

# **WORKPLACE HEALTH AND SAFETY**

## **AMENDMENT BILL 2009**

### **SECOND READING SPEECH**

Mr Speaker, I move that the Bill now be read the second time.

Mr Speaker, the purpose of this Bill is to amend the *Workplace Health and Safety Act 1995*, to allow appropriately authorised officers of employee organisations, that is, authorised union officials, to access workplaces for occupational health and safety purposes.

With the exception of Tasmania and South Australia, all Australian States and mainland Territories now have such provisions.

Right of entry for occupational health and safety purposes is recognised in the *Fair Work Act 2009* of the Commonwealth, as

it was in its predecessor, the *Workplace Relations Act*.

However, the Commonwealth's provisions are dependent on there being right of entry provisions in State or Territory occupational safety and health laws that are called up in the *Fair Work Regulations*. Although the *Fair Work Act* allows for it, most workers in Tasmania cannot benefit from right of entry in relation to workplace health and safety.

Workplace health and safety is best managed when all parties at work, including employers, people with management and control of workplaces, employees, and other workers, work together to identify and resolve issues. Workers are often able to identify hazards and risks, because of their knowledge of the work and their day to day experience of the work environment.

However, not all workers feel confident in raising health and safety issues with the boss. Although I would always encourage workers to raise concerns with the employer or person in charge,

where they feel they can, I accept that some may perceive their jobs to be at risk, or that the employer will think less of them for complaining. And, although the *Workplace Health and Safety Act* provides for employees' safety representatives, as well as health, and safety committees, the reality is that many workplaces are without these mechanisms.

Some critics of the proposed legislation have argued that this should only be the business of workplace inspectors. That concerned workers should simply contact an inspector with OH&S issues. Some workers will comfortably do that. But others fear that the boss may find out, or they may simply not be confident that their concern warrants calling an inspector.

The recognised role for union officials, provided in the Bill, gives workers another alternative. Some workers would prefer to talk to a union official than to anyone else.

As part of their function of representing their member's interests, unions have a legitimate interest in workplace health and safety. They can make a positive contribution, and can particularly assist those employees who feel unable to raise issues with their employer, especially where there are no formal consultative mechanisms at the workplace. Importantly, union involvement can enable health and safety issues to be resolved at the workplace, before injuries occur, and without the need to call in Government inspectors.

When this proposal went to public comment in August, submissions from employee organisations supported the proposal, as did a number of Government agencies. However, not all feedback on proposed right of entry provisions was supportive. Some employers and industry organisation have reservations about the specific provisions of this proposal, or about union right of entry in general. The Government has attempted to address a number of these reservations and concerns, while retaining the integrity of the preventative health

and safety proposal. I want to make it clear that the Government is aware of, has listened to and has taken into account this feedback.

The proposals that were put to public comment, and subsequently included in the Bill, were initially developed for the mining industry, before being adapted to apply to all industries. A tripartite Reference Group on Mine Safety Legislation, with members from industry, unions and government, agreed on a package of proposals allowing union officials to access workplaces. There were initially a number of concerns from industry representatives and the group worked hard to develop a model to address them. One of the key features of the proposal, reflected in the Bill, is that authorised officials, called OHS access card holders, are not quasi inspectors. The Bill makes no mention of investigating breaches, and an OHS access card holder cannot take any enforcement action. In particular an OHS access card holder cannot direct work to stop. The focus is preventative. OHS

access card holders can identify problems and seek to resolve them.

In the longer term, union right of entry provisions are likely to be included in Nationally consistent OHS laws. A COAG agreement commits jurisdictions to implement a consensus Model OHS Act and Regulations by December 2011. I am pleased to be introducing these reforms now, in time to meet this COAG timeline. Acting now will deliver a capacity to have authorised union officials on the ground much earlier than waiting for the conclusion of the national process.

I ask those present, for a moment, to take the view of a worker who is concerned about health and safety at his or her workplace. What worker would want to wait up to two years to gain rights enjoyed in most of the rest of Australia? This additional consultation mechanism is important, and workers have waited long enough to access it.

Many who disagree with the proposal suggest this is not a role that union officials should undertake. Yet union officials are allowed entry for workplace relations purposes. Occupational health and safety is a workplace relations issue. Safety, or the lack of it, is a working condition. It's part of the working environment. If a union official can represent a worker's interests in relation to pay and conditions, then why not health and safety? The Fair Work Act certainly acknowledges the right for union officials to enter workplaces for health and safety purposes.

I'm not suggesting that safety should be used as an industrial tool. Protections need to be in place to prevent that. But exclusion of unions from dealing with health and safety overlooks an important resource.

The Government recognises this resource and presents this Bill for consideration.

The objects of the Bill are to balance the securing of the health and safety of workers. It will achieve this by enabling employee organizations to represent workers and to consult, make enquiries, and seek to resolve OHS matters, with the rights of relevant people, such as employers, to go about their business without undue intervention or hindrance.

The Bill delivers a mechanism whereby a union may nominate one or more officers to be assessed for an OHS access card, which permits access to workplaces for OHS purposes, under certain conditions.

Applications will be assessed by the Director of Industry Safety, a person appointed under the *Workplace Health and Safety Act*. Nominees will have to meet certain specified criteria, before



being granted an OHS access card. In particular, the Director must be satisfied that the nominee has the knowledge, qualifications, experience, or training appropriate for an OHS access card holder. In recognition that such knowledge can be gained through various means, precise requirements are not prescribed. Instead the Director will have to assess the suitability of each nominee's background and experience. The Director may publish guidance in this regard.

A nominee will be required to have an entry permit under the Commonwealth's *Fair Work Act*, unless he or she is an officer of a union that does not operate under the Federal system. In that case the union must be registered under the *Industrial Relations Act 1984*. Further, the Director will be required to assess whether the nominee is a fit and proper person, using criteria that mirror those under the *Fair Work Act*.

The Bill allows entry to workplaces where one or more workers, eligible to be members of the relevant union, work. This applies whether or not any worker is an actual member. Eligibility for membership is important. It means the union's rules must allow membership of a worker at the workplace for access to be allowed.

A number of employer bodies prefer to restrict access to workplaces where members work. The approach of extending entry to workplaces where persons, eligible to be members, work is consistent with the approach in most other jurisdictions.

The Bill allows entry for two purposes. The first is to discuss health and safety issues, during a meal break or other break in work. This entry is for proactive purposes and allows for general awareness raising and information sharing. The second is to enquire into and facilitate the resolution of a health and safety matter at the workplace. These purposes are supported by

powers to enquire into and resolve concerns, including observing work, interviewing relevant people, and consulting with relevant duty holders and inspectors.

Many submissions arguing against the proposal raised the potential for misuse or abuse, especially the potential for union officials to use the right of entry to recruit members. The Bill contains a number of protections in this regard. In particular an OHS access card holder must not enter a workplace for any other purpose, or perform an action for any other purpose than the two I have mentioned. There is a strong disincentive to using OHS access provisions for recruiting purposes. As well as being a contravention subject to a fine, an OHS access card holder who uses their card for other purposes not only risks disqualification under Tasmania's provisions, but also risks losing his or her entry permit under the Commonwealth's *Fair Work Act*.

Also of concern to some respondents was the issue of confidentiality of information.

The Bill contains confidentiality provisions based on those in section 504 of the *Fair Work Act*. A person must not, for a purpose other than the two I mentioned earlier, use or disclose information obtained, except in specified circumstances. These include where there is a serious and imminent threat to life or health and safety, or there is reason to suspect an unlawful activity and the disclosure is necessary for its investigation or reporting of the matter to the relevant persons or authorities.

This approach represents an appropriate balance between right of confidentiality, and the interests of safety and law enforcement.

Some submissions raised a concern about the prospect of an OHS access card holder accessing a workplace without the knowledge of the person in charge. I fully understand that

concern. The person in charge is entitled to know who is present at the workplace. It is also in the best interests of the OHS access card holder, from a health and safety perspective, that the person in charge knows of the card holder's presence.

The Bill requires the OHS access card holder to show his or her card as soon as reasonably practicable after entry. An OHS access card holder must also comply with a reasonable request by the person in charge of the workplace to comply with an occupational health or safety requirement that applies to the workplace. This is consistent with the requirements of the *Fair Work Act* applying to the exercise of right of entry under State OHS laws.

The Bill includes a dispute resolution mechanism through reference to an inspector. Inspectors must seek to resolve issues, and where they cannot, they have powers to make particular orders, depending on the nature of the issue.

Inspectors can determine that the entry requirements have been satisfied, and allow entry, or prohibit entry where they have not been met. Similarly, inspectors can make orders about the use of powers. They may also be called in with respect to a safety and health issue, in which case inspectors will consider whether any action is required under the Act. An inspector's order may be appealed by the person to whom it is issued.

The Bill also contains provisions dealing with disqualification of OHS access card holders. The Director of Industry Safety has the power to disqualify an OHS access card holder, either permanently or temporarily, if satisfied that specified grounds exist. Alternatively, the Director may impose conditions on the card. The Director may initiate any of these actions on his or her own volition or on application from a person at a workplace worker, a person in charge or a relevant duty holder, in each case at a workplace where the card holder has exercised a power.

The OHS access card holder must be given an opportunity to show cause why the intended action should not be taken, and decisions of the Director may be appealed.

The Bill was drafted with a view to avoiding any direct inconsistencies with the *Fair Work Act*, and it mirrors a number of provisions from that Act. In this regard it is important to note the *Fair Work Act* includes separate entry provisions for entry under State or Territory OHS laws to those for other matters. A number of the OHS provisions are reflected in this Bill.

This Bill takes an important step towards improving health and safety at work. It takes a positive approach, focussing on the discussion and resolution of matters at the workplace. If approached positively, it has the potential to improve communication and cooperation between all concerned. It provides increased opportunities for workers to discuss health

and safety, and the resolution of issues that concern workers has the potential to benefit everyone at the workplace. The Bill places tight control on the use of access rights and the accompanying powers, enabling issues to be dealt with within a structured framework that includes protections for all parties concerned.

I commend this Bill to the House.