

6 JUL 2011

WORK HEALTH AND SAFETY BILL 2011

SECOND READING SPEECH

I am pleased to introduce the Work Health and Safety Bill 2011.

This Bill forms a crucial part of the Commonwealth's commitment to nationally harmonised work health and safety laws. These are landmark reforms which have been long in the making. Nationally harmonised work health and safety laws were first raised by the Whitlam Government in 1974. In the intervening years, the harmonisation of work health and safety has experienced many false starts despite having strong support from both unions and business.

Indeed the Coalition had 11 long years to deliver on this important reform and failed to do so.

While its genesis is decades old, the arguments in favour of harmonisation to this date remain compelling.

Having different OHS systems creates a regulatory burden on businesses, increase red tape and means that workers are at risk of poorer safety standards than their counterparts in other states.

In 21st century Australia, workers and businesses deserve better.

In July 2008, the Commonwealth, states and territories came together to sign an historic Council of Australian Governments agreement to put harmonised work health and safety laws in place by 1 January 2012.

This Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety set in place a framework for working cooperatively toward the common goal of harmonised laws. In so doing, Governments set aside politics in favour of a national framework which reduces red tape and ensures that all workers have the same protections, regardless of where they live and work.

Over the past three years, the Government has worked in partnership with the states and territories, business groups and the ACTU to achieve a new legislative framework.

This new framework will replace nine separate OHS Acts and over 400 pieces of OHS regulation which currently causes unnecessary confusion and complexity and higher costs for many businesses.

This duplication and fragmentation of work health and safety legislation has also stood in the way of better safety outcomes. Clearly, the health and safety of workers is a matter of national significance.

Around 290 Australians are killed at work each year. Many more die as a result of work related disease and each year around 135,000 Australians are seriously injured at work.

The cost of work related injury and illness to our economy has been estimated at nearly 6 percent of our gross domestic product. The cost to those injured and to their families, workmates and friends is inestimable.

Not only are workers' lives and health at stake because of the current state of Australia's OHS laws, so too is the efficiency of our economy.

The Work Health and Safety Bill before you today reflects the provisions of the Model Work Health and Safety Act agreed by the Workplace Relations Ministers' Council in December 2009. This model Act has been subject to an extensive consultation process involving considerable stakeholder input and scrutiny.

In April 2008, the Commonwealth established an independent panel to conduct the National Review into Model Occupational Health and Safety Laws. This Review Panel examined work health and safety laws in each state and territory and the Commonwealth and conducted extensive consultation in each jurisdiction.

The Review Panel participated in over 80 meetings, consulting with more than 260 individuals representing over 100 organisations, including regulators, unions, employer organisations, industry representatives, legal professionals, academics and health and safety professionals. The Review Panel received 243 written submissions providing a rich source of ideas and information to form the basis for reform proposals.

The National Review was completed in January 2009, resulting in two comprehensive reports being submitted to the Workplace Relations Ministers' Council. These reports made recommendations on the optimal structure and content for the model Act. Workplace Relations Ministers responded to the Review Panel's 232 recommendations in May 2009. Decisions made by the Workplace Relations Ministers' Council formed the basis for the model Act which was then drafted by Safe Work Australia.

An exposure draft of the model Act was released for public comment for six weeks in September 2009. The 480 submissions received during this time informed many of the amendments to this draft. The model Act as endorsed by the Workplace Relations Ministers' Council in December 2009 reflected the outcome of this extensive consultation process.

In endorsing the model Act, Ministers acknowledged that each jurisdiction will face changes in current OHS arrangements in order to achieve the goal of uniform OHS laws. At the same time, Ministers agreed that the model laws comprise a balanced and inter-related package of measures that will lead to enhanced safety protections for all Australian workers and greater certainty and protections for all workplace parties.

The harmonisation of work health and safety laws is also one of COAG's top ten priority reforms under the 2008 *National Partnership Agreement to Deliver a*

Seamless National Economy. Each party under the National Partnership acknowledged a mutual interest towards achieving a coordinated national approach to work health and safety laws.

The implementation of harmonised work health and safety laws is assessed annually by the COAG Reform Council. Under the National Partnership the Commonwealth will provide reward payments to States and Territories following the COAG Reform Council's advice on the achievement of key milestones set out in the Implementation Plan.

The positive outcome expected from the National Partnership will be a reduction in the costs of regulation, contributing to enhanced productivity and workforce mobility across the country.

The work towards a nationally harmonised system of legislation, regulations and codes of practice will ensure that the 40,000 businesses operating across jurisdictions will face less regulatory duplication associated with compliance through multiple systems across jurisdictions.

A national system will harmonise work health and safety laws so that they are consistently enforced by regulators facilitating a stronger partnership with business to minimise the risks of workplace injuries and deaths.

Under the Intergovernmental Agreement governing the work health and safety harmonisation process, jurisdictions expressly agreed to develop a national compliance and enforcement policy to ensure a consistent regulatory approach across all jurisdictions.

The Work Health and Safety Bill I am introducing today will apply to businesses and undertakings conducted by the Commonwealth, public authorities and non-Commonwealth licensees.

An exposure draft of the Commonwealth Work Health Safety Bill was released for comment from interested stakeholders on the Commonwealth specific provisions, from 26 May to 17 June 2011. Feedback was received from a range of stakeholders including Commonwealth Agencies, public authorities, non-Commonwealth licensees, unions, employer groups and legal professionals.

Despite some differences in detail, OHS laws in all Australian jurisdictions are based on the internationally recognised Robens model of a broad principles-based approach to OHS regulation which creates general duties applicable to all workplaces.

The principles which underpin the Work Health Safety Bill reflect the Robens model, and so echo the basis of the current Commonwealth *Occupational Health and Safety Act 1991*. Like the current Commonwealth Act, the Bill provides that workers and others are to be given the highest level of protection from hazards and risks as is reasonably practicable.

The Bill seeks to secure the health and safety of workers and workplaces through the elimination or minimisation of risks, fair and effective representation, consultation,

co-operation and issue resolution, provision of advice information, education and training, and effective and appropriate compliance and enforcement measures, among other matters.

Of course, some changes have had to be made by all jurisdictions – including the Commonwealth - to their current work health and safety Acts to come to an agreed model Act.

I will now outline some of the more significant features of the Bill which will be new to the Commonwealth jurisdiction.

In line with the model Act, the Bill does not rely on ‘employer’ duties but assigns the primary duty of care on the ‘Person Conducting a Business or Undertaking’, qualified by what is reasonably practicable.

The Work Health and Safety Bill will also provide for a modernised and wider coverage of contemporary work relationships that are broader than the traditional employer/employee relationship.

There is the expanded definition of worker – contractors, employees of contractors, sub-contractors, labour hire workers, apprentices, volunteers as well as employees all come under this definition.

The Work Health and Safety Bill places a positive duty on officers to exercise due diligence to ensure compliance by the organisation.

This Bill also places a duty on designers of plant, substances and structure consistent with the principle that duties of care should be imposed on those that who are materially involved in or materially affect the performance of work.

Similar to current provisions in the Commonwealth *Occupational Health and Safety Act*, the Work Health Safety Bill provides for the election of Health and Safety Representatives who will represent workers in work groups on work health and safety matters.

Health and Safety Representatives will also continue to have powers to issue provisional improvement notices and direct that work cease where there is an immediate threat to the health or safety of a member of a work group. To simplify arrangements, the Bill provides that in bigger organisations, work groups are now allowed multiple Health and Safety Representatives.

Under the model Bill, workers will now have the statutory right to cease unsafe work in certain circumstances. This is a new statutory right for the Commonwealth and provides that workers are entitled to cease work if they have reasonable concerns that to carry out the work would expose them to serious risk to their health and safety, emanating from an immediate or imminent exposure to a hazard.

The Bill also contains new and tougher provisions outlining significant penalties for those who fail to meet their obligations for work health and safety.

There are three categories of penalties based on the degree of culpability, risk and harm.

Category 1 offences involving proven recklessness attract a maximum fine of \$3 million for bodies corporate and for individuals the maximum fine of \$600 000 or a maximum of five years' imprisonment or both.

Category 2 offences involve breaches of health and safety duties which expose another person to a risk of death or serious injury or illness, and attract a maximum fine of \$1.5 million for bodies corporate or \$300 000 for individuals.

Category 3 offences apply for any breach of a health and safety duty with a maximum fine of \$500 000 for bodies corporate and \$100 000 for individuals.

To ensure greater accountability and responsibility for safety outcomes, the Commonwealth will no longer be immune from criminal liability for offences under this legislation. This is an improvement on the current Act which limits Commonwealth liability to civil remedies only.

The range of enforcement mechanisms will also be wider under the new laws. New options include infringement notices, remedial orders, adverse publicity orders, training orders and orders for restoration.

Other significant changes brought about by this Bill include enhanced protections from discrimination, victimisation and coercion over work health and safety matters which go beyond what is currently available through anti-discrimination and other laws. Importantly there will be protection against discrimination for people in the workplace who exercise or perform powers, functions or rights under the Bill.

There will be an entry permit scheme that allows authorised permit holders to inquire into suspected contraventions of work health and safety laws and to consult and advise workers about work health and safety matters.

In addition to changes in Commonwealth work health safety laws to align them with the model Bill, there are also provisions in the Work Health Safety Bill specific to our unique jurisdiction.

I would stress that in keeping with the Government's commitments under the COAG intergovernmental agreement, the Commonwealth specific provisions are expressly permitted under the jurisdictional notes provided in the model Act.

The Bill will apply to businesses or undertakings conducted by the Commonwealth, a public authority and, for a transitional period, a non-Commonwealth licensee.

Importantly, the Bill seeks to ensure the same coverage of Commonwealth workers as are currently covered under the Commonwealth OHS Act. This means that in the Commonwealth jurisdiction the definition of worker will be extended to include persons who are currently deemed to be employees of the Commonwealth such as:

- Members of the Australian Defence Force; and
- A holder of a Commonwealth Statutory office.

The Bill also establishes Comcare as the single regulator for work health and safety in the Commonwealth jurisdiction. Comcare will operate under the oversight of the Safety, Rehabilitation and Compensation Commission. This is a change from the current situation where OHS regulation is the joint responsibility of Comcare and the Commission.

The Commission will continue to have an important role in overseeing the activities of Comcare which will have responsibility for day to day regulatory functions. It will also continue to have advisory and consultative functions, including advising the Minister on the administration of the Act and making recommendations to the Minister on the most effective means of giving effect to the objects of the Act.

The Commission will also be a forum for consultation between Comcare and persons conducting a business or undertaking, workers and the bodies that represent them.

In terms of commencement of this legislation, all jurisdictions have committed to implement the model Bill by 1 January 2012.

These laws will be supported by model regulations and codes of practice that are expected to be finalised at the national level later this year. The process to develop national regulations is again a collaborative one being achieved in partnership with the jurisdictions and employee and employer bodies.

The provisions in the Work Health and Safety Bill complement legislation being enacted across other Australian States and Territories and will lead to enhanced work health and safety protections for Australian workers and greater certainty for businesses.

This legislation will contribute to long term sustainable employment opportunities for all Australians underpinned by strong uniform work health and safety laws.

I do not need to tell you that the Work Health and Safety Bill 2011 is a win-win for both workers and employers in the Commonwealth.

More broadly, the benefits from new harmonised work health and safety laws will increase profitability and productivity for businesses and at the same time protecting the lives and health of Australians.

It is estimated that harmonising work health and safety laws will save multi-state businesses \$179 million per annum. Support for this legislation is support for a balanced and nationally harmonised framework to secure health and safety for all Australian workers and Australian businesses into the future.

6 JUL 2011

WORK HEALTH AND SAFETY (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL

SECOND READING SPEECH

I am pleased to introduce the Work Health and Safety (Transitional and Consequential provisions) Bill 2011. This bill contains transitional and consequential provisions in relation to the Work Health and Safety Bill which will form part of a system of nationally harmonised work health and safety laws.

This Bill will repeal the *Occupational Health and Safety Act 1991* which will be replaced with the Work Health and Safety Bill. It also makes provision for the transition to the new laws. It will deal with matters where action of some kind may have commenced under the OHS Act before it was repealed and where contraventions have occurred prior to the commencement of the new laws. In addition the Bill makes consequential amendments to the *Safety, Rehabilitation and Compensation Act 1988* and the *Social Security Act 1991* that arise from the Work Health and Safety Bill.