

Second Reading Speech

Criminal Code Amendment (Industrial Manslaughter) Bill 2017

I move that the Bill be read a second time

The *Criminal Code Amendment (Industrial Manslaughter) Bill 2017* seeks to introduce the offence of Industrial Manslaughter into the Criminal Code and to ensure penalties for this offence mirror existing manslaughter provisions.

Work is something which should be rewarding, enriching and the basis of our families', communities' and state's welfare and prosperity. Workplace laws should be fair and protect all workers from unjust treatment and unsafe conditions. Every worker has the right to a safe and healthy workplace and all workers are entitled to expect to be able to return home from work safe and well.

Unfortunately this is not always the case, on average one person is fatally injured in a workplace every 19 days in Western Australia. This tragic statistic has remained relatively stable over the last sixteen years. Given the persistence of deaths and injuries in Western Australian workplaces it is clear that reform is needed to address this unacceptable situation and reduce the number of people dying during the course of their work.

This Bill seeks to implement an important component of this much needed reform through ensuring that culpable employers are held responsible for workers deaths. It overcomes difficulties in holding directors criminally responsible by explicitly creating an offence of Industrial Manslaughter.

Currently under the Criminal Code it is difficult to prosecute a company for manslaughter. Furthermore existing manslaughter legislation only allows for the prosecution of individuals who have directly caused the incident which has led to a worker's death. This Bill means that senior managers will be liable if they make a decision that knowingly allows an unsafe workplace. If that decision leads to a fatality or injury, those senior officers can be prosecuted.

The adoption of Industrial Manslaughter legislation will serve to elevate considerations of workplace safety in board rooms. Introducing the ability for

individual officers to be found liable expands responsibility for workplace deaths from the relatively abstract company level to the personal.

The need for introduction of criminal offences to improve Workplace Health and Safety and its role as a deterrent was identified by The National Review into Model Occupational Health and Safety Laws in 2008/9. The review noted that “making non-compliance with duty of care a criminal offence not only reflects the seriousness with which such conduct is regarded, but also reinforces the provision’s deterrent effect”.

This offence has precedent in other jurisdictions and is recognised in the United Kingdom and closer to home, in the ACT. Further, the Queensland Government has recently committed to introducing a new offence “negligence causing death” as a result of an interim recommendation from a review sparked by the tragic fatalities at Dreamworld and Eagle Farm last year.

There are three elements to the offence of Industrial Manslaughter which must be satisfied. First, this offence applies where an employee dies in the course of employment, or is injured in the course of employment and later dies. Second, the employer’s conduct or omission must have caused the death of the employee. Third, the employer must have been negligent in causing the death of the employee. If these three elements are proven beyond reasonable doubt, the employer will be convicted of a criminal offence. Individuals will be liable for a maximum of life imprisonment and corporations will be liable for a fine of any amount decided upon by the court. These penalty levels are in line with community expectations.

The Bill also inserts a variety of sentencing options for offenders. These include adverse publicity orders, orders for restoration, work health and safety project orders, Occupational Safety and Health undertakings, injunctions and training orders. The purpose of these is to not only ensure that employers are accountable via penalties, but potentially to require employers by court order to put in place changes to make their workplaces safer. For example, the court can order that an employer undertake a specified project for the general improvement of occupational safety and health within a specified timeframe.

Accordingly, the proposed amendments serve to improve workers’ safety in Western Australia by placing a greater onus on companies and senior officers to maintain safe workplaces. The Bill allows for criminal prosecutions to be made

when decisions are entered into that knowingly compromise the safety of workers. Furthermore, this bill brings into line Industrial Manslaughter penalties with other manslaughter offences as well as extending sentencing options available to courts.

Pursuant to standing order 126(1) I advise that this Bill is not a uniform legislation Bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the Government of the State is a party, nor does this Bill by reason of its subject matter introduce a uniform scheme or uniform laws throughout the Commonwealth.

I commend the Bill to the House and table an Explanatory Memorandum.