WORK HEALTH AND SAFETY BILL 2011

SECOND READING SPEECH

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

Mr Speaker, this Bill is part of a package of Bills developed to give effect to national model work health and safety laws in Tasmania and to make the necessary transitional arrangements and consequential amendments to introduce the new legislative regime in Tasmania.

The Bill mirrors the provisions of the national *Model Work Health and Safety Bill*.

Although all Australian jurisdictions have occupational health and safety laws based on similar principles, there are significant differences in detail. When you take into account the supporting Regulations, Codes of Practice and referenced

documents, the differences between the laws across Australia become large, confusing and expensive.

This is not only an issue for businesses that operate across state borders. It also impacts on the mobility of workers, where different work activities are subject to different licensing requirements, and it provides different protections for workers in different jurisdictions. It is a concern in a modern, mobile society like Australia, that there could be inequities in the protection of workers. All workers, no matter where they happen to be engaged in Australia, should be able to rely on the same standards for occupational health and safety.

In 2008, Tasmania, along with the Commonwealth and the other States and Territories, signed the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*. This agreement requires all jurisdictions to introduce nationally harmonised model occupational health and

safety legislation by the end of 2011. This means an intended date of commencement of 1 January 2012.

Under the Intergovernmental Agreement, harmonised OHS legislation means a uniform Act, Regulations and Codes of Practice.

The Model Work Health and Safety Bill on which Tasmania's Bill is based is the outcome of a long consultative process across Australia, involving stakeholders in all jurisdictions, including Tasmania.

The process commenced in 2008, with the National Review into Model Occupational Health and Safety Laws. The review panel sought public comment and consulted widely, engaging with major stakeholders in each jurisdiction.

In 2009, Safe Work Australia developed a model Bill based on decisions of the Workplace Relations Ministers Council on the recommendations of the two reports of the national review. The Bill was followed by *Model Work Health and Safety Regulations* which were agreed in principle by the majority of Workplace Relations Ministers in August 2011. These laws will be supported by Codes of Practice on a broad range of topics. The first set of these will be available for implementation when the new laws commence.

There has been an opportunity for public comment at all stages of the process, commencing with the national review right through to the development of the supporting Codes of Practice. Further, both a consultation and a decision regulatory impact statement were prepared separately for the Act and the Regulations. There has also been an opportunity for stakeholder feedback through the Safe Work Australia processes which involve representatives of jurisdictions, industry and unions.

Public comment and stakeholder feedback were taken into account in the revisions of the Model Bill, Regulations, and Codes of Practice. Although not all stakeholders could achieve their preferred position in some areas, the outcomes reflect the weight of views across jurisdictions and key stakeholders, taking into account the feedback from submissions. There was considerable 'give and take' in the development of the model laws and they represent a comprehensive package which the Government of Tasmania can support.

The objects of the harmonisation process are to:

- protect the health and safety of workers;
- improve safety outcomes in workplaces;
- reduce compliance costs for business; and
- improve efficiency for regulator agencies.

The harmonising of existing work health and safety laws is arguably the most significant legislative reform in work health and safety in Australia since modern work health and safety laws were introduced progressively by Australian jurisdictions, some twenty to thirty years ago.

This reform benefits Tasmania, just as much as it benefits the rest of Australia.

Although there is a new Act for Tasmanians to come to grips with, it is similar in principle to the existing *Workplace Health and Safety Act 1995*. There are, however, a few key differences worthy of mention.

One of the most significant differences in the Bill is the inclusion of a new duty holder, called a person who conducts a business or undertaking.

Under the provisions of the Bill, the primary duty of care for the health and safety of workers, and others who may be affected by the work, rests with the person who conducts a business or undertaking.

This was a key recommendation of the national review into Model OHS laws. By focussing on a person conducting a business or undertaking, regardless of whether that person is an employer, a self employed person, a principal contractor or operating in some other capacity, the primary duty of care will apply. The Bill will extend the duty beyond the traditional employer and employee relationship, covering new and evolving work arrangements. This addresses a growing problem, that laws focussing on the employer/employee relationship lack the flexibility to adequately capture changing working relationships.

Nevertheless, for many workplaces, a traditional employer/employee relationship still applies. For these workplaces, very little will change with respect to the general

duties under new the work health and safety laws. The employer is also a person who conducts a business or undertaking, and, as such, will be required to ensure, as far as is reasonably practicable, the health and safety at work of workers employed or engaged by the person. The person who conducts a business or undertaking will also have a duty to ensure, as far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

As is currently the case under existing laws, the primary duty holder may be an individual or a body corporate. A person who conducts a business or undertaking can also be an unincorporated body or a partner in a partnership. A volunteer association that does not employ anyone is not a person who conducts a business or undertaking.

Rather than focussing on responsibilities to employees, duties under the proposed new arrangements will focus largely on

workers, again to take into account the different arrangements under which workers may be engaged and present at the workplace. Of course, employees are workers, so the protections under the Act will apply to employees in much the same way as they do now. The biggest difference will be for those workers who currently might 'slip through the net' because they are not engaged in a traditional manner.

The Bill also places duties on persons who manage or control workplaces; persons who manage or control fixtures or fittings or plant at workplaces; persons who design, manufacture, import or supply plant, substances or structures; and persons who install, construct or commission plant or structures. Again, this approach is similar, although not identical, to existing requirements.

The entry permit scheme for union officials to enter workplaces for health and safety purposes has a number of similarities with the current provisions in Tasmania. One

notable difference is the penalties under this part of the proposed Act will be civil rather than criminal in nature. Nevertheless, monetary penalties will apply. Importantly, union officials will be able to enter eligible workplaces to investigate a suspected contravention affecting a member or person eligible to be a member or to consult and advise such workers about health and safety matters.

A new feature will be the provisions dealing with the resolution of work health and safety issues. Some other jurisdictions already have such provisions, and the intention is to provide a mechanism for issues to be resolved at the workplace, if possible. If this cannot be achieved, then matters may be referred to the regulator for appointment of an inspector to assist with the resolution of the issue.

Another important difference to our existing laws is the increase in penalties. People who fail to meet their obligations

for work health and safety run the risk of receiving significant penalties.

Category 1 offences involving a breach of a health and safety duty, exposing an individual to whom a duty is owed to a risk of death or serious injury or illness, and involving proven recklessness, will attract penalties up to $3 million for a body corporate. For an individual, the maximum penalty will be a fine of up to $600,000 or a maximum of five years imprisonment. The potential fine for an individual who is not a person conducting a business or undertaking or an officer of such is lower, with a maximum fine of $300,000, however the potential prison term is the same.

Category 2 offences, which apply to breaches of a health and safety duty that expose an individual to a risk of death or serious injury or illness, will attract maximum penalties ranging from $150,000 to $1.5 million.

Category 3 offences apply for any breach of health and safety duty with a maximum fine ranging from $50,000 to $500,000.

The Government recognises the importance of ensuring that penalties for breaches of work health and safety laws should:

- act as a significant deterrent;
- reflect community expectations; and
- take account of the seriousness of the contravention in terms of risk to others and the culpability of the offender.

The Government supports the improved penalty structure which delivers the requirements I have mentioned, with penalties that are significant and relevant.

The Model Bill allows for departures to be made where there is a 'jurisdictional note'. Jurisdictional notes allow jurisdictions to specify their own requirements with respect to certain

requirements. Most of the jurisdictional notes require minor changes, largely to take account of local conditions, especially local laws and local court systems. In addition, the jurisdictional note in relation to Schedule 2 of the Bill allows jurisdictions to specify the local tripartite consultation arrangements and the establishment of the regulator. In Tasmania's Bill, these provisions are largely based on similar provisions in the current Workplace Health and Safety Act. In particular, in Tasmania the WorkCover Board will continue to have functions related to work health and safety.

As mentioned earlier, the proposed Act will be supported by Regulations based on the Model Work Health and Safety Regulations. The laws will be further supported by Codes of Practice, also developed nationally, and a number of these Codes will be ready for implementation on commencement day.

There have been some concerns expressed by some stakeholders about the increased detail included in the new laws, especially in relation to the Model Work Health and Safety Regulations.

Absence of detail does not necessarily mean better legislation. Our current legislation is often criticised for being very vague and it does not offer certainty for workplaces on what is expected of them. This issue is a particular problem for small business who want to comply with the law but get little guidance from the current legislation. These current laws rely heavily on broad, general duties, and references to external documents.

The new laws will offer much greater clarity for all workplaces and I believe there will be a particularly positive impact for small business.

The Model Regulations also cover a broader range of matters than Tasmania's existing Regulations, providing increased protections to workers. They also include matters such as major hazard facilities that have been covered under a different Act in Tasmania.

Although the volume may seem somewhat daunting at first, not all of the Regulations will apply to all workplaces. Many duty holders will never need to open the chapter on construction work, or the part on diving work.

The guidance provided by the Regulations and especially the Codes of Practice will be welcomed by many. Although compliance with Codes of Practice is not compulsory, and other means of meeting the same or better standard are also acceptable, they provide information that is invaluable for duty holders who may not quite know where to start. For many workplaces 'more is better' and the detail provided by the Codes of Practice will help meet their needs.

Of course, with any change, there is always a feeling of uncertainty and I recognise that Tasmanian employers and workers will have many questions about the new laws and what they will need to do.

To answer those questions, I am pleased to report that there will be comprehensive information sessions on the new legislation. A number of sessions were conducted during WorkSafe month in October and will continue on for the rest of this year and into 2012.

I am particularly delighted that the WorkCover Board has allocated $100,000 for information sessions around the State which will be jointly conducted with Workplace Standards. The focus of these sessions will be on providing information that is relevant to small and medium workplaces.

It is understandable that some industries will be impacted more heavily than others. In that regard, I acknowledge the concerns of the building industry – particularly those builders operating in domestic construction.

I have asked Workplace Standards to work with the industry employer bodies and unions to ensure that there is a constructive implementation of the new laws. WorkCover Advisors will also be available to help employers achieve a smooth transition.

I want to assure businesses that commencement day will not be a signal to inspectors to start applying the new laws in a heavy handed way. The preferred way for inspectors to achieve compliance has always been through advice and guidance, and this will be particularly so as we transition to the new laws.

The Regulator will establish compliance rules which will ensure that compliance is applied consistently and fairly.

As I have mentioned earlier, the intended commencement date of the new laws is 1 January 2012. The proposed commencement date is contingent on the Regulations being ready to start on that date, because there is no intention of commencing the Act without the Regulations.

Tasmania is well placed to commence the new laws on the target date. Nevertheless, there have been a number of delays at the national level that have caused some states to seriously question the proposed start date, and call for more time. It is evident that, given the time of year and the delays that have already occurred, there is the potential that any further delays could necessitate a rethink at the national level about the commencement date. The Tasmanian Government is prepared to meet its commitments. However, we are also prepared to be adaptable to deal with any delay that is outside our control.

There has been some suggestion that Tasmania should take the initiative and delay implementation. Nevertheless, this is not a universally held view. A number of stakeholders, including businesses, want the changes to occur on time. It is the Government's view that the best approach is to commence the new laws as planned, and provide up to 12 months transition for those provisions of the Regulations that are considerably different to current laws and require considerable work for implementation.

Subject to the finalisation of national principles for the transition to the Regulations, these transitional arrangements would be formally introduced and, with the consultation and educative support mentioned earlier, an orderly transition process can be implemented.

And I'd like to mention a little good news for the State in these times of tough economic conditions. Uniform occupational health and safety legislation is one of 27 priorities for

deregulation under the *National Partnership Agreement to Deliver a Seamless National Economy*. Under the Agreement, jurisdictions are entitled to reward payments from the Commonwealth for meeting specified milestones. As far as this priority is concerned, Tasmania is doing well and is on track to meeting its 2011/12 milestone.

And I would like to thank every business, organisation and individual throughout the country who has made a submission or comment on the various draft versions of this Bill. Through consulting and engaging with stakeholders I am confident that a very good package of laws has been developed. Laws which will do much to improve workplace health and safety well into the future.

I would also like to thank those persons locally who have worked on getting these Bills ready for Parliament. It is a massive task. In particular I would like to thank Wendy Clarkson from Workplace Standards and the staff at the Office

of Parliamentary Counsel who have worked so tirelessly on preparing all five Bills which make up this legislative package.

I commend this Bill to the House.