Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

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WORK HEALTH AND SAFETY BILL; SAFETY IN RECREATIONAL WATER ACTIVITIES BILL

Hon. CR DICK (Greenslopes—ALP) (Minister for Education and Industrial Relations) (3.57 pm), in reply: Mr Deputy Speaker, can I begin by seeking your indulgence to, along with other members, acknowledge and thank the people of Mackay for their hospitality during the past three days. It is a historic time for this city and a historic time for members of the Queensland parliament to be sitting in a very important regional part of our state. I want to thank the people of Mackay, as I know all of my colleagues in the parliament will, for their hospitality and their friendliness over the past few days.

This has been an important debate and it is an important day in the history of work health and safety in Queensland. As we pass these bills, I want to thank all honourable members for their contributions to what will be two very significant pieces of legislation on the statute books in Queensland. The Work Health and Safety Bill is a win-win for Queensland workers and businesses, forming as it does an integral part of a national reform agenda that will result in harmonised workplace laws across Australia. So for the first time we will have a single law that will operate across Australia.

At the moment we have nine different jurisdictions, including the Commonwealth jurisdiction, that have separate work health and safety laws. For the first time in our nation's history we will have a single law that will operate across state and territory boundaries. That is a very significant thing for our nation, and I am proud—and I anticipate this—that the Labor government in Queensland will be the first government to successfully move this bill through the parliament. Queensland will again lead the way

The Work Health and Safety Bill removes the confusion, complexity and duplication caused by Australia's multiple work health and safety regimes. This will save the Queensland economy more than an estimated $30 million a year. Workers will have more stringent protections and business will benefit from reduced red tape and compliance costs. In addition, this bill is complemented by the Safety in Recreational Water Activities Bill. I thank all honourable members who spoke on that bill. There were a number of very eloquent contributions by members of the government on that bill speaking about their own experiences in their own electorates and the importance of the dive industry to Queensland, a very significant industry not just in this part of Queensland but all the way down the eastern seaboard of our state. It is a very significant industry contributing to the Queensland economy. We want to have the best standards in the nation. That is what this bill will help deliver. We have a strong partnership with industry. Labor governments have continued to ensure that we have the highest possible standards of safety and regulation in partnership with industry in the nation.

There were two criticisms raised by the shadow minister in his speech: one related to consultation on the bill and one related to the alleged unseemly haste that this bill was being passed through the parliament and the rush that the parliament was being put to to pass this legislation. The honourable member could simply have read the explanatory notes to the bill. The explanatory notes do run to 150 pages, but he only had to make his way to page 18. If he had the wherewithal to read 18 pages, which I do not think is an onerous task for any member of the opposition—it might be a challenge for them but I do not

think it is onerous to read 18 pages—he would have seen a page setting out in detail the parties consulted in relation to the development of this bill.

Mr Malone interjected.

Mr DICK: I will take the honourable member's interjection. He says, 'We don't know what they said'. Can I say in relation to the Australian Industry Group, the Australian Chamber of Commerce and Industry and other entities consulted, it is a damning indictment on the opposition if they do not have any links to the Australian Industry Group, the Australian Chamber of Commerce and Industry or the Chamber of Commerce and Industry in Queensland.

Mr O'Brien: You can't even pick up the phone now, Ted.

Mr DICK: They cannot even pick up the phone—I take the interjection from the member for Cook—to ring peak business groups to see what their view is.

Mr Malone interjected.

Mr DICK: The member for Mirani says they do not work on the weekend. This bill has been on the table of the House for two weeks in accordance with the standing orders of the parliament. Nothing has been rushed through this parliament. If the honourable member thinks two weeks is not enough to do his work, he should seek to change the standing orders of the parliament. That has been the way in this parliament for many, many years. Frankly, it does not behove well for the third shadow minister that I have dealt with in this parliament that he has not been able to get across this bill, even though he is new, in a short space of time.

This has been a national process that has been ongoing for a number of years. Consultation has been lengthy, inclusive and comprehensive. In fact, there are few bills that have come into this parliament that have had such extensive consultation as the Work Health and Safety Bill. It has involved consultation with representatives of employer associations, workers, legal groups and dive operators in relation to the Safety in Recreational Water Activities Bill. All of those groups have been consulted, as well as the national process that has been running for a number of years now, including the release of a draft bill for public consultation. I do not know what the predecessors of the current shadow minister were doing, but that bill has been out in the public arena for a considerable period of time. The criticism when it comes to consultation has no substance whatsoever.

Those opposite are not doing their work. I have said this on a number of occasions. They think they can be a small target; they think they can sit by and waltz into government. As I have said before, this is the laziest and most complacent opposition in the history of Queensland. We have had two years of all sorts of criticisms and condemnation from the opposition. They have said that they do not support asset sales. As soon as they changed their leader everything they stood for, everything they said in this parliament is, in the words of the punitive leader of the opposition—not the leader in the House, not the leader in the parliament, but the leader outside the parliament, Campbell Newman—null and void. This is not a group of politicians with conviction, with a belief in any particular set of principles; it is a group of politicians who seek power for power's sake. I have said that before in the parliament. The community in Mackay and other places will judge them.

Mr RICKUSS: I rise to a point of order. I ask for a ruling on relevance.

Mr DEPUTY SPEAKER (Mr Elmes): There is no point of order.

Mr DICK: What business, unions and work health and safety experts have told us is that they want this bill to move forward. They want national seamless work health and safety laws in Queensland. They want it done as soon as possible to give them certainty and to maximise the time they have to get ready for the implementation of the law which will commence on 1 January 2012. There comes a time when good intentions have to be put into action and that is what Labor governments do. I am proud that we are the first state moving this bill through parliament.

It is the priority, of course, that Labor governments give to protecting workers that we have given this the highest priority in the legislative program. I reaffirm in relation to the argument that this has been rushed through parliament that the national work health and safety bill was endorsed by workplace ministers in December 2009 following extensive consultation with all stakeholders, including, as I have said, employers, industry, the legal profession and other interested parties. That has been able to be publicly accessed.

The member for Mirani also complained that the costs and benefits are not readily quantifiable. That has been assessed by Access Economics, an independent economic agency, and it has indicated that this will save industry about $30 million. One would have thought that the traditional party of business in this state would have applauded an ability to move legislation through the House that will cut red tape for business, give certainty to workers and reduce the cost to business. One would have thought we would have been applauded for this move but, of course, those opposite do not have that charity in them.

Other jurisdictions are moving the bill through their parliaments. In South Australia the bill was first introduced on 7 April. It was withdrawn on 3 May and reintroduced, on a change of ministers, on 19 May. The Australian Capital Territory, the Commonwealth government and Victoria are currently drafting and, I am advised, are expected to introduce the bill during their winter sittings. In the state of Tasmania—well known to the alternate leader of the opposition; he spent some time there and has some roots in Tasmania—as well as the Northern Territory, the governments are awaiting approval to commence drafting. Western Australia—the home of a conservative government—has indicated it will harmonise its health and safety laws but, of course, will not implement those aspects of the bill that protect unions' rights to enter various workplaces. They do not support increased levels of penalties to protect workers. They do not want to allow health and safety representatives to have direct access to workers and to direct workers to cease work. They do not support a range of other things that strengthen the very important and historic role of trade unions to protect workers in the workplace. I certainly hope that is not the intention of the Liberal National Party in Queensland, but nothing would surprise me. So rushed is the bill that it was introduced by the New South Wales Liberal coalition government into the New South Wales parliament on 4 May despite the fact they were only elected in March. It did not seem to be much of a rush for them. They are keen to move forward to support business and to ensure the rights of workers are protected. I do not think anyone could say that we are rushing this. The member for Mirani's criticism that we were the first jurisdiction to pass this legislation is completely unfounded.

The member for Mirani was also critical of the fact that prosecutions will be conducted in the Magistrates Court rather than the Industrial Court. That was also mirrored in the contributions—if one can call them that—from the member for Kawana and also the member for Gaven. They should be aware that there are only a handful of appeals heard in Queensland each year. It is not anticipated that this change will have any negative impact or impose any additional workload on the court system. They were consulted through the drafting of this bill.

Currently, magistrates hear all offences in the industrial jurisdiction and, because of their nature, category 1 offences only rarely occur. Those are serious breaches of the law and, thankfully, only occur rarely. I am advised that currently appeals are minimal and it is not likely that there will be any significant increase in this area. Certainly we hope not, as we would encourage all duty holders and all employers to comply with the law. More importantly, this change follows the recommendations from the national review. I really do not understand the criticism of the general courts in Queensland, which deal with civil and criminal matters each and every day, handling those sorts of matters.

During the debate an issue was raised in relation to the privilege against self-incrimination. It was claimed that that privilege had been removed under clause 172 of the bill. I want to address that issue, to allay the concerns of honourable members. Under clause 172, a person is not excused from answering a question or providing information or a document on the grounds that the answer might tend to incriminate them or expose them to penalty. This question has been well and truly explored as part of the national reform process. It was discussed in reports of the national review and the model occupational health and safety laws, completed in January 2009, which were submitted to the Council of Australian Governments. An exposure draft of the model bill was released nationally for public comment in late 2009, before the model bill was finalised.

The current Queensland Work Health and Safety Bill before the parliament reflects the key provisions of the model work health and safety bill that the jurisdictions agreed to adopt under the intergovernmental agreement on regulatory and operational reforms in OHS. Both the Australian Law Reform Commission and the Queensland Law Reform Commission have acknowledged previously that the privilege against self-incrimination may be varied by statute where it is outweighed by other significant factors, for example an urgent need to protect health and safety. Parliaments in Australia and around the world often make this decision. In this case, we hold as absolutely paramount the consideration of the health and safety of workers.

Mr Wendt: Absolutely paramount.

Mr DICK: It is absolutely paramount. This is a decision that governments have to make every day. We say that the privilege of self-incrimination should be suspended for this purpose only, to obtain information to ensure workplaces are safe. There are safeguards, of course, and I will talk about those. As I have said, the justification for varying the traditional privilege against self-incrimination was that otherwise inspectors and regulators would have only limited access to critical information, which would compromise their ability to maintain work health and safety protections. As I have said, maintaining safe workplaces and practices is regarded as a significantly important objective to justify some variation to the right to silence.

The compliance provisions of the bill before the parliament focus on identifying the cause of the breach in order to protect the community by preventing injuries and fatalities caused by unsafe work practices. Importantly, the new provision will also include protections for the rights of persons under the criminal law. Under the bill, the powers of investigators must be exercised only in conjunction with safeguards that limit the consequences for people giving evidence. Under clause 172, the answer a

person provides to an inspector is not admissible as evidence against that person in civil or criminal proceedings other than proceedings arising if the answer is misleading or false. If it is a false answer, of course you can be pursued for perjury or similar offences. Otherwise, it cannot be used against the person in any other court in Queensland. The person is protected from the evidence being used against them in subsequent legal proceedings if they answer truthfully.

The Work Health and Safety Bill goes further than the national model work health and safety bill. We have taken it that next step to ensure we have the highest protection in the country. The bill sets out what is called a derivative-use immunity. Any other evidence, directly or indirectly derived from the answer a person gives, is not admissible in any court. That is an important thing. It is not something that we do lightly. We do it with very significant and deliberate thought. We have done it after a lot of public deliberation and we have put in those safeguards. We see this as the best way to ensure the protection of workers in Queensland.

The member for Mirani criticised the need for employers to consult with employees. He said that already occurs without legislative mandate. We say that is an important thing to enshrine in Queensland law. Consultation is at the heart of ensuring workplaces are safe and workers are protected. We would always encourage employers and duty holders to consult with workers and others and to do so protected by the law and without the need to use the very significant powers in this act to get the best outcome. We always look for cooperation in the workplace, supported by Workplace Health and Safety Queensland. However, those powers will be used as necessary to ensure workers are protected.

The need for and benefits of consultation between an employer and worker have been long recognised. The 1972 Robens committee report is the basis of all Australian health and safety laws. That report stated—

The involvement of employees in safety and health measures is too important for legislation to remain entirely silent on the matter.

For a long time that principle has been adopted in Australian law and we enshrine it in this bill.

The member for Mudgeeraba spoke little about the bill and a lot about asbestos, which of course was comprehensively rebutted by the Minister for Government Services earlier today in what was a demolition of the improper claims she made in this parliament about the safety of schools in this community. As the Minister for Education, I strongly support the Minister for Government Services in ensuring that we take whatever action is necessary, as Labor governments have for many years. We lead the nation in protecting the community and protecting schools. A comprehensive replacement program has been implemented in Queensland schools. All asbestos roofs have been replaced. We spend $18 million a year replacing asbestos-containing materials in Queensland schools. Any urgent work is done immediately. We have the highest level of qualification for asbestos contractors. It is a very significant thing and the government takes it very seriously. We will always act in the best interests of Queensland children and their families.

The member for Kawana made a contribution on the bill. He was critical of what he said was a perceived lack of consultation with the Queensland Law Society. In fact, the member for Kawana said he rang the Law Society and spoke to somebody unnamed who said, 'We don't know anything about the bill.' I do not know to whom he spoke. Maybe he spoke to the receptionist. I can assure the honourable member that the Queensland Law Society has been well and truly consulted. It does not augur well for someone who seeks to be the Attorney-General of Queensland that he has such poor links with the Queensland Law Society. I assure all honourable members that the president of the Law Society, Bruce Doyle, was consulted on the bill, as was Mr Gerry Murphy, one of the most distinguished personal injury lawyers in Queensland. They support the bill. All of the parties consulted on the bill support the bill.

Mr Bleijie: Did they give you written advice—public written advice?

Mr DICK: I am not tabling the written advice. There is no written advice. We consult with those groups constantly. The member for Kawana, who seeks to be the Attorney-General, has such links with the Queensland Law Society that he does not know its position on the bill. In relation to the preparation of this bill, we consulted with the Bar Association of Queensland and the Australian Lawyers Alliance along with an enormous number of individuals representing both business and workers. Page 18 of the explanatory notes sets out all of the parties we have consulted with to ensure the bill is right.

The member for Kawana made reference to the operation of the Queensland courts. I assure him and all honourable members that our courts will be able to handle the hopefully small number of cases that will be pursued in this matter when the bill is implemented.

One of the criticisms by the opposition was the increased red tape. The bill will not increase red tape; the bill will slash red tape as part of this significant reform process. It is not only a significant microeconomic reform in our nation's and state's history but also a significant reform to how work health and safety operates in Queensland. That is recognised by industry and employer groups that strongly support the bill.

I will make some comments about specific issues raised by other members, including the issue of surf-lifesaving activities raised by a number of honourable members. The second bill being debated cognately this afternoon focuses on safeguarding people taking part in recreational water activities. That bill defines 'recreational water activity' as an activity carried out for the purposes of recreation on, in or under waters, under the management or control of a person conducting a business or undertaking.

Recreational surf-lifesaving activities conducted by Surf Life Saving Queensland will fall under this definition. The bill sets out the duties and operating requirements of a person conducting a business or undertaking, such as Surf Life Saving Queensland, to minimise or prevent harm for people when providing recreational water activities. The person must give people enjoying recreational surf-lifesaving activities, for example, and others present, such as onlookers, the highest level of protection from hazards and risks associated with the activities as is reasonably practicable in the circumstances.

The provisions of the Work Health and Safety Bill will require a person conducting a business or undertaking, such as Surf Life Saving Queensland, to ensure the health and safety of Queenslanders. Surf Life Saving Queensland has a primary duty of care under the Work Health and Safety Bill to protect its workers—as all duty holders have under the bill—including volunteers, from harm during surf-lifesaving activities and to ensure the safety of the workplace as far as reasonably practicable. Importantly, the two pieces of legislation will operate in tandem, with the Safety in Recreational Water Activities Bill covering the field only in relation to the health and safety of people for whom a business or undertaking, such as Surf Life Saving Queensland, provides recreational surf-lifesaving activities and anyone else present while the activities are being provided.

Surf Life Saving Queensland was consulted in the development of the bill as is set out. It supports the bill as it is drafted. Individual surf-lifesavers do not owe that duty of care; it is the organisation and a number of other sporting and recreational organisations that need to ensure the highest level of care for volunteers and others. That is the law as it is currently in Queensland.

The member for Surfers Paradise raised some issues in relation to recreational water activities as well. While his contribution set out a number of significant incidents that had occurred, of course they really relate to the operation and use of maritime equipment such as jet skis. The member for Gaven also talked about jet boats. The operation of those watercraft, just like the operation of motor vehicles and other land based transportation, is regulated by appropriate legislation in the transport sphere.

Dr Douglas: The problem is they're not.

Mr DICK: Of course, there is an opportunity for the honourable member to introduce a bill in this place if he seeks to change the law. I am advised that there are significant matters already under consideration by the Coroners Court, and that is the appropriate forum for those matters—through transport legislation to rectify those things. It misconceives the legislation, which is about taking action to protect workers in workplaces or other places where there is a duty holder as defined under the act. Principally, all pieces of work health and safety legislation are preventive mechanisms to protect workers and other Queenslanders in their workplaces or other places subject to the law. It is not about regulating the operation of specific equipment. There is other law that can regulate those as well.

Just briefly, I also express my thanks to all honourable members for their interest in this bill, a significant and historic bill, and for their contribution in the debate. I would also like to thank a very significant number of policy officers in the department who have worked very hard on this legislation. They do sterling work for the Queensland community and the Queensland Public Service and they have my full support. I would like to particularly thank Mr Brad Bick, Mr Aldo Raineri, Mr Paul Goldsbrough and Dr Simon Blackwood, who were supported by a number of policy inspectorate staff as well as Workplace Health and Safety Queensland and the Electrical Safety Office. I want to thank them particularly for their work.

The provisions in these bills will lead to enhanced safety protection and greater certainty for employers in relation to the application of work health and safety laws throughout Australia. The bills before us are part of a quantum shift in workplace health and safety and will also ensure that Queensland's world-class safety in recreational water activities standards are maintained. It has been a long time coming. We must now act decisively in the interests of working Queensland families and their communities. I commend the bills to the parliament.