Speech by

Hon. GORDON NUTTALL

MEMBER FOR SANDGATE

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WORKPLACE HEALTH AND SAFETY AND ANOTHER ACT AMENDMENT BILL

Hon. G. R. NUTTALL (Sandgate—ALP) (Minister for Industrial Relations) (12.44 p.m.), in reply: Firstly, I thank all honourable members for their contributions to the debate on what we believe are quite significant reforms to workplace health and safety. A number of questions have been raised by various people in this debate and I will endeavour to try and answer those questions that have been raised by the shadow minister and other speakers in my response in order to expedite the passage of the bill.

These amendments will ensure that all workers are provided statutory protection under workplace health and safety/workers compensation laws. The amendments modernise this legislation to ensure that it is effective in meeting the needs of the workplace in the 21st century. Public concern about workplace health and safety issues remains at an all-time high. The social and economic costs of workplace accidents are quite staggering. About 100 Queenslanders die at work each year and many more are injured or contract work-caused illnesses. Estimates of the cost of workplace fatalities and incidents in the Queensland community stand at approximately $3.5 billion on an annual basis.

The amendments will ensure that the Workplace Health and Safety Act 1995 can address the changing nature of workplaces. For example, Queensland has a lower proportion of its total work force classified as employees and a higher proportion as self-employed, that is, contractors of various sorts, than for Australia as a whole. This is in addition to a decline in standard-time employment, that is, fewer employers working a five-day, 35 to 40 hour week in standard daylight hours over a normal working year, an increase in non-standard or atypical employment, including contractors, the self-employed, part time and casual employment, and an increase in insecurity and precariousness of employment, that is, irregular employment contracts, changing work, shifting jobs and redundancies.

It is evident among the self-employed generally that there is an increase in the number of dependent contractors, that is, self-employed workers who have a small number of customers, compared to independent contractors. This suggests that among the self-employed there are increasing numbers who work in arrangements that more closely resemble those of employees rather than independent contractors. The current provisions of the Workplace Health and Safety Act 1995 tend to rely too heavily upon the traditional employer/employee relationship and do not adequately reflect changes to work arrangements and the complexities of the modern workplace. There is an imbalance of legal obligations in the act that are unfairly weighted against employers, especially small to medium sized employers.

These amendments seek to balance the legal obligation of employers with others who exercise greater control of risk at the workplace. These include suppliers, persons in control of buildings used as workplaces and persons who conduct undertakings that may affect the workplace. The changing nature of the labour market not only reflects the contractual basis upon which labour services are provided but also reflects the changing workplace arrangements. Outworking, mobile work, agency hire workers, franchising, self-employment, working from home and casual work, for example, are not conducted in traditional workplaces. Inspectors need to have appropriate levels of access to places where they reasonably suspect work is being performed.

The amendments to the act ensure that inspectors can effectively perform their job. The amendments will also increase safety in the workplace through trained workplace health and safety representatives and the introduction of annual workplace assessments, which will ensure that workplace

health and safety issues are resolved in the workplace. If there is a dispute over a workplace health and safety representative's entitlements, the act provides for an independent arbitrator. The amendments also introduce enforceable undertakings as an alternative to prosecution. Enforceable undertakings can provide better health and safety outcomes than monetary penalties through prosecution by giving employers the opportunity to make positive considerations to improving health and safety in Queensland workplaces rather than going through the costly processes of prosecution.

The proposed amendments also seek to align reporting requirements with WorkCover Queensland provisions reducing red tape for employers who will no longer have to report the same accident twice. For those in the construction industry, provisions also align to requirements administered by Q-Leave. In addition, the continuing growth in contractual arrangements calls into question the applicability of workers compensation requirements.

The trend towards contracting has also resulted in uncertainty as to whether and when persons are covered or have premium payment obligations under the workers compensation scheme. This particularly affects self-employed contractors, subcontractors and entities engaging labour.

As the WorkCover amnesty in the building and construction industry has shown, there is still a great deal of uncertainty regarding who is a worker and who is an independent contractor. The amendments amend the definition of 'worker' in the WorkCover Queensland Act 1996 to provide greater certainty and consistency by applying a results test in addition to other legislative criteria regarding who is a worker. The amendments will clarify the original intent of the legislation and provide certainty for employers by ensuring that a person who works for another person under a contract is presumed to do so as a worker unless it can be shown that the person is doing so under a genuine business arrangement.

Let me now address matters raised in this debate. The honourable member for Keppel made mention that he would not be supporting the amendments to the WorkCover Queensland Act 1996 on the basis that there were only two weeks to investigate the proposed changes. However, I understand that, following further consideration of the amendment, the opposition will now support the change but are seeking clarification that the amendment would not limit the capacity of legitimate independent contractors to undertake their activities. In reply, and as mentioned by the honourable member for Ashgrove, in the building and construction industry and other industries there are persons who truly wish to do business for themselves and to be recognised as such. There is no doubt that many individuals choose to become independent contractors for the various benefits and associated risks that contracting entails, for example, the freedom to choose where and when to work and the right to determine how the work is to be done. Many individuals gain a great deal of personal pride in that fact. The amendments that we are moving do not seek to deny these people their chosen course in life. They seek to define more clearly the line that separates a true independent contractor from someone who is simply providing the labour in return for a wage.

The honourable member also raised issues regarding provisions for privilege against self-incrimination in relation to certain documents. Clause 27 of the bill, which inserts the proposed new section 121, gives a workplace health and safety inspector power to require persons to give information or to produce documents to assist in the investigation. This requirement is subject to the customary privilege against self-incrimination, except for a document required to be kept by the person under this act. However, under section 122 of the act there is provision that a person has a right to self-incrimination privilege in relation to documents required to be kept by the person under the act. These two complementary provisions provide that the privilege against self-incrimination is not denied to any person.

Furthermore, the honourable member raised concern about the denial of a right to review with regard to enforceable undertakings. While this is correct, the legislation allows for the person who has entered into the undertaking to withdraw or vary the undertaking with the agreement of the chief executive of my department. Therefore, in the example cited by the honourable member for Keppel, where unknown factors may occur that render the conditions of the undertaking harsh, there is an opportunity to change those conditions.

In response to the honourable member for Nicklin, the department has a strategy whereby it appeals issues such as lenient and inconsistent fines. On many occasions the department has sought to appeal judgments to the Industrial Court and in the majority of cases these have been successful. Currently, the prosecution unit has five appeals under way for what they consider to be inadequate penalties. As for staffing numbers on the Sunshine Coast, I can advise that 14 workplace health and safety inspectors are employed in the Nambour office to service the Sunshine Coast area. I can assure the member that there will be no negative implication for inspector staffing levels on the Sunshine Coast or anywhere else in the state as a result of these amendments to the act. I can also advise that when inspectors are employed by the department, they are required to undergo rigorous training, including ethics training.

The member for Toowoomba North inquired about the number of prosecutions by the department for breaches of workplace health and safety laws. I can advise the member that in the last financial year to 30 June 2002, workplace health and safety breaches resulted in fines and costs for offenders totalling nearly $1.9 million. A total of 135 prosecutions were launched in the courts at that time. This represents a continued increase in the number of cases coming before the courts for breaches of workplace health and safety laws as well as an increased level of fines that are being imposed. I believe that that properly reflects the increased seriousness with which this government and the courts are treating these breaches of workplace laws.

The honourable member for Tablelands referred to my second reading speech in which I mentioned that figures from the ILO indicate that Australia has a poor comparative international record. Let me be very clear: Queensland's share of Australian work related fatalities are in line with its population share. However, it is recognised that we, in line with other states, have some way to go towards improving our record. That is the very reason that these legislative improvements and our increased resourcing measures are being introduced. The member also raised the issue of workers having a responsibility for their own safety. I would like to assure the member that there are adequate provisions within the existing legislative framework to reflect this responsibility.

In closing, consultation commenced with industry, the government and the community through the release of an issues paper back in December 2001. A number of proposals to amend the act were subsequently developed after due consideration of the submissions and responses to the issues paper. These proposals were presented to the workplace health and safety board in August of last year. After further development, the proposals were distributed to the stakeholders in October 2002 for comment. In total, more than 100 submissions were received and more than 100 stakeholders were consulted in face-to-face meetings to canvass feedback on the proposed amendments. I would like to take this opportunity to thank those stakeholders and persons who participated through their submissions and comments to the various consultation and issues papers released for public comment.

My department has planned an extensive communication and education strategy to ensure that everyone affected by these changes is informed. Queensland industry associations, unions and most employers will receive a letter notifying them of the changes along with guidance material explaining those changes. The department will also run public seminars across Queensland that will be publicised by press and radio advertising and through direct mail.

I am pleased to say that as a result of the consultation in the lead-up to the bill, there is broad support for these changes. I look forward to the continued strong participation of stakeholders with the implementation of the bill. I also look forward to working with stakeholders in developing and delivering the information and awareness strategies to promote the amendments to the act. This folder, which I am showing the chamber today, will be distributed to honourable members before the close of parliament this week. It will contain all the significant changes to the act. So all honourable members will also have that.

The amendments to both the Workplace Health and Safety Act 1995 and the WorkCover Queensland Act 1996 will go a long way towards improving workplace health and safety, which benefits every community member. It represents the next significant milestone in bringing workplace health and safety and workers compensation legislation into the 21st century by ensuring that all workers are protected regardless of their working arrangements and by assigning legal responsibility to those who can best control the risk. Underlying all of these reforms has been the need to balance both social and economic needs. Workplace laws must take into account the way in which we work. These laws do that. They must take into account how we live and interact in the community. These laws also do that. I commend the amendment bill to the House.