Speech by

Hon. R. E. BORBIDGE

MEMBER FOR SURFERS PARADISE

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

Hon. R. E. BORBIDGE (Surfers Paradise—NPA) (Leader of the Opposition) (5.02 p.m.): Workplace health and safety in Queensland's coal and metalliferous mines and quarries is a matter that should not be a question of party politics or contentious debate. A safe workplace for those who work in our mines and quarries should be an ongoing policy goal that unites management and workers as well as all of those other people who are stakeholders in our great minerals industry.

It goes without saying that the horrific accident at the South Blackwater mine on Saturday where a mechanical engineer had both legs amputated when they were caught in the chain conveyor of a continuing mining machine is a matter that unites all Queenslanders both with heartfelt sympathy for the injured worker and his family and with horror at the nature of the accident. For those of us in public life, it brings into sharp focus the need for to us pass laws and then properly enforce them so that those types of incidents are kept to an absolute minimum. I do not intend to speculate as to the circumstances of this accident, as it is being properly investigated at the moment, except to say that mine safety is too important to be used as a bargaining tool by unions or management.

It is also too important to be compromised by legislation such as this Bill which, in its finished state, owes more to Labor Party horse-trading than to any serious and genuine attempt to tackle directly the issue of workplace health and safety. These Bills are a testament not to a Government determined to introduce state-of-the-art safety legislation, but a Government that has attempted to buy off both the CFMEU and the AWU.

Under the previous coalition Government, a lot of time and effort was expended in drafting mining workplace health and safety legislation and, by the early part of 1998, Bills had been prepared. Tom Gilmore, who was responsible for the preparation of those Bills, together with his Public Service officers, met with both the mining industry and the various trade unions that have a stake in this industry, specifically the CFMEU and the AWU. Various compromises were struck and it seemed that there was going to be an outbreak of reason and consensus. It seemed that, at long last, having witnessed the situation in which the Goss Government in six years was unable to produce any reforming legislation, we would at last see modern, state-of-the-art safety legislation for our mines and quarries— legislation that was based on modern thinking, on the creation of a duty of care culture and on empowering workers at all levels of the industry to play their part in the creation of a safe workplace; legislation that would move away from a prescriptive and hierarchical approach to safety; and legislation that would be flexible and realistic enough to deal with the peculiar situations faced at each and every mining and quarrying site, and yet also be proactive enough so that the workers most at risk would be the people most empowered to craft safety measures.

At least, that was the goal. Of course, some compromises had to be made. Currently, we have legislation governing safety in our coalmines that reflects an era of coalmining that largely disappeared decades ago. It was developed while the Depression was still in full swing and many of the positions, requirements and approaches reflect an era long gone. The same can be said about the general mining and quarrying legislation, although it is at least slightly more up to date. The General Manager of Blair Athol mine, Mr Rod Bates, said a few weeks ago—

"Unions in the past have used safety as a restrictive work practice."

In defending these Bills, the Minister is quoted in the Rockhampton Morning Bulletin of 10 May as saying—

"The status quo would be maintained."

Unfortunately, those two quotes sum up what is wrong with this legislation. Both Bills have been modified by this Government to ensure that the current restrictive work practices that are in place are being maintained and, on top of that, both Bills, through the use of penal provisions, actually make the situation worse.

These Bills have less to do with any genuine attempt to improve workplace health and safety than they have with a barefaced attempt by this Government to shore up the CFMEU's position in coalmines and the AWU's position in most metalliferous mines and quarries. Michael Pinnock, the CEO of the Queensland Mining Council, in responding to the usual over-the-top attacks on the mining industry for which the member for Fitzroy has become notorious said—

> "We were responsible for the new legislation to go before Parliament, which would have been the best in Australia if Jim Pearce and his CFMEU colleagues had not been able to reinsert industrial provisions, which destroy the basic principles in the Act."

In response to the member for Fitzroy's threat to name mining companies if they did not refocus on health and safety issues, Michael Pinnock went on to say—

> "We find it grotesque and offensive— particularly after what has been done to the legislation."

The Opposition also finds many aspects of these Bills grotesque and offensive. At the outset, let me make it very clear that we do not oppose penal provisions per se in safety legislation. There are penal provisions in the general Workplace Health and Safety Act and a legitimate case can be made out for specific penal provisions in these Bills. However, we object to having very widely drafted penal provisions inserted into these Bills, backed up by police powers that in some cases are quite draconian, where the basic defences provided under the Criminal Code of accident, acts occurring independently of one's will and mistakes of fact are specifically deleted. The Opposition finds it impossible to accept that there is any need to remove the basic defences given by sections 23 and 24 of the Criminal Code. In fact, we suggest that taking away these fundamental protections undermines the credibility of penal provisions and is manifestly unfair. The Opposition objects to recognised standards made by the Minister alone, not subject to parliamentary scrutiny and not even with the requirement that they be drafted by the Parliamentary Counsel which, if breached, could result in a person being subject to the penal provisions of these Bills.

The Opposition objects to the bodies that are established to oversee the effectiveness of these standards being appointed by the Minister alone and being subjected to the sack by that very same Minister—as the Bills state—"for any reason or none". The Opposition objects to the basic and fundamental arbitrary nature of the powers granted by these Bills and the way in which they can be misused and the harm that can be inflicted. It finds it hard to accept legislation where safety officers are appointed or nominated by trade unions when there are site safety officers democratically elected at each mine or quarry site by the workers themselves and Public Service safety inspectors appointed by the Department of Mines and Energy. Recently, when I criticised the fact that, under the Coal Mining Safety and Health Bill, the CFMEU is actually provided with the exclusive power to appoint three of its members as industry safety and health representatives, the Minister defended this on the basis that these positions currently exist.

I understand full well that since 1938 the CFMEU and its predecessors have been able to appoint union safety officers. Likewise, for some years now the AWU has been able to appoint district workers' representatives. The Minister also criticised my comments that these union representatives would have the power to close down mines. He suggested that this power had existed for many years and nothing was being changed under these Bills. He even claimed that there would be freedom of choice so far as unions were concerned. Let us deal with the facts and not the rhetoric.

First, union safety officers currently do have the power to suspend operations in any dangerous place until that place has been certified by a Public Service inspector to be safe. Under these Bills, union safety officers will have the additional power to make inquiries about the operations of mines, enter any part of a mine and carry out their functions, examine any document relevant to safety held by persons with obligations under the Bills, copy safety and health management system documents and require a person in control of a mine to give the union representative help in exercising one of these powers. In other words, union safety officers will be in a much more powerful position than at present.

On top of that, anyone obstructing a union safety officer exercising these powers can be fined up to 100 penalty units and, if a person disadvantages a union safety officer exercising their powers,

they are liable to a penalty of 500 penalty units. The term "disadvantage" is not defined. Once again, these penal provisions are currently not in legislation.

However, the Bills go even further and provide that a union safety officer who closes down a mine and possibly causes hundreds of thousands or even millions of dollars of damages is actually protected from any civil liability. Provided the action was done honestly and without negligence, the people of Queensland are made liable to pick up the tab for the actions of union safety officers. Again, there is nothing like that in the current legislation.

If all of this were not bad enough, the Bills actually and quite disgracefully give union safety officers a statutory right to go to the chief inspector of the Department of Mines and Energy and make a formal recommendation that charges be laid against a person or persons. This places the chief inspector in a very difficult situation. Why on earth should a union appointed safety officer be given the statutory power to go to an independent public servant and demand that this or that person be charged? In normal circumstances, the chief inspector would get an independent and objective report from a Public Service inspector and make a prosecution decision based on the facts and professional advice. Instead, this Bill gives union officers, and people who no doubt have their own agendas, the formal right to demand that people be charged. This pollutes and compromises the whole prosecution process, and is an unjustified and unprecedented interference in the decision to prosecute, which should be immune from industrial pressures and politics.

The Opposition's grave concerns are further compounded when one reads that the Minister is given the power to nominate people who can launch criminal prosecutions, apart from Public Service inspectors or any person nominated by the Attorney-General. The Opposition suggests that it is incorrect and inappropriate that criminal prosecutions should be launched otherwise than by people who do not have a stake in the workplace, who are professionally qualified, who are above reproach and who are independent and seen to be independent by all citizens. None of these provisions is in the current legislation.

Therefore, for the Minister to say that this Bill just reflects the status quo is wrong and nothing more than an attempt to gloss over the fact that the CFMEU in particular is being given powers and protections that place it in a position where it can try to impose its will on the mining industry. These Bills have as much to do with attempting to shore up the interests of the CFMEU and the AWU as they have with workplace safety. In his statements, the Minister also was silent about the trend towards both contract labour and non-union labour. I will deal only with the coalmining industry because it is clear that the most damage that these Bills will cause will be in that sector.

As the Minister knows, there are minimal CFMEU members at both Gordonstone and Ensham. The Minister also knows that the following coalmines are operated with contract labour: Burton, Coppabella, South Walker, Collinsville, Jellinbah East, Oakleigh, Ebenezer, Newlands, Alliance and Wilkie Creek. It is no secret that there is a trend away from trade union membership in these mines, yet under the Coal Mining Safety and Health Bill the right to appoint industry safety and health representatives is stated specifically to be exclusively by the CFMEU. There is no scope for any other union to become involved. It is a bit like Cabinet. There is no scope for non-union involvement.

The Minister claims that the right or privilege currently exists, and I am aware that this has been the case since around 1938. However, the world has moved forward since 1938 and, as I have just highlighted, these Bills substantially increase the powers and protections of union safety officers. One way that the world has moved on is demonstrated by Gordonstone and Ensham, where the CFMEU does not represent a majority of workers. Why should union officers appointed by the CFMEU be empowered to enter onto Ensham and Gordonstone where they do not represent the workers? Why should the management of those mines be forced to hand over documents to union representatives who do not represent their work force? Why should people be subject to prosecution for not cooperating with those union representatives when those people have no moral right to be on the premise in the first place? Why should the taxpayers of Queensland be required to pay massive compensation bills for the actions of union safety officers shutting down mines? Why do we need an extra layer of union safety officers when at each and every mine and quarry site in this State there are safety officers, elected by the workers, who can suspend mining operations in the event of danger? If the duly elected workers on the site do not want to close down a mine, why should an off-site union safety officer—and in the case of Gordonstone and Ensham, a union officer who does not even represent them—be able to come in and override their wishes, put them out of work and expose the taxpayer to massive compensation bills?

If the best that the Minister can do in justifying this anomalous and quite outrageous situation is to say that it is simply maintaining the status quo, then I hark back to Rod Bates' comment about the unions using workplace health and safety as a pretext for maintaining restrictive work practices. I would go even further and say that it has as much to do with trying to shore up the unions themselves. It is a pretty sad state of affairs when the CFMEU has to cajole the Labor Party into giving it closed shop or

greenfield status in coalmines by means of workplace health and safety legislation. In fact, I label it as corrupt.

The member for Hinchinbrook has circulated a number of amendments that will be moved during the Committee stage of the debate. One of those amendments will ensure that union safety officers will only be able to exercise their powers in a mine where a majority of the workers at the mine are members of the union. No-one with any sense of justice could seriously argue with that proposition. With the serious industrial strife at Gordonstone, it would be improper to allow CFMEU appointed safety officers to enter that mine site and exercise the very wide powers under the coalmining Bill. How could anyone say with confidence that those union appointed officers would exercise their powers fairly and not in an endeavour to make life as difficult as possible for both management and non-CFMEU workers?

Whether it be Gordonstone, Ensham or some other mine in the future, there is a basic and fundamental principle at stake. That principle is that the CFMEU or any other union should not be in a position to use workplace safety legislation on sites where it has no industrial presence and use workplace health and safety powers in a manner designed to advance the union's interests rather than the safety of the workers. I look forward to the Government supporting this amendment. If the Government opposes the amendment, it will entrench in legislation a basic conflict of duty and interest situation and risk the escalation of industrial confrontation at certain sites.

The anomalies in these Bills have been set out at length by my colleagues and I will not repeat them except for the issue of open-cut examiners. Under the Coal Mining Safety and Health Bill, these provisions will be maintained for open-cut coalmines even though they do not exist for open-cut metalliferous mines or quarries. These positions have existed in coalmines for more than three decades, even though until recently the safety record for surface metalliferous mines was much better. Some of the surface metalliferous mines employ many staff: Weipa, 654; Phosphate Hill, 285; Ernest Henry, 282; Mount Leyshon, 380; Kidston, 431; and Stradbroke Island, 215.

If surface metalliferous mines could have achieved a better safety record than that of surface coalmines without such statutory positions, a serious question arises as to why these positions are being maintained. Of course, the cat was let out of the bag by the member for Fitzroy. He congratulated the Minister on keeping these positions and said—

> "... those positions almost became extinct because in the past, some—but not all—OCEs have allowed themselves to be sidetracked. They, to put it simply, did not do their job. They became messenger boys and carried out work other than that which they were supposed to be doing."

In other words, at the behest of the CFMEU, this Government has maintained by force of legislation positions which are redundant and which even the member for Fitzroy recognises have achieved very little and, in some cases, nothing. That really sums up the tragedy of these Bills. They are motivated not by cutting-edge workplace health and safety principles, but by attempts to maintain positions, power bases and restrictive practices. On top of all of that, we have example after example of unfettered powers being given to the Minister, which the Scrutiny of Legislation Committee and the member for Hinchinbrook highlighted.

These Bills attempt to maintain the industrial status quo in our mind, but in the process they construct an edifice of more powers, more protection and more intrusive activity on a worn-out, rotten industrial base. Once again, we see legislation crafted by the so-called progressive Beattie Labor Government which is regressive, contradictory, harmful to workers' interests and absolutely inappropriate from the preamble through to the definitions, with provisions designed to appease unrepresentative sectional interests. This is the Beattie/CFMEU Government in action again.