Speech By

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WORK HEALTH AND SAFETY AND OTHER LEGISLATION AMENDMENT BILL

Mr JANETZKI (Toowoomba South—LNP) (5.46 pm): Like all of my colleagues tonight I will register my disagreement with the Work Health and Safety and Other Legislation Amendment Bill. In September 2000 the then Beattie Labor government released a *Dangerous industrial conduct* discussion paper which canvassed a range of issues. This discussion paper sought public input into a proposed new offence for the Queensland Criminal Code called dangerous industrial conduct to cover both individuals and corporations. As it turned out, no industrial manslaughter legislation was introduced at the time. That particular issue was brought to a conclusion by the dissolution of the parliament and the 2001 state election.

There was no chance that this government and this parliament would be dissolved before industrial manslaughter is legislated. This government had one last final debt to repay to the CFMEU, because this government in this election will need the CFMEU like it has never needed it before. This government has taken this last opportunity to expand the reach and scope of union influence not just into workplaces but right through middle management and boardrooms across Queensland business.

Today the member for Kawana and the Leader of the Opposition have spoken about some of the outrageous language used by CFMEU officials. They stand condemned by their own words, but I thought that I would turn not to the words of the CFMEU this evening but to the words of the judiciary regarding some of the conduct that the CFMEU has displayed over the years. I reflect on the words of Justice Jessup, who said—

The CFMEU's record of non-compliance with legislation ... has now become notorious.

...

That record ought to be an embarrassment to the trade union movement.

He also said—

I am bound to say that the conduct referred to ... bespeaks an organisational culture in which contraventions of the law have become normalised.

He added—

Has there ever been a worse recidivist in the history of the common law?

As a result of union policies banning anyone other than licensed plumbers from installing water meters and labour hire bills—whatever it may be—time and time again in Queensland and right around Australia we have seen the lawlessness of the CFMEU rewarded in spite of their continual disregard for the laws of the land.

As legislators we are duty bound to legislate for the protection and good governance of the citizens of the state of Queensland. This bill was never about the health and safety of workers. Tragedies have been cynically used for political purposes. Today, again, this Labor government fails this test. To see that this is the case we need only look at the report and in particular the opposition

members' statement of reservation. No-one is backing this legislation except the union movement. We should have called off the committee process because, as the deputy chair has so colourfully described, there is a lemming-like adherence to union-building legislation so obvious among those opposite that attempts to reason or persuade them otherwise would be a chasing after the wind.

There have been a range of contributions already in relation to union influence and control over this government, so I want to turn my attention to the legal and commercial implications of this legislation for Queensland businesses. The ACT is the only Australian jurisdiction to have enacted a specific offence of industrial manslaughter. It has never been used or tested. Other jurisdictions rely on general manslaughter provisions in their criminal legislation or common law. Queensland has also done so and, as the QLS has commented, it is 'unwise to overcomplicate statute book offences that cover the same acts and omissions'. There are also currently workplace related proceedings on foot founded on the manslaughter provisions in the Queensland Criminal Code.

Under the proposed bill, a person conducting a business or undertaking commits the offence of industrial manslaughter where a worker dies either whilst carrying out work or after sustaining an injury while performing work and the business's conduct causes the worker's death and the business is negligent in engaging in the conduct that causes that death. The bill states that a business causes a worker's death where the business's conduct substantially contributes to the fatality. The new offence will replace the existing category 1 offence for recklessly exposing an individual to a risk of serious illness or injury or death as the most serious contravention of the Work Health and Safety Act a person can commit. The bill provides that industrial manslaughter will be a criminal offence provision, meaning that the relevant standard for a successful prosecution is beyond reasonable doubt.

As is so often the case, the devil is in the detail. As it was with the labour hire bill in the last sittings, so it is with this bill. It again comes down to the definition. What we see in this bill are some serious complications around the definition of 'senior officer' of a business. The first point to make is that the definition of 'senior officer' contained in the bill is wider than the definition of 'officer' in the existing Work Health and Safety Act. Under the bill, a senior officer of a corporation includes any person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer. This means that those exposed to potential prosecution are not just those individuals with organisational control of the business but any person who is part of the company's management team. To add to the uncertainty, the definition of 'senior officer' for an unincorporated entity is narrower and is limited to a person whose position requires them to make, or take part in making, decisions that affect all or a substantial part of the business. What is clear, however, is that any senior manager within a business could be prosecuted for an industrial manslaughter offence and other lower level managers may also be caught.

When considering the implications of this definition, it is relevant to compare the ACT definition. It appears that the Queensland definition goes much further than the ACT definition of 'senior officer', which is limited for an officer of a corporation to section 9 of the Corporations Act definition, which is a director, a secretary or any person that makes decisions which will impact the business of the corporation.

If you unpack the law in the United Kingdom, their equivalent corporate manslaughter provisions are concerned entirely with corporate liability and do not apply to senior officers of an organisation. Again, in contrast to this government's bill, liability for the offence in the United Kingdom is subject to a higher standard—a finding of gross negligence in the way in which an organisation conducts its activities. That is a step up from the normal standard of negligence, which is a mere failure to exercise reasonable care, and it is expanded and extended to a conscious or voluntary failure to exercise reasonable care.

Although the provisions in the ACT have failed to be used or even tested, there has been some jurisprudential consideration of the implications, and some alarming ones. A *New Zealand Universities Law Review* article from December 2016 examined how corporate culture can be taken into account in respect of industrial manslaughter. This means that the attitudes, policies, rules, course of conduct or practice will be taken into account—indeed, so, too, in the case of negligence that the actions of employees, officers or agents of an organisation can be aggregated so that the company's conduct might be viewed as a whole.

While the opposition has a range of questions as to why and how union influence is so endemic, so entrenched, when it relates to this particular government, I would say that every business in Queensland has far more pressing questions. The questions they will be asking are: what is our liability following a workplace death; will we be exposed to imprisonment if charged and convicted; how far down the management chain could the legislation reach; and will our current work health and safety systems be sufficient protection?

It is a significant cost on business. As the member for Mermaid Beach has just described, CCIQ has in fact undertaken some analysis of the cost to business of additional red tape, of duplicating laws that already exist in other provisions. I table the analysis.

Tabled paper: Chamber of Commerce and Industry Queensland: response to the Finance and Administration Committee regarding Work Health and Safety and Other Legislation Amendment Bill 2017, 27 September 2017 [**2002**].

The CCIQ asserts that it will cost businesses across Queensland in the order of $1.125 billion in the first year of implementation. We know the considerable impost on business of these laws, which are unnecessary and will not effect any change whatsoever to the work health and safety environment in workplaces around Queensland.

In defence of business, from my experience in advising them—small and large—on the far-reaching consequences of complying with workplace health and safety law, I can say that businesses will always go beyond what is required. I saw that when businesses sought to comply with the 2011 Work Health and Safety Act, which saw executive officers of a business being responsible and legally liable for the health and safety of every employee, contractor and subcontractor in their workplace. They comply with the law in good faith because, unlike the CFMEU and unlike union officials like Sally McManus, they care and they believe in the rule of law, in meeting their obligations and in abiding by the law of the land.

I have posed some of the questions that businesses will be asking. They will also be asking other questions. Why does this government not properly resource appropriate numbers of inspectors, investigators and prosecutors to perform their obligations to supervise workplace health and safety compliance around existing workplaces in Queensland? Why is there a new, costly independent statutory office being set up that will facilitate the overlapping of the workplace health and safety prosecutor and the DPP which in turn will allow prosecutors a couple of bites at the cherry to try to secure a prosecution? Why will this law place Queensland out of step with every other state and territory in the country when it was a prescribed Labor idea in 2011 that uniformity across workplace health and safety laws in Australia was a worthwhile pursuit. These are the questions that cannot be answered, and the government will not even attempt to answer them.

An amendment that has escaped significant comment relates to the reinstatement of the legislative status of codes of practice to their previous standing under the Workplace Health and Safety Act 1995.