



Speech by

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WORKPLACE HEALTH AND SAFETY AND ANOTHER ACT AMENDMENT BILL

Dr LESLEY CLARK (Barron River—ALP) (11.35 a.m.): I rise to speak in support of the Workplace Health and Safety and Another Act Amendment Bill which will amend the Workplace Health and Safety Act 1995 to ensure that it continues to provide for an effective modern regulatory regime that meets the needs associated with the changing nature of the labour market and ensures appropriate health and safety outcomes are achieved for all stakeholders. The bill gives effect to the recommendations of an independent review of the act conducted in 2001-02 which involved extensive consultation. Before I elaborate on the details of the bill itself, I want to highlight the continuing need for strong occupational health and safety legislation, and I make no apologies for the tough action that this government takes so as to reduce workplace accidents.

According to the Industry Commission, each year in Australia approximately 500 workers die while at work and a further 50,000 are injured or become ill. The human costs are immeasurable. The cost to the economy is more than \$20 billion a year. Queensland accounts for, on average, approximately 100 of those 500 work related fatalities throughout Australia each year and the estimated total cost to the Queensland gross domestic product is a staggering \$3.5 billion. Figures from the ILO indicate that Australia has a comparatively poor international record with an overall fatal injury rate three times as high as that of Britain, Sweden and Japan and double that of the United States, obviously demonstrating that we still have much more of an improvement to make. I want to indicate while on this topic that today in the *Cairns Post* there was a report that Pat Nicholls, the president of the Cairns branch of the Queensland Council of Unions, has launched a book of remembrance to recognise far-north Queensland workers who have lost their lives on the job or died from work related injuries. I congratulate members of the Queensland Council of Unions for this initiative and look forward to marching again with members of unions in Cairns at the Labor Day march next Monday which will have as its theme multiculturalism in the workplace.

While I am pleased to report that the rate of compensated lost time injuries has decreased to 15 per thousand from 18 per thousand workers in 1998, more needs to be done and is being done as shown by this bill and by the activities outlined this morning by the minister for Workplace Health and Safety Week beginning on 19 May. I join with the minister in encouraging people to attend one of the 32 seminars planned for 23 locations across the state, including Cairns, and to get involved with a range of other community events that are planned. As the minister said, it is an unparalleled opportunity to bring together as many Queensland workers and employers as possible in an effort to better understand and help improve workplace health and safety risk in workplaces throughout Queensland. I do believe that as MPs we have a special responsibility and I will certainly be getting involved to help get the message across that we all need to work harder to reduce the incidence of death and injury in our workplaces.

Returning now to the bill before the House, it has the following three broad aims. Firstly, it will improve the balance of legal obligations at the workplace by including for the first time people who, for example, design buildings and equipment and who manufacture and supply equipment. This will be most welcomed by employers, particularly small employers, who have until now shouldered all the responsibility for any accident involving equipment that could be flawed in its design or manufacture but over which, of course, they have no control. These amendments will require suppliers to ensure that the equipment they do supply is safe and that safety information about that product is provided. Secondly,

the bill will strengthen the role of workplace health and safety officers. Currently, there are some 16,000 trained workplace health and safety officers with functions under the act but there are no mandatory tasks and no obligation on the employer to use the expertise of their workplace health and safety officers, which is a waste of their expertise.

The bill will require employers to support their workplace health and safety officers carry out at least one workplace health and safety assessment each year and then take appropriate action to rectify any identified unsafe conditions and practices. In addition, the bill provides greater consistency with other safety legislation such as the Electrical Safety Act, and will streamline reporting requirements for employers.

In my contribution today I want to particularly focus on an amendment to be moved by the minister in the committee stage of the bill. The objective of this amendment is to provide increased certainty of coverage and premium payment obligations across all industries, but in particular the building and construction industry which, of course, is a key industry in the Cairns area.

The 1998 review of industrial relations legislation in Queensland found that Queensland had 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. 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 clients compared to true 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. For example, in the Queensland building and construction industry the relationship between those providing their labour and entities engaging labour is characterised by a variety of contractual relationships to reflect the different way that work is done or organised. In particular I might mention that work is increasingly project based, highly specialised and persons engaged regularly move between projects and engaging entities. Persons regularly change status between employee and contractor, and there is a long-term trend to self-employment through contracting, with increased numbers of the labour force working as contractors.

The continuing growth in various contracting arrangements calls into question the applicability of workers compensation, payroll tax and federal taxation requirements. The Commonwealth has responded to this trend in contracting by introducing tests as part of the New Business Tax System (Alienation of Personal Services Income) Act 2000 to determine whether an individual is in fact in business for himself or herself or is merely seeking to receive a reward for providing his or her labour, personal efforts or skills.

For Queensland's workers compensation scheme the trend towards contracting has resulted in a level of uncertainty as to whether and when persons are covered or have premium payment obligations under the workers compensation scheme because of the difficulty of determining just who is a worker and who is an employer. Under section 12 of the WorkCover Queensland Act 1996 a worker is a person who works under a contract of service. Schedule 2 of the act also deems certain persons as workers.

These definitions were introduced in July 2000 to clarify who were workers and who were contractors—a change much needed and necessary because of the previous very narrow definition of 'worker' adopted by the previous coalition government and which severely disadvantaged large numbers of people providing labour only under contract.

In fact, it was just such a case that came to my attention when I was re-elected in 1998. In fact, it was the first case of a number that I have had to deal with. In this particular case I believe it was a plumber who travelled out to a remote community in far-north Queensland and on his very first day received a very serious eye injury from some inappropriately located fencing. My constituent was unable to prove he was a worker in terms of the legislation at the time. The person who had contracted him to carry out that work—and I was quite satisfied that he was indeed a worker—was able to avoid what I regarded and indeed what I think any reasonable person would regard as his responsibilities as the employer.

However, despite now having a better and more appropriate definition of 'worker' it appears still that our legislative framework does not provide sufficient certainty when applied to the increasing multitude of employment and contractual arrangements that now exist in the building and construction and other industries, and further work in this area is required. It is, of course, being compounded by differences in the definition of 'worker' or 'employee' in other state and Commonwealth legislation that Queensland employers are required to comply with.

It is now proposed to extend the definition of 'worker' to provide greater certainty and consistency by applying a results test in addition to the other legislative criteria regarding who is a worker, thereby clarifying the original intent of the act. Under the results test, a person will be considered

to be a worker unless it can be shown that the person meets all elements of the results test. The elements of that test are: firstly, the person is paid to achieve a specified result or outcome; secondly, the person has to supply the plant and equipment or tools of trade needed to perform the work; and, thirdly, the person is or would be liable for the cost of rectifying any defect in the work performed.

The results test closely aligns with a similar test in the Commonwealth Income Tax Assessment Act 1997 for the purposes of determining a personal services business under the alienation of personal services income measures introduced by the Commonwealth in the year 2000. Accordingly, the amendment to the definition of 'worker' will exclude from coverage those persons who have obtained a personal services business determination from the Commissioner of Taxation, and this approach ensures consistency in determinations made by the Australian Taxation Office and WorkCover Queensland as to who is and who is not a worker.

These amendments in fact give legislative force to current practice. WorkCover staff in Cairns tell me they have been successfully using this results test. So we do know that we have a workable procedure for clarifying this contentious issue of just who are workers and who are employers. In conclusion, I am proud to be a member of a government that protects workers and strives to further reduce the unacceptably high number of workplace accidents and deaths in Queensland. I congratulate the minister and departmental staff on their work on this legislation. I commend the bill to the House.