Speech by

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MEMBER FOR CALLIDE

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WORKPLACE HEALTH AND SAFETY AND ANOTHER ACT AMENDMENT BILL

Mr SEENEY (Callide—NPA) (Deputy Leader of the Opposition) (5.00 p.m.): I rise to speak to the Workplace Health and Safety and Another Act Amendment Bill, which amends the Workplace Health and Safety Act. I will also make some comments about the amendments circulated by the minister which seek to amend the WorkCover Queensland Act 1996.

As my predecessor in the role of shadow minister, the Hon. Vince Lester, pointed out in his contribution to this debate, the opposition will be supporting the bill before the House. I think it is safe to say that the issue of maintaining safety at work and safety in the workplace has the support of every member of this House. Indeed, it should have the support of every employer and employee. It has been the subject of remarkable change over a period of years. People have recognised how important maintaining safe standards is, not just to the welfare of individual employees. That should not be underestimated by any means. It is critically important that employees have the right to work in a safe workplace.

I think there has been a recognition right throughout the corporate world of the importance of a safe workplace to the success of a business. It is certainly a characteristic of successful businesses that they are able to attain and maintain high levels of safety at work and high standards of safety in the workplace. That makes for a successful business from the point of view of both the business operator and the employees. It is in everybody's interests that we have these types of bills that continually improve workplace health and safety. I expect that so long as those bills continue to strive to achieve those high levels of workplace health and safety they will have the support of most members of this House.

Having said that, I think some parallels can be drawn between the area of workplace health and safety and another area that has often been the subject of debate in this House—that is, public liability insurance. I know that the government has wrestled with that issue and has tried to achieve a balance between the rights of people who are injured and the rights of people who are held to be somehow responsible for those injuries. Some parallels can be drawn with workplace health and safety. I reinforce my earlier comment that it is in everyone's interests to make workplaces as safe as possible.

There are particular workplaces in which it is incumbent on everyone in the workplace to act reasonably. Some of the more recent legislation relating to public liability requires people to act reasonably and to take account of risks that cannot entirely be avoided. There are inherent risks in certain activities. If the work of which that activity is a part is going to continue, then that inherent risk has to be managed. People have to realise that everyone has a responsibility to act reasonably, to be aware of inherent risks and to manage them as well as possible to avoid any injury. I am not suggesting that any injury is acceptable—it certainly is not—but there are particular workplaces in which the management of risk relies upon employees exercising what many people would consider to be commonsense and what has often been described in legislation as acting reasonably or taking reasonable precautions.

The objectives of the bill are outlined in the explanatory notes. The first objective is improving the balance of legal obligations at the workplace. It is particularly important that there is a balance of legal and moral obligations in the workplace in terms of what is reasonably expected of each party in the workplace. This bill seeks to better define the balance of legal obligations. I guess it comes back to

the reasonableness of both employers and employees in dealing with how they exercise those obligations in the workplace.

The second objective of the bill is stated to be strengthening the consultative arrangements between employers and employees. I think it is particularly important that communication lines between employers and employees are not just maintained but also strengthened and expanded at every opportunity. Communication in the work force can in many cases prevent situations that can lead to injury arising. The member for Gladstone referred to the mining accident at Moura. In the general area that both the member for Gladstone and I come from that is an issue that is often spoken of as an example of what can happen when communication within the work force is stymied for whatever reason—communication between the people who in this case were literally at the coalface and the people who had administrative roles.

When communication breaks down or is restricted in any workplace, there is potential for these types of situations to arise and for injuries to occur. That is a circumstance which everyone would seek to avoid. That whole area of communication between employers and employees and the strengthening of communication channels is something that would receive our support. It is good to see that it is listed here as the second objective of this bill.

The third objective of the bill relates to providing greater consistency with other safety legislation and streamlining reporting requirements for employers. That is also something that would undoubtedly receive support. Consistency across various pieces of legislation and various administrative instruments is certainly an important issue for employers and those who have to work within legislation understanding and knowing their obligations and avoiding any confusion in that regard.

Equally, the reporting requirements for employers are something that employers often complain about. Anyone who has a reporting requirement understands that it can be tiresome. Paperwork itself, no matter what form it takes, is something I am sure that we have all had reason to grumble about at times. So it is important that those essential reporting mechanisms are streamlined as much as possible. In so doing, it will increase the compliance with those requirements. So it is in everyone's interests that they are streamlined and those compliance rates are as good as can be achieved.

The second part of debate on this bill concerns the amendments that will be moved in the committee stage by the minister. It is unusual and it has certainly been cause for some comment by the member for Keppel that quite extensive amendment has been introduced as part of this bill, but this particular amendment applies to the WorkCover Queensland Act 1996 and deals with something that had nothing to do with the original bill in that it sets out to provide certainty for the coverage and premium payment obligations across industries in terms of WorkCover and workers compensation. In particular, the explanatory notes point out that it is in relation to the building and construction industry. As other speakers have outlined, these amendments are about better defining or redefining or more closely defining the definition of 'workers' and closing off opportunities for people who have sought to not be part of the workers compensation scheme by being employed as independent contractors.

I acknowledge some of the comments that have been made by the member for Ashgrove and other speakers earlier in this debate about situations where, unfortunately, people are required for whatever reason to work in dodgy situations where the only explanation for the dodgy situation is that the employer is trying to avoid his or her obligation to ensure that the workers are insured and the workplace is safe. I certainly do not and never would support that type of activity, and I have no doubt that it probably still occurs, given human nature being what it is. I certainly believe it occurs a lot less frequently now than it did in years past.

However, there is another group of people in the community who seek to take these responsibilities on themselves and who make a conscious and informed decision that they want to work as a contractor. They have the capacity to make an informed decision that they prefer, for whatever reason, to work as a contractor and in so doing they assume the responsibility for paying their income tax and insuring themselves against injury. They have the capacity to assume for themselves the responsibilities that are traditionally taken on by employers in most employer-employee situations.

The caution that I would raise in considering our response to the amendments that the minister has moved in this regard is whether or not it is going to be possible for anybody to do that. Should we not turn our minds to whether or not people should be allowed to do that? If they have the capacity to make that decision, if they have the information available to them to make that decision and they choose to make that decision, is this legislation effectively taking away the right that they currently have to make that decision in a particular circumstance?

Having said that, I certainly accept the logic that has been put forward in the explanatory notes about consistency between the state legislation in terms of WorkCover responsibilities and the definitions that are used by the federal jurisdiction in terms of income tax. I think there needs to be some consistency, and I know that until now in particular circumstances a person has been able to work

as a contractor under one definition but be an employee under another definition. I would acknowledge that that is not a good situation.

I am somewhat swayed by the argument contained within the explanatory notes that that test about whether or not a person is an employee or a contractor has to have some sort of consistency across those different jurisdictions. What the minister is putting forward here is a results test which is in addition to the other criteria contained in the state legislation about who should be regarded as a worker. The results test is set out in three elements and a person must meet each of those elements.

The elements of the test are that, firstly, a person is paid to achieve a specified result or outcome—and that is probably a reasonable basis for deciding whether anyone is a contractor; that there is a contract for a specified result or outcome—and, secondly, a person has to supply the plant and equipment or tools of trade needed to perform the work. I understand that has been a requirement under the taxation laws for quite some time. As an employer, that is a test that I have quite often used when deciding whether a person is an employee or an employer.

Mr Purcell: Can I give an example in the building industry? Say you have a builder's labourer who is working with a gang of brickies and he has all the tools that he needs, he does the scaffolding and supplies the bricks for the brickie. You cannot make him a subcontractor. He is an employee every day of the week, but some people want to say he is a subbie, which is absolute rubbish.

Mr SEENEY: That is a pretty long interjection. I think if the member reads the propositions being put forward by the minister, there are three elements which have to be met before the test is satisfied. The third element of that test is that a person is or would be liable for the cost of rectifying any defect in the work performed. The question that I would put to the member, given that his knowledge of the situation is much more intimate than mine, is would the person in that particular situation be liable for the cost of fixing up the job if it was not done properly?

Mr Purcell: Brickies are doing that. If the brickie is stuffing up, you have him to blame.

Mr SEENEY: So the brickies have to fix it up, do they not?

Mr Purcell: That is right.

Mr SEENEY: I think the important point that the member illustrates is that there is such a wide range of circumstances in any industry.

Mr Purcell: As wide as it is long.

Mr SEENEY: Exactly. I guess no matter what efforts the minister makes to narrowly define these particular categories there is always going to be a situation which tests that definition. It is important, as I mentioned before, that there is some consistency between what definition is used in the income tax act at the federal level and what definition is used in pieces of legislation such as this. I will be interested to hear the minister's comments, but I think that is the overriding argument in considering this particular amendment that is being put forward. As I see it, this is achieving that consistency.

I go back to the caution I raised before. I am a great believer in the fact that we live in a free country, and we should always be mindful of protecting those freedoms. Where people have the capacity, and it is important that people have the capacity to make informed decisions about their own particular situation, they should have the freedom to choose. That does not mean—and I say it again for emphasis because I know someone will attack me about it—that under any circumstances I would condone the imposition of these dodgy type contracts on anyone. But where someone has the capacity to make a choice, who are we to deny those people that choice? So there is a balancing act there that I appreciate is difficult.

Mr Purcell interjected.

Mr SEENEY: That is a decision for them, and this is where the member and I differ. This is where he throws away the whole concept of personal freedom. It is up to them to decide whether they are better off.

Mr Purcell interjected.

Mr SEENEY: It is not for you, old mate, to make a decision about whether they are better off or not. I will have more to say at the committee stage.

Time expired.