Speech By

Hon. Grace Grace

MEMBER FOR MCCONNEL

Record of Proceedings, 20 March 2024

WORK HEALTH SAFETY AND OTHER LEGISLATION AMENDMENT BILL

Resumed from 30 November 2023 (see p. 3912).

Second Reading

Hon. G GRACE (McConnel—ALP) (Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing) (12.10 pm): I move—

That the bill be now read a second time.

The Miles government is fundamentally committed to protecting the health and safety of Queensland workers. Every single worker deserves to be safe at work and then go home safe to their families. Workers sell their labour, not their health. I am immensely proud to be part of a government that has consistently led the nation in strengthening work health and safety laws. I am pleased that this bill ensures Queensland continues to lead the way in the critically important area of work health and safety.

The bill implements legislative recommendations from the independent *Review of the Work Health and Safety Act 2011: final report* as well as the national *Review of the model work health and safety laws: final report* conducted by Ms Marie Boland. Before turning to the contents of the bill, I would like to extend my sincere thanks to the 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. I again acknowledge the careful consideration the reviewers gave to stakeholder views and express my thanks for their thorough examination of the issues raised.

I would also like to thank the members of both the former Education, Employment and Training Committee for its consideration of the bill and the new Education, Employment, Training and Skills Committee, which tabled its report on the bill on 23 February 2024. Finally, I extend my sincere thanks to those who made submissions to the committee and those who appeared as witnesses as part of the committee's inquiry. I am very pleased that registered unions and employer groups could find common ground on measures to protect the health and safety of Queensland workers.

The committee made five recommendations, with the first being that the bill be passed. The committee made a further four recommendations relating to administrative actions the Office of Industrial Relations can take to assist with implementing the bill. I agree with the committee's recommendations. I table the government's response to the committee's report.

Tabled paper: Education, Employment, Training and Skills Committee: Report No. 2, 57th Parliament—Work Health and Safety and Other Legislation Amendment Bill 2023, government response 409.

I am proud that this government was the first state in Australia to introduce industrial manslaughter provisions into work health and safety laws. On 17 October 2023, acting on recommendation 31 of the Work Health and Safety Act review, I requested the independent Work Health and Safety Prosecutor to undertake a review of the scope and application of Queensland's industrial manslaughter provisions.

I received the findings of this review in February 2024—just last month. The review included consultation with registered industrial organisations, affected persons, other consultative bodies and the legal profession. I thank the prosecutor, Simon Nicholson, for his diligent efforts in conducting this review. The review made three recommendations on Queensland's industrial manslaughter provisions. The Work Health and Safety Prosecutor recommended that the industrial manslaughter provisions be amended to:

- expressly include a bystander whose death is caused by the negligent conduct of a person conducting a business or undertaking;
- clarify that multiple parties in a contractual chain can be held accountable; and
- allow an alternative verdict to be found if industrial manslaughter could not be satisfied beyond a reasonable doubt.

The government is currently considering these recommendations.

As a result of this review, I will move amendments during consideration in detail to remove clauses in the bill which had proposed to extend the category 1 offence to include the fault element of negligence in both the Work Health and Safety Act and the Safety in Recreational Water Activities Act. Removal of these clauses from the bill allows the government to take a comprehensive and holistic approach to its consideration of the Work Health and Safety Prosecutor's recommendations. For clarity, the government intends to progress the extension of the category 1 offence, but we want to ensure they are progressed consistently with any changes to industrial manslaughter laws arising from the prosecutor's review.

As a proud former union official, I know firsthand the critical role health and safety representatives play in effectively representing workers and improving safety in the workplace. In performing this critical role, health and safety representatives need to be well trained and well supported. Work health and safety representatives accessing appropriate training tools and information is central to the four committee recommendations directed to the Office of Industrial Relations.

In summary, the committee recommended that the Office of Industrial Relations:

- develop guidance and resource materials to assist health and safety representatives, particularly in relation to exercising their powers;
- consider how industry-specific knowledge can be incorporated in health and safety representative training, particularly for high-risk industries such as construction, transport, manufacturing and health;
- consult with registered employer or employee organisations as part of its review of health and safety representative training; and
- consider undertaking an awareness campaign to ensure relevant organisations and workers are aware of the changes in the bill.

I welcome these practical recommendations from the committee.

I will now expand on two important features of the bill related to the training of health and safety representatives. First, the bill implements a recommendation from the Boland review to allow workers to choose their preferred health and safety representative training course. The Boland review found the choice of the health and safety training was often an area of contention which could hinder or delay access to this crucial work.

The changes in the bill will allow health and safety representatives to undertake the required training without delay and includes a streamlined resolution process where there is no agreement on the training course. I am pleased to note this also implements a government election commitment.

Second, the bill removes a financial disincentive experienced by many workers attending health and safety training, as the reviewers found many workers did not receive equivalent wages while undertaking those vital courses. The bill clarifies that health and safety representatives will be fully compensated for attending training, as if they had been at work. Importantly, for part-time workers, this means payment for any additional hours required to attending the training. Well-trained health and safety representatives benefit workers, the person conducting a business and the wider community.

These two provisions will not only reduce disputation around the areas of choice of trainer and the remuneration paid for periods of training but just as importantly create a smoother pathway to access training in the first place. For health and safety representatives to be effective, they need to be

fully informed of health and safety issues in their workplace. The bill ensures health and safety representatives are empowered to obtain relevant health and safety information directly from the person conducting a business or undertaking and from the regulator.

The bill also ensures health and safety representatives are aware of and can accompany both inspectors and entry permit holders at the work site. These changes are vital in ensuring health and safety representatives are completely integrated into the identification and resolution of safety issues in the workplace and can fully perform their crucial role as covered in the act.

The Work Health and Safety Act currently empowers a health and safety representative to direct a worker to cease unsafe work where there is a reasonable concern that the health and safety of a worker is at serious risk from immediate or imminent exposure to a hazard. The bill clarifies the exercise of this power, requiring a written direction to cease work to be issued directly to the person conducting the business or undertaking. The written notice will provide clarity on the serious risk identified and support resolution of the issue, as well as provide assurance that the direction given has satisfied the required preconditions, therefore making it a lawful direction. Importantly, health and safety representatives retain the power to issue a cease work direction to a worker where the immediate exposure to risk is so serious that prior consultation or a written notice is not reasonable.

In recognising the great value of health and safety representatives in improving safety in the workplace, the reviewers recommended a range of measures to promote and encourage the take-up of these roles. The bill strengthens and promotes the role of health and safety representatives through:

- the requirement for employers to notify their workers that they can request the election of a health and safety representative; details of the role, powers and functions of health and safety representatives; and the process and time frames for electing them;
- prohibiting employers from intentionally hindering, preventing or discouraging workers from making a request about facilitating the election of, or discouraging the election of, a health and safety representative; and
- setting out new processes and time frames for work group negotiations, including an obligation on employers to negotiate with workers in the formation of work groups and the development of a streamlined dispute resolution process.

No-one should be punished directly or indirectly for raising health and safety concerns that impact themselves or others. In fact, workers should be encouraged to do just that. The bill provides greater protections to Queensland workers who raise their voice to make their workplace safer by introducing a new circumstance in which discriminatory conduct matters can be brought under the act to align more closely with the Industrial Relations Act. The amendment to the definition of 'discriminatory conduct' captures situations in which a worker is treated less favourably than other workers; for example, on the basis that the worker has been, or seeks to be, involved in health and safety issues in the workplace. The government firmly believes that workers have a right to raise health and safety issues in the workplace and not fear reprisal for doing so. I am pleased the bill provides these safeguards.

The reviewers recognised the crucial role that not only health and safety representatives but also entry permit holders play in workplace safety. The bill clarifies the powers of entry permit holders to ensure that, like health and safety representatives, they are appropriately equipped and empowered to perform their role. These changes are intended to minimise disputation by making it clear what entry permit holders can do when exercising their rights at a workplace. The bill clarifies that entry permit holders may enter a workplace to exercise their statutory right to investigate a suspected contravention of the act prior to giving notice and that any formal defect or irregularity does not invalidate the notice. It has never been the intention that minor administrative errors should frustrate workers' rights. Sensible outcomes should prevail. Further, the bill clarifies that while an entry permit holder remains at the workplace they are not required to give an additional 24 hours notice to view relevant documents or consult workers related to the suspected contravention.

The bill also clarifies that an entry permit holder is permitted to remain at a workplace for the time necessary to complete the exercise of their statutory powers subject to the limitation that such rights can only be exercised during the usual working hours at the workplace. This change ensures consistency with amendments made to the trespass offence in the Summary Offences Act.

The reviewers identified a need for clarification with respect to entry permit holders and requests for them to comply with a work health and safety requirement. The bill clarifies that a request is not reasonable if it would unduly delay or unreasonably hinder or obstruct that permit holder from exercising a right of entry. Such an example could be requiring offsite induction at a location far from where entry is sought or excessive or unnecessary usage of exclusion zones. Again, sensible outcomes should prevail.

The reviewers recognised that for entry permit holders to be effective, like health and safety representatives they need to be fully informed of health and safety issues in their workplace. The bill ensures entry permit holders are able to receive information from improvement notices, prohibition notices or non-disturbance notices issued by an inspector under the act. The independent review of the Work Health and Safety Act found—

Registered unions, with well-established eligibility rules, have a recognised interest in regulating the performance of the way in which work is performed within their area of coverage.

The independent review also concluded—

... registered unions have a longstanding interest in WHS matters and have demonstrated expertise in those matters. That expertise is of value to both workers and PCBUs.

This bill amends a number of definitions to clarify representational rights for workers when it comes to health and safety. In particular, definitions for the terms 'union', 'suitable entity' and 'excluded entity' are included in the bill to ensure the workplace health and safety interests of workers are only represented by entities subject to regulation and registration under the Industrial Relations Act or the Fair Work (Registered Organisations) Act. These changes are consistent with amendments made to the Industrial Relations Act in 2022.

As I have said in this House previously, the primacy of registered organisations has been a central feature of industrial relations systems throughout Australia for generations. This has been consistently acknowledged and implemented through statutory representative rights, obligations and standing for registered organisations. Organisations registered under Queensland and Commonwealth industrial relations legislation are subject to consistent regulatory oversight and accountability, including: rigorous reporting requirements to ensure these organisations are transparent in their dealings; and being accountable to members and able to demonstrate good governance practices. In contrast, unregulated entities are not subject to these rigorous, transparent and accountability registration requirements. This bill reduces the risk of workers and employers being misled or confused about an entity's standing to represent them under work health and safety and industrial relations legislation. However, it should be noted that workers can still call on an expert to assist them in relation to a work health and safety issue provided they are not regarded as excluded entities. Examples include allied health practitioners such as physiotherapists and occupational therapists.

I am proud of the role registered unions and employer organisations have played in helping to keep Queensland workers safe; however, some workers still experience impediments when requesting union involvement in their workplace. The reviewers found—

... many workers who are members of registered unions are reticent to tell their employer that they are a member of a registered union, or that they have sought the registered union's intervention in the workplace.

The reviewers also noted strong evidence that 'registered unions are the most vital source of support for HSRs and that safety outcomes are closely tied to union involvement'; therefore, several of their recommendations recognise that relevant registered unions should be involved in the discussions about those issues as a party principal and not just as a mere representative. To ensure all Queensland workers can get the representation they need, even when they feel unable to identify themselves as union members to their employer, the bill provides for a relevant union to be a party principal to negotiations regarding health and safety representatives, work groups and as a party to the health and safety issue.

Lastly, the bill ensures businesses are taking safety seriously by clarifying that insurance contracts and arrangements cannot be used to pay monetary penalties under both the Work Health and Safety Act and the Safety in Recreational Water Activities Act. The effectiveness of monetary penalties as a deterrent is significantly undermined if businesses can take out insurance to cover this cost. The bill removes this by placing a prohibition on entering, providing or benefiting from an insurance contract or arrangement that purports to cover monetary penalties under the acts.

There should be no higher priority than safety at work. This bill strengthens worker protection and representation and builds on the record of the Miles government in leading the nation to keep Queensland workers safe. I once again thank the committee for its work in considering the bill and I look forward to the debate regarding these amendments. I commend the bill to the House.