




Speech By
Hon. Grace Grace

MEMBER FOR BRISBANE CENTRAL

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WORK HEALTH AND SAFETY AND OTHER LEGISLATION AMENDMENT BILL

 **Hon. G GRACE** (Brisbane Central—ALP) (Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs) (4.16 pm), in reply: I thank all members for their contributions to today's debate on the Work Health and Safety and Other Legislation Amendment Bill 2017. We were confronted with situations last year where workers lost their lives. If we did not take the opportunity to implement a best practice review—which was announced by the Premier soon after that series of tragic events occurred—and learn from that best practice review and implement the recommendations, we would be failing workers and Queenslanders in this state.

The debate from those opposite has sunk once again to this pathological hatred of unions and this prejudice against anything they do. They have tarred every union, every union member, every worker and every father, mother, brother, sister, uncle or aunt—and I could go on—with the same brush. This is an absolute nonsense and it shows how this desperate opposition have stooped and are scraping the bottom of the barrel during desperate times on their side of the House. That is all this demonstrates. No matter what we are debating in this House—whether it is trading hours, labour licensing or health and safety—there is no doubt that the debate from those opposite sinks down to this pathological, prejudice based hatred of the union movement.

At the same time, those same people opposite are more than happy to do deals like they did with 1 William Street. They have boasted in this House about how they were doing deals with the CFMEU, yet when it does not suit them they use every excuse under the sun to come in here and bag proper laws that protect workers in this state. By not voting for this bill today, they are not taking on the responsibility we have to protect workers and to learn from events and incidents. That is what we have done. We are a bit more than 12 months down the track, and we are now debating sensible laws that will bring about safe workplaces in this state. I am very proud to have driven this much needed reform, which will strengthen the safety culture and protect Queensland workers on the job. This bill will result in increased safety awareness and best practice across-the-board from management down, from PCBUs and senior officers through to the grassroots level of workers and their representatives.

This bill is about ensuring all Queensland workers return home safely to their families at the end of the day. It is no good coming into this House and just repeating that. Actions speak louder than words, and this government is acting in relation to what we believe. It is about making sure that those responsible for creating and enforcing the culture of safety in their workplace are held accountable and meet community expectations around the safety of people's loved ones at work. The creation of a new offence of industrial manslaughter will bring about this important cultural shift.

Those opposite ask why we are doing this. They say it is not needed and it is already in the Criminal Code. I will tell them why. There has never been one successful manslaughter claim against an employer in history. There has not been one. There are three cases pending at the moment and not one case has been brought under the Criminal Code. What we are doing is ensuring that that changes and accords with societal expectations. That is what we are doing. As I have said previously, these new

offences will not place any new duties on business or senior officers, but rather will reinforce safety duties already owed. If people are doing the right thing they will have nothing to fear from this legislation or these new offences.

The bill also reinforces the gravity of work related fatalities by prohibiting the ability to accept enforceable undertakings in circumstances involving a fatality. This change reflects community expectations around how fatalities in the workplace should be treated and reinforces the seriousness of such incidents. The bill also enhances the enforceability of workplace health and safety through: the establishment of an independent statutory office for work health and safety prosecutions, and they will be dealing directly with the DPP; the expansion of the jurisdiction of the Queensland Industrial Relations Commission to hear and determine work health and safety disputes before they escalate and before accidents occur; restoring the legislative standing of codes of practice to facilitate their enforceability by inspectors; enhancing the role of, and support for, health and safety representatives; reintroducing the role of workplace health and safety officers; and clarifying inspector powers. All combined, these changes will ensure Queensland work health and safety laws—and their enforcement—are robust and transparent and that compliance is driven by all parties in the workplace.

I will now take the opportunity to address some of the remarks made by members opposite during this debate. I will start with the comments made by various members, including the members for Kawana and Mermaid Beach, regarding the views of the Queensland Law Society and the Queensland Bar Association that the proposed amendments are duplicative and the current regime is adequate. As I previously advised when the bill was introduced, although individuals and corporations are indeed liable to be prosecuted for manslaughter under the Criminal Code, there are limitations that impede the ability of larger organisations to be successfully prosecuted for a worker's death. In particular, the courts have interpreted the current manslaughter provision under the Criminal Code as requiring an act or omission to have been performed by someone with the authority to act as the corporation. For example, an individual director or employee must be identified as the directing mind and will of the corporation. This generally requires proof of fault by a top-level manager or director. That is difficult to establish in the case of large corporations with elaborate corporate structures, and I spoke about this in my previous speech.

This ultimately means that manslaughter prosecutions under the Criminal Code are only successful against smaller businesses and the prosecutions against large corporations are unlikely to succeed. Anyone with a law background understands those principles. Placing the offence in the Work Health and Safety Act overcomes this issue by enabling the conduct of employees, agents and officers to be attributed to the organisation, which addresses the current limitations under the Criminal Code. Establishing the stand-alone offence also sends a clear message to duty holders that companies, and the seniors officers working for them, will be held accountable for neglecting safety management.

Further, in response to other concerns raised by members regarding the Chamber of Commerce & Industry Queensland, I reiterate that the amendments in relation to codes of practice reinforce their status as the minimum standards for managing workplace health and safety risks. In doing so, the amendments provide clarity and certainty on what are the minimum standards. When I met with the CCIQ just recently I confirmed to them that restoring the status of the codes of practice allows those companies to use these codes as a defence in a prosecution under the Work Health and Safety Act, and so they should. Under these new provisions a person conducting a business or undertaking will still be able to adopt alternative safety measures to those outlined in the code. This ensures that technological advances and business innovation can be taken into account when deciding how to manage health and safety risks in a workplace. Importantly, the proposed amendments in relation to codes of practice do not impose a reverse onus of proof. That is a very strange interpretation of being able to use these as a defence, as suggested by those opposite.

I note the concerns expressed about the proper resourcing of inspectors, investigators and prosecutors. I can confirm that there has been no reduction in funding over the past three years. What has happened is that different areas have now transferred to another area within the department. The funding for Workplace Health and Safety has not reduced in the past three years.

I acknowledge that increased community expectations about Workplace Health and Safety Queensland's role puts pressure on the budget and resources. I share the wishes of the member for Kawana and other members to see funding allocations increase for that purpose. I can assure everyone in this House that I will do all I can to support the position that we fund Workplace Health and Safety as best we possibly can. Recommendations 17 and 18 of the best practice review relate to this very issue and call for a re-examination of the funding formula and the staffing model for Workplace Health and Safety Queensland in order for the agency to keep pace with increases in economic activity, population growth and regulatory responsibility. The government has endorsed this recommendation and I look forward to working to put that into place as soon as possible.

I do not accept claims by those opposite that workplace health and safety outcomes were better under an LNP government. In fact, compensated fatalities show a downward trend for Queensland for the past decade, falling to 33 in 2015-16 from 53 in 2006-07. The government is committed to continuing a combination of compliance and awareness-raising activities to ensure this downward trend continues.

In response to the concerns raised regarding the bill's departure from the national model work health and safety laws, the amendments implement the findings of the best practice review of workplace health and safety, and I want to take this opportunity to thank Tim Lyons for his excellent work. For those opposite to somehow demonise the character of this man, who did excellent work, because of his background is nothing short of pathetic. These amendments address a gap in the existing regime as it applies, and is enforceable, to corporations. While the government will continually pursue a consistent, harmonised approach to work health and safety, it would be irresponsible to not address this gap until such time as an amendment to the model work health and safety laws can be achieved. A review of these national model workplace health and safety laws is due to commence in 2018. This review will consider the model offence and penalty regime and it is intended that mirror amendments to the model laws will be pursued during that process to ensure harmonisation is maintained.

I also note issues raised with regard to the forecast by the CCIQ that the bill will cost businesses—I am not even sure of the actual amount. I think it changed a bit, but it is something like over \$1.1 billion—

Mr Power: Gazillion!

Ms GRACE:—or was it gazillion? I take that interjection from the member for Logan—or was it over a gazillion dollars in the first year with ongoing costs of \$540 million?

Mr Power interjected.

Ms GRACE: I take that interjection from the member for Logan—hundreds and thousands of millions. I am advised by my department that it is not very clear how the CCIQ arrived at this figure based on the paper tabled by the member for Kawana. Further, last Wednesday I met with CCIQ together with other employers regarding the bill and, interestingly, they did not raise with me this issue in relation to the cost to business at all. There were no figures put on the table. They raised a series of issues and we discussed them in a very friendly and open manner. We went through their concerns but, interestingly, in regard to all these gazillions of dollars—and I refer to the previous interjection of the member for Logan—not at any stage was the cost to industry raised with me during that meeting. In fact, good workplace health and safety makes good business sense, and those employers know it.

As I have previously advised the House, the industrial manslaughter offences will not impose any new duties on PCBUs or senior officers beyond those that they are already required to comply with. That means that, if they are already doing everything they are supposed to be doing, there should be no additional cost to business.

In relation to the code of practice amendments, codes are already considered to be the minimum standard. Businesses should now be working to the standards outlined in the existing codes and any additional costs experienced by business will be as a result of not already adhering to codes of practice such as the minimum standards.

The costs associated with the training of health and safety representatives and the reintroduction of the work health and safety officers is not considered to be significant, given that the appointment of a WHSO is not mandatory and the HSRs are already entitled to attend an initial five-day training course if requested. Where businesses elect to hire a workplace health and safety officer, they will consider this in the context of the health and safety benefits to be achieved, including if the workplace health and safety officer is able to effect cultural change in their workplace.

The Palaszczuk government believes that all workers have the right to return home safely from work. We remain committed to protecting workers in mines, quarries, on oil and gas rigs and people working with explosives, which are covered by specific resources legislation. However, stakeholders and crossbenchers have made it very clear that consultation is required to progress such significant reforms to the resources industries health and safety legislation. These proposals will be taken forward to the tripartite advisory committees—the Coal Mining Safety and Health Advisory Committee and the Mining Safety and Health Advisory Committee—for discussion and consultation before advice is provided to Minister Lynham. Any proposed amendments will then be introduced to the parliament as soon as possible for scrutiny via parliamentary committee and debate.

As Minister Lynham has said, should a mineworker not have the same protections as a worker in Coles? Coalmining employers have worked closely with government, unions and medicos to bring about major reforms to protect coal workers from black lung and other mine dust lung diseases. The resources safety bill is currently before the Infrastructure, Planning and Natural Resources Committee

for consideration. This bill contains significant increases in monetary penalties and retains sentences of imprisonment along with the option for removal or suspension of a statutory ticket from a statutory officer as a suite of deterrents to further bolster the safety standards in the Mining and Quarrying Safety and Health Act and the Coal Mining Safety and Health Act.

I will move a number of minor amendments to the bill during the consideration in detail stage of the debate. These amendments are aimed at improving the clarity of the bill, providing certainty for stakeholders and implementing the intended policy and objectives of the bill. These amendments have been circulated to members and will clarify when a worker is carrying out work for the business and undertaking, require a person conducting a business or undertaking to give a copy of a provisional improvement notice issued by a health and safety representative to the regulator, and clarify that section 23 of the Criminal Code does not apply to the offence in this part.

In conclusion, I would like to thank the Finance and Administration Committee and the staff of the committee for their detailed consideration of the bill. I would like to thank our reviewer, Tim Lyons. In particular, I would like to thank those who made submissions and attended the public hearings on this bill. As I have previously stated, at its core this debate is about the lives of workers and ensuring that we do all we can to prevent fatalities in Queensland workplaces. I encourage all members to support the bill. I think Michael Garrels summed it up best in a statement that I received from him this afternoon. He said, 'Of all the 40 affected families who have been actively involved in the committee, not one of them thinks the creation of this new offence is a bad idea.' I think that says it all. I commend the bill to the House.