HOUSE OF REPRESENTATIVES

OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) AMENDMENT (PROMOTING SAFER WORKPLACES) BILL 2004

Second Reading

SPEECH

Thursday, 1 April 2004

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES
Mr ANDREWS (Menzies—Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service) (9.14 am)—I move:

That this bill be now read a second time.

The amendments in this bill will reinforce and underscore the Commonwealth's regulatory approach to workplace health and safety by ensuring there is an emphasis on prevention of workplace fatalities. The framework on which this approach is based highlights the importance of the prevention of workplace accidents and an effective enforcement and compliance regime.

On 1 March 2004, a new part 2A of the Australian Capital Territory (ACT) Crimes Act 1900 came into operation. This part contains two new criminal offences of industrial manslaughter: one for employers and one for senior officers. The ACT law imposes a criminal liability on employers and senior officers after the death of a worker. This is inconsistent with the overall objective of an occupational health and safety legislative framework which is to prevent workplace deaths and injuries. It is also contrary to the unified and integrated OHS legislative system established under the internationally recognised Robens model which all Australian jurisdictions have adopted, including the ACT.

The bill removes the uncertainty facing some Commonwealth employers and employees that has arisen from the ACT legislation. The amendments contained in this bill will also provide certainty for Commonwealth employers and employees should other Australian jurisdictions enact similar industrial manslaughter legislation.

Workplace health and safety is an important issue for all Australians. The promotion of injury prevention and the best occupational health and safety practice is a key priority of the Australian government. The government has demonstrated this commitment by initiating the development of the national OHS strategy and encouraging its adoption by all Australian governments and peak employer and employee bodies. For the first time in Australia, this strategy establishes an integrated approach to strive for workplaces free from work related death, injury and disease.

The Occupational Health and Safety (Commonwealth Employment) Act 1991 (the `act') is the legislative basis for the protection of the health and safety at work of Commonwealth employees in departments, statutory authorities and government business enterprises. The principles underpinning the act emphasise that workplace health and safety is a partnership between all parties in the workplace, with a particular focus on prevention.

The government's commitment to prevention of workplace injuries and deaths is demonstrated by the amendments proposed in the Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002 (the `Commonwealth bill'). The Commonwealth bill, which passed this House on 29 March 2004, ensures that the act is underpinned by a strong and effective compliance and enforcement regime.

The Commonwealth bill provides for a mix of preventative, remedial and punitive civil and criminal sanctions, including higher penalty levels, to ensure all parties meet their workplace health and safety obligations. This is the best way to eliminate accidents and injuries.

Industrial manslaughter laws, like the ACT laws, place employers and employees in an adversarial environment and create a culture of blame. This inhibits their ability to work together to eliminate workplace safety hazards and prevent the unwanted consequence of endangering workplace safety.

The ACT industrial manslaughter legislation also duplicates the existing offences already available under the ACT Crimes Act and ACT OHS legislation to deal with the involvement of employers and employees in workplace deaths or serious injuries.
The ACT legislation singles out employers for punishment after a death which neglects the involvement of a range of other parties such as another employee, manufacturers, and suppliers of plant and equipment. This creates inequities and gaps in attributing responsibility in the unacceptable event of a workplace fatality or serious injury, and wrongly presumes that employers are solely responsible for all workplace injuries and deaths.

The bill would amend the act to insert a new section 11A. This new section would provide that part 2A of the ACT Crimes Act and any other similar industrial manslaughter laws which might be enacted by a state or territory that are prescribed in the regulations will have no effect. These laws will have no effect to the extent to which they seek to impose criminal liability on an employer, employing authority or employee covered by the act in respect of a person's death that occurs during, or in relation to, the person's employment or provision of services to another person.

Without the criteria of prescribing other state and territory laws, the new section could catch general criminal offences, such as manslaughter, murder and culpable driving. This would include, for example, the offence of manslaughter in section 15 of the Crimes Act 1900 (ACT). However, it is not the Commonwealth's intention to exclude employers, employing authorities or employees from the application of these general criminal laws. Similarly, the Commonwealth does not intend to affect the concurrent operation of state or territory laws which promote occupational health and safety provided for in section 4 of the act.

The Commonwealth only objects to a specific type of state and territory laws which purport to impose criminal liability in respect of a person's death that occurs during, or in relation to, the person's employment or provision of services to another person—that is, laws like part 2A of the Crimes Act 1900 (ACT). Only these particular types of laws would be prescribed under the new section 11A.

The bill will apply to any conduct of a Commonwealth employer, employing authority or employee occurring on or after today. This will ensure that Commonwealth employers and employees could not be prosecuted under the ACT industrial manslaughter laws after the bill commences on royal assent in relation to any conduct that occurred on or after the date of introduction.

This bill reflects the government's commitment to achieving safer workplaces and ensures the focus of occupational health and safety is on prevention of a workplace injury or fatality rather than punishment after the event.

I commend the bill to the House and present the explanatory memorandum.

Debate (on motion by Mr Edwards) adjourned.