



Speech By  
**Hon. Grace Grace**

**MEMBER FOR MCCONNEL**

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Record of Proceedings, 30 November 2023

## **WORK HEALTH AND SAFETY AND OTHER LEGISLATION AMENDMENT BILL**

### **Introduction**

 **Hon. G GRACE** (McConnel—ALP) (Minister for Education, Minister for Industrial Relations and Minister for Racing) (11.22 am): I present a bill for an act to amend the Safety in Recreational Water Activities Act 2011, the Work Health and Safety Act 2011 and the legislation mentioned in schedule 1 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Education, Employment and Training Committee to consider the bill.

*Tabled paper:* Work Health and Safety and Other Legislation Amendment Bill 2023 [2056](#).

*Tabled paper:* Work Health and Safety and Other Legislation Amendment Bill 2023, explanatory notes [2057](#).

*Tabled paper:* Work Health and Safety and Other Legislation Amendment Bill 2023, statement of compatibility with human rights [2058](#).

I am proud to introduce the Work Health and Safety and Other Legislation Amendment Bill 2023. The bill continues the Palaszczuk government's long record of strengthening workplace health and safety laws in Queensland and leading the nation in doing so. This bill builds on our substantial reforms in 2017 which introduced the offence of industrial manslaughter and established the independent Work Health and Safety Prosecutor.

Ensuring Queensland workers are protected by robust and contemporary work health and safety laws is of paramount importance. The impact workplace fatalities have on loved ones, friends and colleagues is immense—the pain and grief unimaginable. Today, I again extend my deepest condolences to the family, friends and workmates of workers who have lost their lives as a result of work. We must do all we can to ensure workers are protected in the workplace and that employers comply with health and safety laws.

The bill gives effect to substantial legislative recommendations made by the independent 2022 review of the Work Health and Safety Act, as well as nine recommendations from the 2018 national review of the model work health and safety laws undertaken by Ms Marie Boland. On 18 August 2022, I announced a review into the Work Health and Safety Act as I considered it timely to examine whether existing frameworks in the act are robust and operating effectively to secure the health and safety of workers and workplaces.

To lead the Work Health and Safety Act review, I appointed three independent reviewers: Mr Craig Allen, former deputy director-general of the Office of Industrial Relations; Mr Charles Massy, a barrister specialising in industrial relations and employment law; and Ms Deirdre Swan, former deputy president of the Queensland Industrial Relations Commission. These eminently qualified experts brought a valuable combination of regulatory, practical and legal perspectives to the review. The terms of reference for the review focused on ensuring the provisions relating to health and safety representatives and issue and dispute resolution are effective and operating as intended and ensuring that workers are appropriately represented and assisted when it comes to health and safety matters.

I acknowledge the careful consideration the reviewers gave to stakeholder views and express my thanks for their thorough examination of the issues raised during the review. I also extend my thanks to Dr Rebecca Loudoun, associate professor at Griffith University, and Dr Carol Hon, senior lecturer and research fellow at the Queensland University of Technology, who provided the reviewers with support during the review. I know their contribution was greatly valued by the reviewers.

I would also like to extend my thanks to all stakeholders who participated in consultation during the review of the act and the development of this bill. I am very pleased that registered unions and employer groups could find common ground on measures to protect the health and safety of people in Queensland workplaces. It is very well established that safety is improved when there is effective worker representation on work health and safety matters. Health and safety representatives play an integral role in improving health and safety outcomes in the workplace through providing representation and the support necessary to identify, notify and resolve work health and safety issues.

The bill implements recommendations of the review to strengthen the operation of the health and safety representative framework in the act. It does this by clarifying and better integrating the role of the health and safety representative in the workplace. The bill requires employers to be proactive in supporting the formation of work groups and the election of health and safety representatives. This includes: advising workers about the role, powers and functions of health and safety representatives; the election process; and who may represent workers in negotiations for work groups. Further, employers must invite workers to request that the employer facilitate the election of health and safety representatives. The bill also introduces new offences to prohibit employers from intentionally hindering, preventing or discouraging workers from making a request about facilitating the conduct of an election for health and safety representatives.

Clear time frames are established for the completion of work group negotiations and establishment of health and safety committees, as well as for resolving any disputes in relation to them. This will ensure no unnecessary delays in establishing these important consultative arrangements at a workplace. Negotiations for work groups must be completed within 14 days, though there is space to extend this date by mutual agreement. The time frame for establishment of a health and safety committee is reduced from two months to 28 days.

The bill implements the recommendation of the reviewers that relevant unions, by written request, can be a party to work group negotiations. This enables a relevant union to become a party to any resulting dispute without requiring a worker to make the request and identify themselves as a union member to their employer. The reviewers also heard from stakeholders that they want faster and more definitive resolution so that, if there is a dispute regarding work group negotiations or the establishment of health and safety committees, an inspector can be appointed to assist the parties to reach an agreement or to otherwise make a decision within seven days. If required, a party to the dispute can refer the matter directly to the Queensland Industrial Relations Commission for resolution. The inspector's decision will stand until the matter is otherwise determined by the QIRC. This ensures that workers are represented for safety matters even if there is an ongoing dispute. Relevant unions, as a party to work group negotiations, can also apply to have the dispute resolved by the QIRC.

Importantly, the bill delivers on an election commitment that health and safety representatives can choose their training provider. It also clarifies that remuneration while attending training is to include any overtime, penalties or allowances they would otherwise be entitled to receive if the worker was performing their usual duties. This ensures workers are paid their usual pay during health and safety representative training and takes away any barrier of financial disadvantage which might discourage some workers from becoming a health and safety representative.

The Work Health and Safety Act review found that for health and safety representatives to perform the role envisaged by the Work Health and Safety Act it is necessary for them to be fully integrated into the identification and resolution of safety issues at the workplace.

The bill requires health and safety representatives to be notified when an inspector or work health and safety entry permit holder is on site and to allow them to join them where the visit is relevant to their work group. Employers are required to provide health and safety representatives with copies of enforcement notices issued by inspectors, work health and safety entry permit holders' entry notices, and mandatory incident notifications made to the regulator that are relevant to the representative's work group. To ensure that a health and safety representative has information on enforcement notices issued, the representative can also request that information from the regulator.

I fully endorse the reviewers' finding that it is impossible for a health and safety representative to be effective in performing their functions and powers if they are not fully apprised of safety issues that have been identified at their workplace. For the most serious circumstances, the bill implements the recommendations of the reviewers to improve the cease work powers of health and safety

representatives and make them more effective. If a serious risk to health and safety remains unresolved after the health and safety representative has consulted with the employer and attempted to resolve it, the representative may issue a written cease work direction to the employer who must cease the work until such time as the issue is resolved or the direction is set aside in accordance with the dispute resolution process. This provides greater clarity on cease work arrangements and supports resolution of serious issues that put workers at risk. Health and safety representatives retain the power to direct a worker to cease work where there is an immediate exposure to risk that is serious enough that prior consultation is not reasonable. Training for health and safety representatives will cover the cease work notice direction to ensure they understand and have the confidence to exercise these powers if the need arises. My department will develop straightforward templates for use by health and safety representatives exercising this power.

This bill will also create greater consistency between the Work Health and Safety Act and the Industrial Relations Act. Firstly, the bill amends the definition of 'discriminatory conduct' in the Work Health and Safety Act to include treating a worker less favourably than other workers. This change closely reflects the Industrial Relations Act and provides an additional circumstance in which discriminatory matters can be brought under the Work Health and Safety Act. This will include situations in which a worker is treated less favourably than other workers on the basis that the worker has been, or seeks to be, involved in work health and safety issues at the workplace. Proceedings relating to discriminatory or coercive conduct will occur in the QIRC rather than the Magistrates Court, with clarification that a relevant union has standing to commence a proceeding. With the additional workload of the commission, due to changes to the Industrial Relations Act and further changes incorporated in this bill an expression of interest process has been conducted for additional appointments to the commission.

Secondly, the bill also clarifies rules on the representation of workers by relevant registered unions for work health and safety matters to ensure consistency with the amendments made to the Industrial Relations Act in 2022. The reviewers found that the involvement of registered unions improves safety outcomes and there is strong evidence that registered unions are the most important source of support for health and safety representatives. This supports the government's longstanding position that primacy is given to registered employee organisations with appropriate coverage by ensuring that unions that seek to exercise representation rights under the Work Health and Safety Act are those organisations that fulfil the stringent governance and accountability requirements under the Fair Work (Registered Organisations) Act 2009 or the Industrial Relations Act 2016. Unregistered organisations are not subject to the same rigorous transparency, accountability and registration requirements as registered industrial organisations. Therefore, the bill excludes associations of employees or independent contractors and other non-union organisations that represent, or purport to represent, the industrial interests of workers from involvement in resolving work health and safety matters.

The bill clarifies the rights of work health and safety entry permit holders in relation to suspected contraventions to enable them to perform their intended role and functions effectively and minimise the opportunity for disputation. The bill clarifies that the requirement to give notice of entry does not limit the ability of a work health and safety entry permit holder to enter the workplace before giving notice, and any defects or irregularities—for example, incorrect spelling—in the notice do not make the notice invalid. Work health and safety entry permit holders, on giving notice of entry, will be able to remain at a workplace for the time needed to achieve the purpose of entry within usual working hours at the workplace. The bill also clarifies that, in relation to suspected contraventions, work health and safety entry permit holders can consult with workers and access employee records at the workplace without the requirement to give additional 24 hours notice.

Currently, a work health and safety entry permit holder must comply with any request to meet a work health and safety requirement at the workplace that is reasonable. The reviewers found that in some cases this was not used appropriately. The bill clarifies that a request is not reasonable if complying would unduly delay or unreasonably hinder or obstruct a work health and safety entry permit holder from exercising a right of entry—for example, requiring them to undertake site induction at a location far from where the entry is sought or excessive and unnecessary use of exclusion zones that would unduly delay entry to the workplace.

The bill enables work health and safety entry permit holders to request information from the regulator about enforcement notices issued by inspectors. Protections have been included to ensure that any personal and confidential commercial information cannot be disclosed. This will support work health and safety entry permit holders in fulfilling their role by providing them with an avenue of awareness of health and safety issues that have been found by the inspectors at a workplace.

The bill also continues the Palaszczuk government's delivery of an election commitment to implement recommendations of the Boland review. This includes an important amendment to extend the category 1 offence to include the fault element of negligence. This means that where the duty holder's negligent conduct leads to a high risk of serious harm, they can be subject to the same significant penalties as the reckless conduct category 1 offence.

This bill introduces new offences to prohibit a person from providing, entering into or benefiting from a contract of insurance or indemnity to cover liability for monetary penalties imposed by the Work Health and Safety Act and the Safety in Recreational Water Activities Act. This was a recommendation of the best practice review of Workplace Health and Safety Queensland that has been adopted in the national model work health and safety laws. It is simply unacceptable for companies to put workers' safety at risk and to use insurance to avoid any financial penalties imposed on them.

While this bill represents a substantial package of reforms, some of the recommendations of the review are being delivered separately. In response to recommendation 31 of the work health and safety review, I have requested that the Work Health and Safety Prosecutor conduct a review of the industrial manslaughter laws which were introduced in the 2017 act amendment. In conducting this review, the Work Health and Safety Prosecutor will bring knowledge and practical experience in the operation of these provisions since they have come into effect.

Work is continuing on the remaining legislative recommendations from the review. This includes two recommendations that were originally intended to progress with this bill to extend the powers of the health and safety representatives and health and safety entry permit holders to take photos and make videos and take measurements and samples. Further consultation will be undertaken to ensure these powers are accompanied by robust safeguards to protect privacy. These recommendations will be progressed next year.

Consultation is also continuing on the elevation of the hierarchy of control from the Work Health and Safety Regulation to the Work Health and Safety Act. The hierarchy of control is an important part of risk management in the workplace. In addition, to complement the improvements contained in the bill, it is my intention to commission an independent review of Workplace Health and Safety Queensland, the regulator, to ensure its activities remain contemporary and reflective of community expectations. Initial stakeholder consultation will commence this year, and I anticipate that the review will be completed in early 2024.

The bill strengthens the Work Health and Safety Act by improving worker consultation and representation and ensures any disputes can be dealt with effectively and without unnecessary delays. This builds upon the Palaszczuk government's proud record of standing up for Queensland workers. We believe that every single worker has the right to be safe in the workplace and to return home safe and healthy to their families and loved ones at the end of the day. I commend the bill to the House.

### **First Reading**

**Hon. G GRACE** (McConnel—ALP) (Minister for Education, Minister for Industrial Relations and Minister for Racing) (11.42 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

### **Referral to Education, Employment and Training Committee**

**Mr DEPUTY SPEAKER** (Mr Kelly): In accordance with standing order 131, the bill is now referred to the Education, Employment and Training Committee.