

**WORK HEALTH AND SAFETY BILL 2019**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)** on behalf of Hon Alannah MacTiernan (Minister for Regional Development), read a first time.

*Second Reading*

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [5.10 pm]: On behalf of Hon Alannah MacTiernan, Minister for Regional Development representing the Minister for Industrial Relations, I move —

That the bill be now read a second time.

I draw to the attention of the house that there are two bills to be read and a limited number of copies of this bill are available today, but they will be made available to members at the earliest opportunity, most likely tomorrow.

This bill 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, together to provide for more effective administration and greater consistency. It seeks to improve health and safety outcomes for Western Australian workers. 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 expects that every worker comes home safely after each shift. Having a strong deterrence in this legislation completely accords with these expectations.

Modernisation: 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Act 1994 have served Western Australia well in the decades since they were first introduced, but they are now outdated. The vehicle for this reform is the model Work Health and Safety Bill, developed by workplace participants and their representatives, regulators, and Safe Work Australia in response to the recommendations of the Productivity Commission and the Council of Australian Governments.

With the exception of Victoria and Western Australia, every other state and territory in the commonwealth adopted the model work health and safety laws. New Zealand also adopted the model. After eight years of operation in other jurisdictions, workplace participants have developed significant experience in using the model work health and safety laws. A range of reviews have been conducted on the way the model bill operates. 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, the 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. We have been able to take advantage of the experience of others, and those reviews, to update and refine the bill. The bill includes key reforms recommended by Ms Boland, such as a prohibition of insurance against fines imposed for a work health and safety offence and industrial manslaughter. We want to ensure the highest of standards in consultation between a person conducting a business or undertaking and workers. 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. Two new offences of industrial manslaughter are also included in the bill. I will address those new offences shortly.

Consultation: The model work health and safety laws have been subject to substantial consultation since 2008 and 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 reforms 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.

Safety Levies: 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 also be amended to remove matters relating to work health and safety. Elements of those 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.

Industrial Manslaughter: I turn now to the 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 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. Every human life is unique and priceless and the cost of their loss is borne most by their family and also by our community.

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 that the approach of businesses to workplace safety is not as effective as it should be. The death of one worker is one too many. Industrial manslaughter laws have already been adopted in Queensland, Victoria and the Australian Capital Territory. 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 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 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.

In conclusion, workplace health and safety will be improved by taking a series of interlocking steps, through education and community understanding, through a new direction for WorkSafe and an independent commissioner. Our government has found the resources that were for too long lacking for WorkSafe. We have brought in 27 new inspectors since we came to office, along with increased resources for educational work and communicating with the broader community. These changes complement the new legislative framework. The bill introduced today meets Western Australia’s commitment to harmonisation and the government’s commitment to more effective workplace health and safety laws.

The bill satisfies Western Australia’s obligations under the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety, July 2008. Pursuant to standing order 126(1), I advise that this bill is a uniform legislation bill. It is a bill that, by reason of its subject matter, is part of a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper [3630](#).]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.