Speech By

Dale Last

MEMBER FOR BURDEKIN

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MINERAL AND ENERGY RESOURCES AND OTHER LEGISLATION AMENDMENT BILL

Mr LAST (Burdekin—LNP) (12.52 pm): I rise to contribute to the debate on the Mineral and Energy Resources and Other Legislation Amendment Bill 2020. As the member for Burdekin and shadow minister for natural resources and mines, at the outset I say that we will not be opposing the bill, particularly off the back of the amendments just tabled by the minister regarding the extension of the period for compliance with the new statutory office holder requirements in the Coal Mining Safety and Health Act 1999 to 18 months. That issue around permanent employees and contractors remains a contentious one in the mining sector. Simply extending that period to 18 months will not necessarily resolve the issue regarding the appointment of permanent employees.

Our mines and quarrying industry is very close to my heart. Unlike some in this House, I speak to workers from that industry every single day. Unlike some in this House, I have visited mine sites and I have been underground. I have spoken to the parents, partners and friends of miners and quarry workers who have paid the ultimate price for the benefit of all of us. It is because of these interactions that we will not be opposing this bill. However, I make it crystal clear today that this legislation on its own will not fix the problems. There are still major concerns and issues associated with mine safety in this state.

Do my constituents and every other person who works in mines and quarries deserve safer workplaces? Of course they do. I know that and the LNP knows that. Should people who contribute to the death of a worker in any way be held to account? Of course they should be. This government and this minister have much more to do. They too need to be held to account.

Before moving on to the steps that I would like to see the minister take, I want to clarify a few points for the benefit of members and, more importantly, for Queensland's miners and quarry workers because they deserve the truth. Let us begin with the minister's claim that 'the LNP fail to support it' when referring to the committee's report. As any member will know from reading the committee report, the LNP members of the committee in fact highlighted the shortcomings of this legislation and, as is the role of a committee member, highlighted the implications this legislation would have for workers throughout the industry.

I attended the committee's public hearing at Moranbah. It was a packed house. During the course of that hearing we heard of the issues and concerns that senior managers right through to workers at the coalface continue to have around mine safety in this state. The minister's allegation is further proof that the LNP members' statement of reservation is correct in stating that 'this legislation may receive the headlines and media coverage that the minister is seeking'. If this minister had an ounce of credibility, he would correct his misleading statement during the course of this debate today.

It is not just the minister who is not providing the full picture when it comes to his media stunts. The member for Keppel recently wrote in the Rockhampton *Morning Bulletin* that this government 'has increased mines inspectors'. What the member for Keppel conveniently chose to omit was that the

increase in 2018-19 was just two inspectors and that even then the number of mines inspectors was lower than the number in 2014-15. The member for Keppel also conveniently omitted that despite the appointment of two extra mines inspectors the total number of inspections of Queensland's mines and quarries in 2018-19 was lower than the number in 2017-18. In fact, it was seven per cent lower. Again, Queensland's miners and quarry workers deserve the truth.

The attempts of this minister and this government to mislead an industry that contributes over $74 billion to the Queensland economy are not recent. This has been happening for years. It is this minister and this government that almost three years after its release have failed to act on the recommendations contained in the *Black lung white lies* report. The number of unannounced inspections is fewer than half the target set in that report—a target that was set based on the advice of industry professionals and industry participants. It is that report that recommended that Mine Safety and Health Queensland be based in Mackay to ensure access to sites and knowledge at the heart of Queensland's mining industry. However, as we now know, this minister and the government have decided that Brisbane is a better location. Queenslanders have every right to ask when this minister will take advice from industry workers and participants.

I will move on to the Brady report. The minister advised that the serious accident frequency rate and the high potential incident frequency rate would both be adopted as measures of safety and culture in the industry. What comfort does it provide to our miners and quarry workers that it took yet another report for the minister to adopt these indicators when that information is already held by the department? If we look at the serious accident frequency rate we find that it has been steadily climbing on an overall basis since this government came to power. In fact, if we look at quarries we find the rate has skyrocketed, but still the minister took no action.

Instead of taking action, instead of increasing the number of unannounced inspections in line with the recommendations contained within the *Black lung white lies* report and instead of simply increasing inspections, this minister stood by while the watchdog fobbed off responsibility to industry. As the minister with responsibility for an industry that contributes billions of dollars in royalties to this government and to this state, he does have a responsibility. The minister has a responsibility to explain to Queensland's miners and quarry workers, their families and their communities why compliance actions in the natural resources industry, in the mining sector, in Queensland were almost 80 per cent lower in 2018-19 than in 2017-18. If we focus on coalmines, the reduction over the same period was over 96 per cent.

Sitting suspended from 12.59 pm to 2.00 pm.

Mr LAST (Burdekin—LNP) (3.36 pm), continuing: If safety in mines is the minister's greatest concern, why are inspections down? Why are compliance actions down? Why are the number of safety alerts being issued also down, especially when the information that his department holds shows dramatic increases in the indicators the government has adopted?

This minister openly refers to Queensland having the toughest mine safety legislation in the world. That legislation has not prevented eight deaths in 21 months. That legislation has failed to keep pace. In fact, it has taken almost eight years and the Brady report for this minister to adopt the indicators referred to by the Pike River royal commission in New Zealand in 2012. The report into that disaster has an entire chapter dedicated to and entitled 'The decline of the mining inspectorate', yet this minister took no notice.

Our friends across the ditch were aware in 2012 of the correlation between decreasing inspections and the increase in what they call serious harm frequency rates. In fact, to quote the royal commission's report, 'Reduced inspections frequency was a contributing factor to the increase in serious harm incidents.' As one industry safety correspondent wrote, 'I am exhausted from hearing the statement that we have the toughest mine legislation in the world as miners continue to die or be maimed.'

I move onto the detail of the bill. Despite the somewhat belated intention to make our mines and quarries safer, this legislation has some serious deficiencies. It is lacking in its understanding of the very industry it seeks to make safer. Statutory office holders are safety critical roles and are important in managing risks to the safety and health of coalmine workers to whom they owe a responsibility. Currently, the Coal Mining Safety and Health Act 1999 does not prescribe particular persons who may be appointed. For example, this may include a contractor or service provider or employee of a contractor or service provider.

This bill amends the act to clarify that only persons who are employees of a coalmine operator may be appointed as certain statutory office holders. I reiterate my earlier comments following the tabling of the amendments by the minister to extend the time period for these mines to sort out this issue between permanent employees and contractors. I want to express my concern that those amendments do not go far enough in resolving that particular issue, which is the single biggest concern raised throughout the course of public hearings and deliberations on this particular bill.

The bill amends the act to clarify that only persons who are employees of a coalmine operator may be appointed as certain statutory office holders. I ask the minister: what guarantees will there be that we will have sufficient SSEs at all of our mine sites across this state following the implementation of this legislation we are debating today?

This issue around site senior executives having to be employees of the mine operator has been a point of contention for mine operators and some workers, as this will remove the ability for contractors to be able to work in these roles at the present time. The rationalisation for this change in the explanatory notes stated—

This will ensure that statutory office holders can make safety complaints, raise safety issues or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment.

However, as outlined in the LNP statement of reservation, there was no evidence presented to the committee to justify this. In fact, the Brady mine safety review indicated that contract statutory office holders were not reporting safety breaches for fear of losing their job as opposed to direct employees.

At last year's safety resets, only 22 people raised employment status as a reason for not raising safety issues—22. With only 22 out of 52,000 workers at 1,197 resets, that does not appear to be justification for this significant and extreme amendment to force contractors to become employees of the mines. The committee even heard evidence that contract statutory office holders were more likely to report safety concerns—opposite to the justification used for the law change requiring direct employment.

Mr Andrew McDonald from the SSE Forum confirmed the benefit of having contractors on site to raise safety concerns. He said—

Our mine is set up with around 70 per cent full-time employment and 30 per cent contractors. We did a review back through our hazard reporting process for the last 12 months. When I pulled the numbers out, it surprised me. Some 68 per cent of all hazards reported came from the contractor base and only 32 per cent from the full-time employee base. To me, that is telling us that our full-time employees have become very acclimatised to it. It is what they do every day. They are starting to move past hazards that the contractors are seeing and recognising from other sites.

Mr Dan Proffitt claimed that statutory officers and coalmine workers often seek different employment arrangements and that this difference is neglected in the bill. He said—

I believe the reason behind the perception this change is needed has been incorrectly interpreted from the safety reset feedback. The majority of contractors that do the statutory roles within our industry actually prefer to remain contract. This is in stark contrast to contract coal mine workers on the shop floor level who are constantly chasing a permanent role.

The Queensland Resources Council also believed that it would be an unreasonable and unjustified regulatory burden requirement for all statutory position holders—senior site executives—at a coalmine to be employed by the coalmine operator. Corporate structures in mining are complex and involve joint ventures, partnerships and structures within individual companies. This is why contract statutory office holders are in demand in the industry as they can easily fit into new roles and relieve in situations where the office holder has taken leave or is ill. The LNP strongly believe that it is not the government's role to tell workers who they must work for.

I also want to raise a serious issue around this bill's compliance with fundamental legislative principles, or FLPs as we all know them. This flows into the issues around the fact that this provision and its mismanagement through the drafting and committee process breaches the fundamental legislative principles of Queensland law. The QRC wrote to the Speaker notifying him that there had been a serious breach of FLPs with the bill. In the letter from QRC, CEO Ian Macfarlane stated—

The QRC has for some time been concerned about the lack of genuine consultation on regulatory changes that will significantly affect the resources industry. Too frequently there has been no proper regulatory assessment of policy proposals that impose a regulatory burden on industry.

The letter went on to outline that clause 7.2.12 of the *Queensland Legislation Handbook* states that Queensland's legislators—that is, us in this chamber here today—must consider the abrogation of individual rights and liberties and justify restrictions on a person's ordinary activities. The clause also states that legislative intervention should be proportionate and relevant to any issue being dealt with

under the legislation. The fact that there was a failure in the regulatory assessment process for the bill, as well as the committee's assessment, has meant that the issue has been referred to the Committee of the Legislative Assembly for review, as it should. Ian Macfarlane went on the finish his letter saying—

I am bringing this to your attention so that you consider under the Standing Rules and Orders whether the effectiveness of the debate of the Bill has been compromised by both the short comings of the regulatory assessment process for the Bill as well as the State Development, Natural Resources and Agricultural Industry Development Committee's assessment of how it affects the fundamental legislative principles.

This is a serious issue that this chamber and the members in this place need to consider as part of this debate. I ask the minister to clarify why this mess was allowed to happen in the first place and whether he will now abandon this provision that has breached the fundamental legislative principles?

This legislation is lacking when it comes to the limitations in this legislation on who can be charged with the industrial manslaughter offence. During the committee process, the issue of the appropriateness of the targeting of the statutory supervisors under the industrial manslaughter offence was raised time and time again. For example, while the CFMMEU strongly support amendments to implement industrial manslaughter, they too firmly believe that the definition of a senior officer needs to be considered further and expanded. They want to see the definition applied to other offsite decision-makers and obligation holders.

The CFMMEU want to extend the industrial manslaughter definition beyond just targeting statutory office holders and, in doing so, allow investigators or police officers the discretion to determine who should be charged with the offence—that is, the person who is actually negligent. They believe by restricting the proposed industrial manslaughter provisions to statutory position holders will allow other employees—for example, supervisors, superintendents et cetera—to fall outside the ambit of this legislation. At the Moranbah public hearing, Stephen Smyth from the CFMMEU stated—

... the industrial manslaughter definition should be broader by leaving it up to the investigator—

that is, the workplace health and safety officer or police officer—

to determine who is going to be charged—not just the SSEs.

We certainly support that this should be across the board because we want the decision-makers to be the ones who are responsible. We think by exempting people, you are not going to get that.

I personally support the notion that industrial manslaughter should always be applied to those responsible. That is why I am seeking clarification from the minister on whether he supports the CFMMEU's calls to extend the criteria of who can be charged and to clarify exactly who can be held responsible.

This legislation is also deficient when it comes to respecting the rights of Queenslanders under the law, especially relating to the defences available to people who may be charged with industrial manslaughter. The submission and contribution from the Queensland Law Society, which raised concerns around the lack of defences and rationale for the introduction of the industrial manslaughter offences, highlighted a number of issues. The society stated—

The Queensland Law Society does not support the introduction of the industrial manslaughter offences into the resources safety acts. There are existing criminal offences in these acts which capture conduct, both acts and omissions that causes a fatality, as well as offences in the Criminal Code which do the same.

In relation to the proposed offence of industrial manslaughter the Queensland Law Society said—

a) the standard of proof should be higher, to align with the standard of proof for criminal manslaughter under the Criminal Code;

b) defences should be available (again, consistent with the Criminal Code) to account for circumstances of accident, involuntariness, reasonable excuse or acts independent of the will; additional consideration should be given to defences for specific duty holders who have exercised due diligence, given the framing of duties under the Resources Safety Acts;

c) the penalties for individuals should not be limited to custodial sentences, and there should be judicial discretion (as there is with most offences) for financial penalties to be imposed in the alternative if appropriate.

d) significant consideration ... should also be given to ensuring that there is appropriate and adequate separation between the regulatory, investigatory and prosecutorial arms of the investigating body to protect individual rights and preserve the principles of natural justice.

When we prescribe in legislation the removal of a defence as outlined in section 23 of the Criminal Code, we are then becoming extremely prescriptive. We are taking away a fundamental right of people charged with this offence to rely on that defence in any subsequent court hearing. That is something that causes me a great deal of concern. The LNP opposition believes it is essential that the minister addresses the concerns raised by the Queensland Law Society and reassures Queenslanders that appropriate and necessary legal processes and defences exist for all parties involved.

This legislation is also lacking when it comes to transparency. Again, we are seeing the government force through an omnibus bill with hidden consequences. When it comes to the section of the legislation that seeks to clarify full-supply level provisions with regard to dams, Queenslanders affected by floods have every right to be suspicious. We know what happened with the Wivenhoe Dam and the flooding of Brisbane. We know what happened in Townsville with the flood event that occurred last year and the difficulties and issues that arise when we release water from storage facilities during wet weather events and the subsequent impact that might have on communities. We are seeing that being played out in the courts at the moment. As stated in the explanatory notes—

The proposed amendments to the Water Supply (Safety and Reliability) Act 2008 will clarify the intent and interaction of the Water Supply (Safety and Reliability) Act 2008 flood mitigation for dam safety purposes, with resource operations licence, temporary full supply level and reduced full supply level provisions under the Water Act 2000. Specifically, they propose to clarify and confirm that necessary actions taken by storage infrastructure operators, e.g. Seqwater and Sunwater, to make water releases to reduce storage capacity as per an approved Flood Mitigation Manual or to meet a dam safety requirement under the Water Supply (Safety and Reliability) Act 2008, are separate to obligations stated in the resource operations licence under the Water Act 2000.

All Queenslanders have the right to question whether these changes are in response to legal action already taken against this government and legal action that may be taken into the future. My colleagues on this side of the House will address other areas of concern that the LNP has with this particular legislation. There are a number of parts to the bill before the House that involve areas right across this state of ours. Rightly, Queenslanders still want answers. They want to know why this minister has failed to act. They want to know why we have seen eight deaths in 21 months and why we are still seeing horrific incidents in the mining and quarrying industries.

On behalf of the opposition I want to place on record our thoughts and prayers for the five men who were critically injured in the gas explosion at the Anglo American Grosvenor mine outside of Moranbah earlier this month. As the member for Burdekin, incidents like this demonstrate why we need to get mine safety issues right. I also want to place on record my thanks to those who responded to that incident.

The LNP understands the importance of the state's resource industry and firmly believes that, given its contribution, as a society we can afford to pay for a mine safety system that protects our workers. The LNP stands shoulder to shoulder with our miners on this important issue. I have taken dozens of phone calls from miners regarding this particular legislation. They are concerned about their safety. They are concerned that safety standards are being compromised in some of our mines and that production is being put in front of protection. That mentality needs to change. The LNP supports laws that protect miners' legal rights to a safe workplace. The safety of our miners must be paramount. The opposition and I will continue to hold this government to account when it comes to our miners' health and wellbeing, because our miners need to know that when they go to work each day they will come home again at the end of their shift.