persons nominated by a union who are given duties and powers of a nature similar to the site safety representatives and inspectors. I concede that inspectors are given a much wider range of powers and duties. Nevertheless, the power vested in these union representatives is ridiculous.

Mr Pearce: They're going to love you out there, Rob.

Mr MITCHELL: They do not love me now, anyway, so what is the use?

These union representatives are empowered to walk onto mine sites and give legal directions, which could result in massive fines if they are disobeyed. They can copy documents, make inquiries, require assistance, enter onto any part of a mine and then issue a directive by word of mouth to shut down a mine. This is despite the fact that the mines they may be entering may contain no union members at all. Honourable members should just stop and think about Gordonstone. The member for Fitzroy would know all about it; he has been there a few times.

Under the Coal Mining Safety and Health Bill, the CFMEU would be given the sole power to nominate industry safety and health representatives. As I said, those people can enter onto any mine site, disrupt operations and, at the end of the day, close down part or the whole of a mine. Having regard to the protracted dispute at that mine and the actions of the CFMEU and its rent-a-crowd friends, how could the workers or management at Gordonstone be anything other than apprehensive about how the CFMEU union representatives will exercise these powers?

Why should a union representative have any power at all over a workplace where not all of the workers are members of the union? Why should these Bills, under the cover of protecting mine workers' health and safety, give union officers police powers and try to entrench their position in the workplace? I can understand why the Mining Council and the industry are apprehensive about these penal powers. I can understand it all too well. In addition to all of that, both of these Bills empower these union representatives to make a formal statutory recommendation to the chief inspector to commence prosecutions.

Why should these Bills contain any mention of union appointed officers or site senior executives having the statutory right to recommend prosecutions? If these people have a complaint to make, they have the right, in common with anybody else, to approach the inspectorate. However, the insertion of this right in the Bills gives the complaints of these people a semiofficial status. It is the sort of status that is unwanted, unneeded and totally counterproductive.

These Bills even provide that prosecutions can be launched not just by the chief inspector, the Attorney-General or his nominee, neither of whom I would argue against, but also by a person authorised by the Minister. In other words, the Minister for Mines and Energy can nominate whom he likes to start prosecutions. He is given the discretion and latitude to nominate any union representative he likes or any person who has an industrial stake in the mining industry. I am not suggesting that this is the Minister's intention, but I am pointing out that there is nothing to stop this occurring. Under these Bills, the only thing that would prevent it at the moment is the lack of a nomination by the Minister of the day. This type of power casts a cloud over the whole prosecution process and taints the argument that penal provisions should be in these Bills.

In the time remaining I wish to touch on one or two other issues. The Scrutiny of Legislation Committee has queried why the chairpersons of the Coal Mining Safety and Health Advisory Council and the Board of Examiners are to be appointed for the term that the Governor in Council considers appropriate, whereas the members of these bodies are limited to a particular period. This will be discussed further during the Committee stage. This sort of open-ended power is unsatisfactory. Clearly, some time limitation should appear in the legislation.

Secondly, the committee also deals with clause 180, which provides that a person must not give an inspector, inspection officer or union appointed industry representative a document containing information the person knows is false or misleading. The committee makes the following point in its Alert Digest—

> "Clause 180 goes on to provide an exemption where the person, when giving the document to the inspector or other relevant person, tells them 'to the best of the person's ability, how it is false or misleading' and, if the correct information is obtainable, gives it to the inspector or other person.
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> This seems at first glance a relatively onerous duty to impose on the person giving the document, given that the nature of the documents concerned is not subject to any express restriction."

I totally agree with the committee that this provision is too open-ended and potentially unjust. It is these types of vague, broad and oppressive obligations and penal provisions which highlight why the Mining Council is so concerned about the legislation.

I have touched on just some of the provisions in the Bills that cause me concern. In summing up, I say that these Bills are basically good, but they contain elements that have the potential to impede safety reforms and could be used unjustly and in a biased and oppressive manner. In particular, the combination of very broadly drafted penal provisions with a union appointed inspectorate results in the Mining Council having every reason to feel uncomfortable about the Bills. I have not

suggested at any stage that these Bills should not contain some sort of penal provisions. In fact, it would be unusual if Bills of this nature did not have some penalties for persons not observing this or that requirement. However, the way that these Bills have been constructed goes far beyond what is either necessary or desirable.

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