

**WORK HEALTH AND SAFETY BILL 2019**

*Introduction and First Reading*

Bill introduced, on motion by **Mr W.J. Johnston (Minister for Industrial Relations)**, and read a first time.

Explanatory memorandum presented by the minister.

*Second Reading*

**MR W.J. JOHNSTON (Cannington — Minister for Industrial Relations)** [12.19 pm]: I move —

That the bill be now read a second time.

The bill before the house today represents the long overdue modernisation of Western Australia's work health and safety laws. It brings work health and safety of all workplaces, including mines and petroleum, under the same laws to provide for more effective administration and greater consistency. It meets Western Australia's obligations under the Inter-governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety. Most importantly, it seeks to improve health and safety outcomes for Western Australian workers by the introduction of additional reforms.

In introducing this bill, I want to acknowledge the loss and suffering of many families who have lost loved ones in workplace accidents. The community has high expectations that every worker has the right to come home safely after each shift. Having a strong deterrence in this legislation completely accords with these expectations. I am pleased that the families of some of those tragically lost are here today to see these new laws introduced. Their powerful advocacy has played a key role in the introduction of this bill, which includes industrial manslaughter laws. The new laws will also make it illegal for insurance companies to indemnify entities against monetary penalties imposed under workplace health and safety laws. I think it is appropriate to honour the loved ones of all the families who have had to deal with workplace fatalities. I specifically want to recognise the families with us today and their loved ones: Mr Des Kelsh, who died on 18 September 2002; Mr Luke Murrie, who died on 9 October 2007; Mr Chris Patrick, who died on 4 October 2014; Mr Jayden Zapelli, who died on 17 March 2016; Mr Lee Buzzard, who died on 19 June 2016; Mr Wesley Ballantine, who died on 5 January 2017; and Mr Robert Cunico, who died on 20 April 2018. Thank you to the families for being here today.

I am proud to say that we can commit to these laws. The Occupational Safety and Health Act 1984 and the Mines Safety and Inspection Act 1994 have served Western Australia well in the decades since they were first introduced, but they are now outdated and overdue for renewal and reform.

Members of this house with an interest in health and safety will be familiar with many aspects of the bill. These include the primary duty of care, requirements for consultation at the workplace, health and safety representatives and committees, and the inclusion of the work health and safety commission as Western Australia's tripartite consultative body for these matters. These are broadly accepted features of the work health and safety landscape, and their inclusion should be familiar to all workplace participants. This familiarity is by design. The vehicle for this reform is the model Work Health and Safety Act, developed by workplace participants and their representatives, regulators, and Safe Work Australia in response to recommendations of the Productivity Commission and the Council of Australian Governments.

With the exception of Victoria and Western Australia, every other state, the territories and the commonwealth adopted the model work health and safety laws between 2011 and 2012. New Zealand also adopted new laws in 2015 based on the model Work Health and Safety Act as part of its response to the Pike River Mine disaster. Yet these key reforms have languished in Western Australia until today. The bill seeks to not only introduce updated laws, reflecting a contemporary approach to work health and safety, but also enhance the model work health and safety laws. After eight years of operation in other Australian jurisdictions, workplace participants have developed a great deal of practical experience operating in the harmonised environment using the model work health and safety laws. A range of reviews have been conducted on the way the model bill operates, in particular by Queensland and New South Wales. At the national level, the federal Senate Standing Committee on Education and Employment published a report in 2018, titled "They Never Came Home—the Framework Surrounding the Prevention, Investigation and Prosecution of Industrial Deaths in Australia".

In November 2017, former executive director of SafeWork South Australia, Marie Boland, was appointed by Safe Work Australia to conduct the first independent review of the model work health and safety laws. The review, which was published in 2018, was very informative. Although it is unfortunate that Western Australia is the laggard in this reform process, as a consequence of the failure of the previous government to bring forward reform, we have been able to take advantage of the experience of others, and those reviews, to update and refine the bill. I am pleased to announce that the bill includes key reforms recommended by Ms Boland, such as the requirement for an inspector to make a swift decision to resolve a work health and safety issue and a prohibition of insurance

against fines imposed for a work health and safety offence. We want to ensure the highest of standards in consultation between a person conducting a business or undertaking, and workers.

While recognising that there are circumstances in which practical considerations may make consultation difficult, we want to ensure all reasonable steps are taken to ensure that affected workers are consulted about workplace health and safety matters. We will enshrine the right of unions to represent their members in workplace health and safety disputes. We will make clear the right of health and safety representatives to be able to determine who provides their training. The new Work Health and Safety Bill intends to serve as a reminder that risks to psychological health must be considered alongside risks to physical health.

Two new offences of industrial manslaughter are included in the bill. As I indicated earlier, I know this is of great concern to a great number of the families of those who have died in the workplace, and I will address these new offences in more detail shortly. The model work health and safety laws have been subject to substantial consultation since 2008 and, as I have previously mentioned, have been the subject of statutory reviews. In 2017, the government announced the formation of a Ministerial Advisory Panel on Work Health and Safety Reform. The recommendations of the MAP were made available for public consultation in 2018. A total of 66 submissions were provided by interested parties, consisting of more than 600 pages of substantive comment.

The other reforms I mentioned have been included as a consequence of this public comment process, or due to recommendations made by reviews of other work health and safety laws. To bring work health and safety under a single piece of legislation requires substantial and complex amendments to existing laws. Most of the Mines Safety and Inspection Act will be repealed and a number of petroleum laws must be amended to remove matters relating to work health and safety. Elements of these laws that raise safety levies will be retained, with no changes to liability or the amounts raised. The Work Health and Safety Bill 2019 makes provision for a smooth transition of the administration of these levies. The Safety Levies Amendment Bill 2019 provides for these levies to be correctly imposed.

I will now turn to one of the key reforms previously announced by the government relating to new offences for industrial manslaughter. Before Lord Robens completed his report into health and safety at the workplace, the phrase “industrial accident” was in common use. The problem with that phrase is that it implies no causality and no culpability. An accident is simply something terrible that occurs, resulting in significant injury or loss of life but with no error or responsibility to be assigned. Work health and safety professionals no longer refer to “industrial accidents” because, decades after Robens, they know that systems of work are subject to catastrophic failures due to poor system design, bad behaviour, improper choice of tools or a combination of factors. Workplace injuries and deaths are caused by choices. If somebody makes a choice or decision that inevitably leads to the death of a worker, it is appropriate to call that behaviour “industrial manslaughter”. If something is foreseeable, it is preventable. If something is preventable, if it occurs, it is not merely an accident. If some human agency can take action to prevent harm at the workplace, that human agency is responsible to the extent of their influence or control should that harm occur. Often I hear the phrase “the cost of a human life”, and I acknowledge the urge to soften the truth and to bury the blood in the comfort of numbers and statistics in dollars and cents. The truth is that every human life is unique and priceless and the cost of their loss is borne most by their family and our community. For want of an emergency beacon, for want of a fall protection harness, and for want of proper supervision and training, deaths have occurred at Western Australian workplaces. If I might paraphrase Ashlea Cunico, the daughter of Mr Robert Cunico, in her testimony regarding the death of her father to this Parliament’s inquiry into WorkSafe, the families of the bereaved have become “lifelong members of a club you never want to join”. Each and every one of them has been devastated by the loss of a loved one who had the right to come home safely from work.

Despite our existing laws, and the work health and safety laws adopted throughout most of Australia and New Zealand, workplace deaths continue to occur at a rate higher than 10 per million workers every year. This persistently high rate of workplace deaths suggests the business-as-usual approach to workplace safety is not as effective as it should be. The death of one worker is one too many. Western Australia is not the only state to accept that stronger penalties are required to encourage better workplace choices. Industrial manslaughter laws have already been adopted in Queensland and the Australian Capital Territory. Victoria’s industrial manslaughter laws have passed its lower house and, indeed, passed the Victorian Legislative Council just this morning. I do not shy away from the fact that penalties imposed by the new industrial manslaughter offences are significant and are intended to provide a substantial deterrent. We have serious penalties for drivers who cause death on our roads and for those who are guilty of manslaughter in the wider community; now it is time for the workplace to be treated in a similar way.

It is my hope that the introduction of industrial manslaughter offences will serve to sharpen the attention of people who exercise the most control over workplaces to their health and safety responsibilities. No person conducting a business or undertaking or an officer has anything to fear from these laws if they do the right thing for their workers and comply with the duties conferred upon them. These laws will make it very clear that those who fail to comply with a duty, which then causes a death, will be affected. For work health and safety to be effective, we must be alert to the hazards and risks and make conscious, intelligent choices to deal with them. Pausing to think, pausing to plan, and pausing to observe and review and make conscious choices to remove hazards and control

risks are not onerous requirements. I encourage business owners, company directors and their officers to think about the need for a locator beacon in a remote area, or fall protection devices, or updated training and appropriate supervision, particularly of younger workers—think and implement. If we can encourage a culture in which the newest apprentice has no fear of approaching his CEO and telling him or her to wear a hardhat, it is my fervent hope that nobody will ever need to be charged with an industrial manslaughter offence.

Workplace health and safety will be improved by taking a series of interlocking steps, through education and community understanding and through a new direction for WorkSafe with a new independent commissioner. Our government has found the resources that were for too long lacking for WorkSafe. We have brought in 21 new inspectors, on top of the six additional inspectors employed since we came to office, along with increased resources for educational work and communicating with the broader community about the importance of work health and safety. These changes complement the new legislative framework. The bill I have introduced today meets Western Australia's commitment to harmonisation and the government's commitment to more effective workplace health and safety laws. I commend the bill to the house.

Debate adjourned, on motion by **Mrs A.K. Hayden**.