

**CRIMINAL CODE AMENDMENT (INDUSTRIAL MANSLAUGHTER) BILL 2017**

*Second Reading*

Resumed from 15 June 2017.

**HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Agriculture and Food)** [10.09 am]: I rise as the lead speaker for the government on the Criminal Code Amendment (Industrial Manslaughter) Bill 2017, which I will refer to as the bill. The government absolutely accepts that more needs to be done in the area of occupational health and safety sanctions. Although current occupational safety and health laws provide for some level of incarceration, the government agrees that there are question marks about whether those penalties are enough to necessarily change workplace culture and attitudes and whether that change in attitude leads to a reduction in workplace deaths. We accept that more needs to be done about the penalties attached to occupational safety and health so that we can create a climate in which there will be a marked change in the culture around those laws. The government recognises that far too many people do not come home from work still and we are deeply concerned about that.

As members will be aware, earlier in this session we passed a series of amendments to the current legislation to create what we believe are more appropriate and contemporary penalties, but it is clear that more needs to be done. I will now outline some of the government's concerns about the approach taken in this bill. The government recognises the intentions of the member in introducing this bill, but it does not believe that it is the right way forward. For that reason, the government will not be supporting the bill. The approach that has been taken in this legislation is similar to an approach that was taken in the Australian Capital Territory—that is, to create new provisions within the Criminal Code. I am advised that this bill seeks to amend the Criminal Code Act Compilation Act 1913 to introduce an offence of industrial manslaughter. It appears to be modelled significantly on the ACT Crimes (Industrial Manslaughter) Amendment Act 2003. The government is concerned that attempts to emulate the ACT legislation will ignore the statutory scheme that already exists in Western Australia. Western Australia already has the Occupational Health and Safety Act 1984. Furthermore, there has been not been a successful industrial manslaughter prosecution in the ACT since its bill was introduced some 15 years ago.

It is also important to note that just because an offence carries a penalty of imprisonment as an option, it does not mean that the sentence will be one of imprisonment. The Sentencing Act provides a range of sentencing options and the court must take into account any mitigating factors that reduce the penalties that are imposed. The bill proposes offences similar to the OHS act for exactly the same purpose but with different motives. This is highly irregular and it may lead to inefficiencies and jurisdictional issues. Western Australia would have two sets of legislation with identical offences but with different penalties attached to those offences. The government believes that creating an industrial manslaughter offence without giving due consideration to how it may affect the capacity of the WorkSafe Western Australia Commissioner to enforce the OHS act is very unwise. As I said, the government acknowledges that the resources available to the crossbench are perhaps modest, but we do urge members to consider the challenges and the unintended consequences of this legislation that could interfere with the capacity of the WorkSafe commissioner to do his or her job.

The bill is limited to employer offences against their own employees. It does not consider other forms of employment, including independent contractors and subcontractors, persons on labour-hire arrangements or persons who are participating in the commonwealth's work for the dole program, which are covered by the OHS act. It makes no provision for charges to be laid for the death of bystanders—persons who are killed as a result of the employer's work but who are not employed by the employer. The bill is also narrower in scope than the OHS act for senior company officers who may be liable to prosecution. For example, a senior manager of a local government would not be liable for prosecution under the proposed legislation but would be liable for prosecution under section 55 of the OHS act.

Amendments to increase penalties for offences under the OHS act came into effect on 3 October 2018. These penalties are significantly higher than the current OHS act penalties and better reflect community expectations and help prevent noncompliance. The new level 4 penalties are, for an individual, a fine of \$550 000 and imprisonment for five years for a first offence, and a fine of \$680 000 and imprisonment for five years for a subsequent offence. For a body corporate, the penalty is a fine of \$2 700 000 for a first offence and a fine of \$3 500 000 for a subsequent offence. As members can see, we are moving as a government to take workplace safety very seriously.

I want to set this out in the context of what has been happening at a national level. As I said, the government notes that the introduction of some much stronger penalties that involve incarceration have been contemplated at a national level. There is the Boland report. As I indicated before, changes were introduced some years ago in the ACT. There have also been changes in Queensland, and in her review Ms Marie Boland pointed out —

The introduction of an industrial manslaughter offence in the Qld WHS Act —

Queensland incorporated the offence into the WHS act —

reignited the public debate about the advantages and disadvantages of including an offence of industrial manslaughter in the model WHS laws. This debate has formed a significant backdrop to this Review. This year also saw the release of the report of a Senate inquiry into industrial deaths which recommended, in October 2018, that Safe Work Australia work with the various Australian governments to ‘introduce a nationally consistent industrial manslaughter offence into the model WHS laws using the Queensland laws as a starting point’. The ACT and now Queensland both have industrial manslaughter provisions in their jurisdiction. Although the ACT offence is included in its criminal statute, I note the ACT government in its submission to the Senate inquiry into industrial deaths advocated the inclusion of an industrial manslaughter provision in model WorkSafe health and safety laws that is based on the Queensland model.

This is a significant point. The model proposed in this bill is based very much on the Australian Capital Territory provision, which creates an offence that exists outside of the occupational health and safety laws. Indeed, it is now the view of the ACT that in fact this issue is better dealt with under the occupational health and safety laws.

Commissioner Boland went on to determine that some of the elements of the Queensland approach need enhancement. I note that some of the elements of the Queensland approach rely on provisions within the model WHS laws that would similarly need to be analysed if an industrial manslaughter offence were to be included. The comments made by Ms Boland on that matter were —

First, while the Queensland offence broadens the range of individuals whose conduct and state of mind may be attributed to a corporation, it falls short of targeting organisational as well as individual aspects of a corporation’s conduct.

In addition, the Queensland WHS Act introduced a new concept of ‘senior officer’, which, although similar, differs from the definition of officer which generally applies to the model WHS Act. This could give rise to confusion, exacerbated by the use of another term—‘executive officer’—as part of the definition of ‘senior officer’.

Many people, including the Minister for Industrial Relations in this state, have raised concerns about rushing forward with this legislation. We need to get this right. We need to look at our legislative scheme in a holistic way and make sure that we have a consistent picture of what is proposed. It is not appropriate to take one aspect of occupational health and safety and put it into the criminal law, because if we have a number of inconsistent terminologies and a number of inconsistent categories, that will, no doubt, be a bonanza for industrial lawyers, but it will not necessarily get us to the place to which we need to get. At the end of the day, we want a cultural shift. We want a staged advancement of the focus within the workplace on health and safety issues.

Ms Boland then explored the important issue of why the situation is not consistent across the jurisdictions, and, more specifically, why some jurisdictions have not moved towards legislating industrial manslaughter provisions independently. One issue is whether the basis of the offence should be recklessness, negligence, or some other test. Recklessness in criminal law is intentional. It requires the prosecution to prove a conscious choice to take an unjustified risk. However, criminal negligence is generally regarded as not requiring intent. The proposed bill just uses the term “cause”. That is a very broad concept. It has not been explained how that will work, what standard of conduct will need to be established, and whether an element of intent will need to be entrenched into the legislation. It is interesting that the definition of “cause” in the bill relies on the use of the word “cause”. Defining a word by using the same word is not generally thought to be particularly illuminating. Therefore, we believe that more thought needs to be given to the form of criteria. We need a more robust pivot point for the introduction of liability. We need to understand that in much more detail.

In making these comments, I am mindful of the fact that in preparing legislation, opposition crossbench members do not have available to them the full heft of State Solicitor advice that is available to government. We are not seeking to engage in trivial pointscore against Hon Alison Xamon. However, it is very important that we tease out these issues, because when we are legislating, we need to get these things right. Any action, even if done with the best intention, may cause something to happen. Therefore, there are real question marks about whether “cause” is a sufficient fulcrum to establish liability for industrial manslaughter. This points to another issue covered by Ms Boland, which is how these sorts of provisions can cut across other local laws and provide an inconsistent approach.

The proposals also rely on a new term, “senior officer”. It is not clear why this new term has been created, instead of relying on accepted and known principles in the Corporations Law, which provides a definition of “officer”. Is “senior officer” intended to limit finding the answer to the second question: namely, who is responsible or accountable; and, if yes, why? The term “senior officer” is used in the Queensland approach. However, on that matter Ms Boland said —

I consider that the current definition of ‘officer’ in the model WHS Act should continue to be relied on for any new offence under the model WHS Act.

In looking at this issue in a holistic and systemic way, Ms Boland’s finding, in her comprehensive review, was that we should not be introduce the new term “senior officer” but instead rely on the current definition of “officer” in the WHS act.

This highlights another issue on which we need to step back and take a measured and considered approach to the topic of industrial manslaughter. Ms Boland highlighted another issue —

... prosecuting workplace injuries cause defensive litigious strategies on the part of employers and regulators and an industrial manslaughter offence will only add to that.

We need to consider a complete package. The isolated creation of a new penalty cannot guarantee that the outcome desired by its introduction will be achieved, rather than simply bogging down the regulator. A more fulsome reform of workplace laws is needed. Ms Boland noted —

The Category 1 offence under s 31 of the model WHS Act does not require proof that there ‘was serious harm to any person’ but applies where there is ‘a risk of death or serious injury or illness’.

Adoption of such a regime would represent a shift and should be explored as part of the potential suite of changes to workplace safety laws. This is the first step, so we should consider the next step in driving forward this law. The recommendation of the Boland report was —

Amend the model WHS Act to provide for a new offence of industrial manslaughter. The offence should provide for gross negligence causing death and include the following:

- The offence can be committed by a PCBU and an officer as defined under s 4 of the model WHS Act.
- The conduct engaged in on behalf of a body corporate is taken to be conduct engaged in by the body corporate.
- A body corporate’s conduct includes the conduct of the body corporate when viewed as a whole by aggregating the conduct of its employees, agents or officers.
- The offence covers the death of an individual to whom a duty is owed.

Safe Work Australia should work with legal experts to draft the offence and include consideration of recommendations to increase penalty levels ... and develop sentencing guidelines ...

I think very important work has been done by the Boland review and it very much reflects the work and the general views that emerged from the federal Senate report, “They Never Came Home—The Framework Surrounding the Prevention, Investigation and Prosecution of Industrial Deaths in Australia”. These are very, very important considerations.

As I think members here will be aware, the Minister for Industrial Relations has, indeed, been acting in this area and has established a committee to examine the whole issue of our occupational safety and health laws. We very much want to ensure that our laws are harmonised with the national scheme. In creating a culture and having a logical and rational system, we think we need to move towards harmonisation. Harmonisation does not mean that we will not have individual variations that we believe are appropriate for Western Australian circumstances. For example, we might have areas within which we want the bar to be higher. However, we believe it is incredibly important that we have a nationally coherent system. We know that increasing numbers of companies operate inter-jurisdictionally with bodies of law, expertise and knowledge, and it is important that this is done in a nationally consistent way. We get much better bang for our community buck if we can have systems through which we learn from each other. We are not arguing that they need to be exactly the same, but the fundamental principles need to be harmonised so that we can share learnings, experience and development of the law across the entire country. That is a commitment of our government; indeed, Minister Johnston is moving to do that.

Given the Boland report recommendations and the principles set out in the federal Parliament’s “They Never Came Home” report, it is very clear that there needs to be an enhanced regime of penalties and something that moves towards an industrial manslaughter style of framework. However, it must be done in a consistent way. It cannot be introduced as just a provision in another bunch of legislation. In our view, it needs to be deeply interwoven into the state’s occupational safety and health legislation.

I want to repeat that we have already taken action to increase penalties. We know there is a long and complex process to deal with the harmonisation and the introduction of these new principles of industrial manslaughter. Therefore, we took the interim measure of providing a suite of very significant penalty upgrades to the existing framework. More than a year ago, Minister Johnston established the Ministerial Advisory Panel on Work Health and Safety Reform. That panel has completed its work and a two-month consultation period on the proposals to modernise the legislation has been completed. The Department of Mines, Industry Regulation and Safety is

presently analysing 600 pages of submissions and preparing a report to inform the minister of the view of both industry and the community on this.

To recap, we understand the member's intent, but we believe very, very profoundly that this is not the way to do it; we cannot deal with increasing these penalties through the route of introduction into the Criminal Code. That would provide a system that is very at odds and, as I say, would create situations in which the same offences in different pieces of legislation would have different penalties attached to them. It is our view that there is no doubt that there has been movement across the country on this issue, and we are actively looking at how we deal with this as part of our move to modernise and harmonise the occupational health and safety laws within the state. More than a year's very detailed work has gone into that and we are now sifting through all that feedback so that we can come forward with a comprehensive package that makes sense.

I urge members when considering the Criminal Code Amendment (Industrial Manslaughter) Bill 2017 to note that even the Australian Capital Territory itself is now saying that this legislation is better placed within the occupational safety and health framework, rather than standing alone in the Criminal Code. Queensland and other states are now looking at how we can develop the existing legislation.

The government will not be supporting the bill, but I want to make it absolutely clear that it is not because we do not believe that there needs to be a step change in the awareness of issues of occupational health and safety. There needs to be a step change in understanding the seriousness of creating a situation in which an employee dies or suffers serious injury. We want to address that, but it needs to be done in a coherent way, in which this is merged with the whole apparatus of occupational safety and health in this state. In our view, that is the way we will deliver a much more enduring benefit. In the ACT, in 15 years there has not been one successful prosecution under its legislative model. As the member can see from our conduct, and the way that we have moved to change and dramatically increase penalties under the legislative framework, we seek to build a stronger and more harmonised model of occupational safety and health. This has to be done in a most coherent way if we are to use this legislation to transform the way companies view occupational health and safety. Although I commend the sentiments of the member in bringing this legislation forward, we do not think that this is the answer, and for that reason the government cannot support the bill before the house.

**HON PIERRE YANG (South Metropolitan)** [10.42 am]: I wish to make a contribution to debate on the Criminal Code Amendment (Industrial Manslaughter) Bill 2017. As the member detailed in the explanatory memorandum, this bill is about amending the Criminal Code to include an offence of industrial manslaughter. Under proposed section 291B, the prescribed penalty would be life imprisonment. That is also the maximum penalty prescribed in the Criminal Code for manslaughter, under section 280, if my memory serves me right.

Going back through history, no party other than the Australian Labor Party has the workers' best interests at heart. Over the past century and a half, the Labor Party and the labour movement have been at the forefront in advocating for working Australians. One hundred or so years ago, workers were working 14 hours a day, six days a week.

Several members interjected.

**The PRESIDENT:** Order! Member, there is no need to raise your voice. We were going really well up until that point. There were no difficulties for Hansard, but let us make sure that they can hear clearly what Hon Pierre Yang has got to say.

**Hon PIERRE YANG:** Thank you, Madam President, for your protection.

Let us not forget that, a century and a half ago, workers were working 14 hours a day, six days a week. The labour movement advocated for change, to bring decency into working conditions, over time. Let us not forget that, 100 years ago, there was no sick leave, personal leave, annual leave or domestic violence leave. The Labor Party has been at the forefront of advocating for working Australians.

An opposition member interjected.

**Hon PIERRE YANG:** The member will have his opportunity to make a contribution when he seeks the call.

The important thing is that I am going through the history, because it is important to explore history to see where we came from, and how we got to the present stage. If members have difficulty talking about history, so be it.

**Hon Michael Mischin:** Is it relevant to this bill?

**Hon PIERRE YANG:** Absolutely, member—it is a very relevant.

Several members interjected.

**The PRESIDENT:** Order! Members, we all know that interjections are unruly, and I know that the member on his feet is going to ignore all of them and direct his comments to me alone.

**Hon PIERRE YANG:** Thank you, Madam President.

A worker has a right to go to work and come home without harm or injury, and without suffering a fatal incident. No-one wants their loved ones to go to work and get hurt or pass away due to a workplace incident. No husband or wife wants to see their partner go to work and come home hurt, or not come home at all. No parents want to see their children go to work and come back hurt, or not come back at all. No-one wants their working parents to go to work and come back hurt, or not come back at all. I am sure that many members here would agree with the sentiment that workplace safety is paramount. It relates to all working Australians and their families.

I agree with the minister in thanking the member for the sentiment, because it is very important. We hear in the news from time to time of workplace fatalities. I remember Hon Alison Xamon made a member statement about an incident that happened a few years ago in the central business district, of a very young man who fell to his death. It was very tragic.

**Hon Alison Xamon** interjected.

**Hon PIERRE YANG:** I thank the member for mentioning the name; I appreciate that.

Workplace safety, and workers' welfare, as I said, is very important. I draw on my experience during my time in the Australian Army Reserve. As part of my service, a risk management assessment was carried out for every activity that the Army organised. A non-commissioned officer is assigned to prepare the paperwork and conduct the assessment. It is a very critical piece of documentation for any activity that we were organising. That is the important aspect of workplace safety in the Army's conduct of activities. I remember a particular incident from when I got my risk assessment licence. The instructing officers said that during an exercise on a training weekend, a fire broke out. Live ammunition was used. Although it was blank, it was classified as live because it could trigger a fire and cause injury. The ammunition triggered a fire that was put out by the members involved, but an investigation was carried out by the brigade's higher echelons. The risk assessment was important because it covered such an incident in which there was the potential for fire, and remedial action was carried out in accordance with that assessment. Therefore, in the end, the officer was cleared of any negligence, and that shows the importance of work health and safety guidelines. Although that incident did not involve personal injury, it did cause damage to property. Luckily, no-one was hurt, and due to the risk management mechanism in place, the incident was resolved in a way that caused no harm, which was at the forefront of the minds of those involved in that activity.

I would like to make a few remarks about the industrial manslaughter laws in the Australian Capital Territory. As we heard from the minister —

**Hon Michael Mischin:** How about the bill?

**Hon PIERRE YANG:** I will come to that, honourable member.

Although the ACT's population is small compared with that of other states, there are strong similarities between the ACT's legislation and the Criminal Code Amendment (Industrial Manslaughter) Bill 2017. My understanding is that commonwealth employees are not covered by the ACT legislation. I also understand that more than 80 per cent of ACT employees or workers are not covered by the ACT legislation per se. The Queensland government has also introduced and passed a similar bill. In South Australia, there have been numerous attempts to introduce similar legislation. Back in 2004, Hon Nick Xenophon introduced a private member's bill into the South Australian Legislative Council on this issue. That bill lapsed on the notice paper due to the prorogation of Parliament. In 2010, Hon Tammy Franks introduced a similar bill to amend the South Australian Occupational Health, Safety and Welfare Act 1986. In 2015, she also introduced the Work Health and Safety (Industrial Manslaughter) Amendment Bill. That bill ended up being examined by a parliamentary committee. During the committee examination process, submissions were received from the Law Society of South Australia, the Office of the Director of Public Prosecutions and Flinders University. Those submissions drew the attention of the parliamentary committee to, and raised concerns about, conflicting language, definitions and adoptions, as well as the United Kingdom's Corporate Manslaughter and Corporate Homicide Act. That South Australian bill did not pass through the Parliament.

I am of the view that when it comes to workplace health and safety, a jurisdiction needs to take a holistic approach and examine the entire workplace legislative framework, rather than look at one issue at a time. When a single issue is tackled, there is the potential for unintended consequences as a result. When it comes to significant legislation that is relevant to every single Western Australian, such as workplace health and safety legislation, it is important that we take a holistic approach to tackling the issue. The McGowan Labor government has been working on that. In 2017, the Minister for Industrial Relations, Bill Johnston, announced and formed the Ministerial Advisory Panel on Work Health and Safety Reform. The panel reported back and provided recommendations to the minister. I understand that the government is working very hard on draft legislation concerning workplace health and safety. The minister's press release in 2018 attributes this comment to the minister —

“The new Bill will strength the national harmonisation of laws and facilitate a consistent approach of health and safety in the workplace.”

I thank the honourable member for the sentiment that the bill presents. It is critical that the legislative framework be viewed and reviewed in its entirety. There is a strong desire on the part of the government to move forward. With those words, I conclude my remarks.

**HON MARTIN PRITCHARD (North Metropolitan)** [10.59 am]: I wish to make a brief comment on the Criminal Code Amendment (Industrial Manslaughter) Bill 2017. Unfortunately, I became aware only yesterday afternoon that the bill was going to come on for debate today, so that has not allowed me to coordinate my thoughts. I hope members forgive me if my contribution is a little disjointed.

I obviously have a long work history. Part of that was work I undertook in my earlier life and then my work for a union on behalf of workers, and of course I am working here now. Over that time I have developed a view on safety in the workplace, which comes down to three main concepts: firstly, education; secondly, joint responsibility within the workplace; and, thirdly, making sure that the culture is right. Obviously, if those are all done correctly, a situation in which there has to be penalties will hopefully rarely arise. That is my general approach to occupational health and safety. I understand that there needs to be penalties, but I am not sure that this legislation fits with what I believe is an appropriate response. I understand the honourable member bringing it forward because, obviously, when deaths occur within the workplace, they make us angry. Deaths should never occur within the workplace.

In trying to understand the reason that this bill has come forward, I did a bit of research on what deaths are occurring in the workplace. My work history is mainly within retail and for store workers. Although there are unfortunately occasional fatal accidents involving store workers, it is not common within the retail sector, and that was where I did the vast majority of my work in my union. To look at workplace deaths, I first looked at the industry in which we would expect deaths to occur. Unfortunately, in this state, mining is a very integral part of our economy and of our opportunities to work.

**Hon Robin Chapple:** And one of the most dangerous.

**Hon MARTIN PRITCHARD:** As Hon Robin Chapple indicated, it is also one of the most dangerous. That is the area that I initially looked at. I was flabbergasted with the outcomes that I discovered. Again, my research is not comprehensive, because of the late notice about this bill coming on. I am led to believe that between 2000 and 2012, there were 52 deaths within the mining industry in Western Australia. I hate just talking about numbers, because saying “52 deaths” does not give due respect to the people who turned up to work and expected to go home at the end of the day, and to the reason they were at work, which was to provide for their families. I want to go through a short list of some people who have died in the mining industry since the turn of the century. I want to do them some justice. What I will say is not comprehensive and I am not going to spend a long time doing it, but it is important to acknowledge some of the people who have died and also expose some of the companies that they worked for. Irrespective of whether or not we look at penalties, this should not be a source of pride for the companies in any way, shape or form. They should do more and more to ensure that their employees do not continue to be added to this list of deaths that occur in their area.

In June 2019, Andrew Herd, a haul truck driver, was killed at Hanson Australia’s Red Hill granite quarry near Perth when his truck fell from the haul road into the pit. In August 2018, Daniel Patterson, also a haul truck driver, was killed at Rio Tinto’s Channar mine near Paraburdoo when his truck veered off the road. In April 2018, Neville Bentley, a face-shovel operator, was crushed between the excavator ladder and handrail at Griffin Coal’s Ewington coalmine in Colliie. In July 2016, Lindsay Bridges, a boilermaker working at the Central Norseman goldmine inside a thickener tank during a shutdown, was crushed when a corroded gantry above him failed and collapsed. Again in 2016, in June, Lee Buzzard, a fitter, died while performing maintenance on a driller rig at Rio Tinto’s Channar mine near Paraburdoo. There are plenty more. I will not go through them all, because, indeed, there are too many, but I want to do at least some justice to the names behind the deaths that have occurred within the workplace. I very well understand the reason this bill has been brought before us. I wish I had had a bit more notice so that I could have got my thoughts in order to make a more comprehensive contribution.

As I indicated, because of my experiences, my views tend more towards the education of the workforce and management, the joint responsibility between the two and the culture within the workplace. I tend to look at the legislation on occupational safety and health, as it was called back when I was working at the union, to deal with these concerns. That tendency developed over many years. I will just go through my working history a little.

After I left school, my first job was in a little timber plant in Bayswater. As a very inexperienced 16-year-old, I turned up very happy to have this job and they gave me a number of tasks to do. My role was as an apprentice timber machinist. I was there for only three months, so I cannot remember how quickly they got me on to these tasks, but in 1975, I think it was, this was the sort of culture that was in these small companies. Keep in mind I was 16 years of age, a young male, fresh out of school, working as an apprentice. I pretty much did all the crap jobs that nobody else wanted to do. If people remember back to that time, doorjambes that hold doors were made of timber. One of the jobs I had was to dock these big lengths of timber into a jamb-sized piece of timber. That was with a massive saw that could have taken my hand off, let alone a finger. The other thing they had me do at that

time was that I had to jump into the big container that used to collect the sawdust from chipping and shovel it into a truck, all while wearing an old mask that had no ability to keep the dust out. That was in 1975; that was the culture in those small companies. It would have had probably only 20 employees. It was not big. That was the culture. The young kid gets to do all the stuff that nobody else wants to do, and with no real view to what impact that might have had.

The fact that I did not like the job was great, because I left it after three months—indeed, I was probably encouraged to leave. However, there was no thought about the security and the safety of that young kid. My father took pity on me and decided to teach me how to be a bricklayer. He had a small team of one labourer and three bricklayers and he thought that another labourer could come on and help keep the bricklayers working and, at the same time, he could teach me how to lay a few bricks and teach me a profession. There was no such thing as occupational health and safety when we worked on small houses. For instance, my father died from melanomas; he did not wear a hat and a shirt and he did not use sunscreen and everybody was the same. When they got to the height that the bricklayer could reach from the ground, we built a scaffold, which was made of two drums with very compromised structures. I think they were 80-gallon drums.

**Hon Robin Scott:** They were 200-litre drums.

**The ACTING PRESIDENT (Hon Dr Steve Thomas):** They were 44-gallon drums or 200 litres.

**Hon MARTIN PRITCHARD:** I thank members for their assistance.

I say that they were compromised because one end was gone; they would bend and buckle and had rusted through from the rain. We used two of those with a block of wood on each and the planks would lay over them. We would jump up and load the bricks by hand and shovel cement onto the boards. The brickies would jump up and finish the height of the wall. There were many accidents but luckily for me nothing too serious. That was the extent of safety for those teams in 1975.

I then went into retail and, of course, as I mentioned before, retail does not necessarily pose the same sort of risks but there were some risks. I have mentioned before that I worked in the city for Aherns in a very old building in which there was a lot of asbestos. There were those sorts of risks but probably they were not something that would kill someone outright as opposed to the risks in the mining and construction industry. I worked there for a while and then I worked for the retail union. During the time that I worked for the retail union there was a real push for occupational health and safety—we called it OHS. The concept included some of the things that I have indicated that I believe in; namely, the required education of the workforce, the joint responsibility of all within that workplace and improvement in the culture. That is where I developed my sense that OHS legislation could improve safety in the workplace and hopefully result in fewer deaths. I truly believe—I do not have any material to support this claim due to a lack of time—that there have been fewer deaths because of occupational health and safety legislation. We spent a lot of time training occupational health and safety representatives. The legislation supported those representatives and suggested that committees be formed and that management participate in those committees to talk about safety in the workplace and develop a culture that would lead to fewer deaths and accidents.

I spent many years working under and supporting that legislation and trying to make sure that it led to the outcomes we wanted, and that is how my views developed over time. I see where I started and how I developed over a number of years, particularly because of that legislation, which leads me to suggest that that legislation should have primacy and it is the legislation on which we should depend. My understanding is that continual improvements are made to that legislation. Does that mean that there will be no deaths? No, it does not. Will we ever reach a stage at which there are no deaths? Probably not, and that is to be deplored. As I said, I have read about a number of circumstances in which people have died at their workplace. It is a massive tragedy when people die at their workplace. When I looked at the stats, I learnt that the mining industry is not the highest killer; rather, more people have died working in the transport and storage industries. Members can understand why that might be the case. It was a shock to read that information because I always thought that the mining industry would far outweigh other industries. Transport industry workplaces are the primary workplaces at which deaths occur, with deaths also occurring in the mining and building industries. The Occupational Safety and Health Act has taken us a long way down this path. It is a matter of recommitting to that act. It is not anywhere near where it should be but hopefully it will get there.

I turn to the Criminal Code Amendment (Industrial Manslaughter) Bill 2017. People see me as a pacifist, and I suppose I am. I do not attribute bad intent to many people. For instance, I talk about people in this place but I usually do not criticise opposition or crossbench members or members on my side for bad intent. I may not agree with them and I may think that they are going in the wrong direction but that does not go to intent. I refer to proposed section 291B(b), which states —

The employer's conduct causes the death of the employee;

That creates a problem in making a causal link. I presume that establishing that causal link—to a CEO, for example—is one of the reasons there have been few prosecutions under the legislation that is currently available. The provision that I do not agree with specifically is proposed paragraph 291B(c), which states —

The employer —

- (i) knew the conduct would be likely to cause the death of, or serious harm to, the employee;

I have accused bosses of being many things, including being wedded to making profits and wedded to shareholders, and of not caring about their employees. I have accused some bosses of many, many things. But I do not think any human being would do or not do something that is likely to cause someone's death. Perhaps that provision has a different connotation from the one I am reading into it. It likely has a different meaning in the dictionary under this legislation. I do not believe that any employer would do or not do something that is likely to cause somebody to die, whether or not it is their employee.

They may be very flippant about things; they may choose to undertake due diligence with the things that they do or do not do. I could certainly accuse them of that. I could certainly accuse them of putting profits and shareholders above the interests of their own employees. I could certainly understand that, but I do not believe that any reasonable human being would do or not do something that they believed was likely to cause somebody else to die.

That is really the only issue I have with the Criminal Code Amendment (Industrial Manslaughter) Bill 2017. I believe that there should be another approach. With the support or non-support of the bill, another approach is probably more likely to have a more general application and produce a general improvement. Things have certainly improved over many years, and that is all for the good. Some believe that providing a penalty would achieve this aim, but I do not necessarily believe that it would. I do not think that any person would break the law if they believed that they were going to get caught. With the prevalence of the unions, particularly within the mining and construction industries, I think that if this bill were passed, there would be no lack of desire to test it, whether or not a final outcome could be achieved.

On moving forward as a society, I think we need to go back to the three points I initially made—that we educate; we make sure people take responsibility for the things that they should; and we continually improve the culture. That, in my view, is probably a preferable way.

I am very interested to hear the debate that will go on around this bill. I am sure that many members will want some input. That was my brief contribution. As I said, if I had had more time, my line of discussion would probably have been more cohesive and better understood, and I probably would have had a lot more to contribute; however, given the fact that I only found out yesterday that the bill was going to come on for debate today, that is my contribution to the debate.

**The ACTING PRESIDENT (Hon Dr Steve Thomas):** Honourable members, we are dealing with the Criminal Code Amendment (Industrial Manslaughter) Bill 2017. Given that he is going to relieve me next in the chair, I will give the call to Hon Robin Chapple.

**HON ROBIN CHAPPLE (Mining and Pastoral) [11.22 am]:** Thank you, Mr Acting President. You are very kind to one of your colleagues.

The second reading debate on the Criminal Code Amendment (Industrial Manslaughter) Bill 2017 is not a kindly discussion. I have worked in the mining industry for a number of years, and I can assure members that the culpability of many people in that industry is sadly wanting. One of the fundamental problems is that whether a fine is set at \$160 000, \$140 000 or whatever—now we know that they have been raised significantly—any of those fines will have only a minuscule effect on a corporation in any way, shape or form. Firstly, it is written off against tax, so they rub their hands with glee. I will go into some detail in my contribution about the BHP hot-briquetted-iron accident, with which I was heavily involved as a consultant. BHP closed down a plant that was worth \$6 billion. The accident killed one person and seriously injured three others. BHP was fined. The fact that the plant was closed down did not make a dent on its share-market value. The people who were ultimately responsible—I will refer to that later on in my contribution—had no responsibility whatsoever. Yet we know that when that plant was about to be constructed, they did not even know how they were going to construct it, because they were simply magnifying the South Australian plant by three and saying, “We can do it.” When we did the consultancy—I did that with a guy called Andrew Corbyn, who happens to be Jeremy Corbyn's brother—we discussed this at great length. The company would not even provide us with the data on how it was going to build it so that we could do a proper assessment. I will come back to that. That is a bit of a bugbear of mine.

In the goldfields, we have corporations that have had one, two or three deaths. They continue to operate without any prosecution of the people who ultimately drove the agenda that meant that people were not accompanied by a buddy in a serious place of work. On one occasion, a line manager of a goldfields company instructed a guy to drive a vehicle on top of a pile of waste that had been created so that he could stand on top of the vehicle to fix rod bolts. That was an instruction that came down the line. We need to make sure that those people who give



instructions to workers that place them in danger are held both morally and financially responsible. I am mindful that the government has increased the structure of fees.

Anyway, let us get back to the bill before us, under which senior managers will be liable if they make a decision that knowingly or unknowingly leads to somebody's death. "Knowingly or unknowingly" is an interesting concept, because a person can be like Nelson and close one eye, put their telescope to it and say, "I didn't know." However, Nelson was ultimately responsible for his actions. In the case of the mining industry, those CEOs who put the telescope to their blind eye must equally be held responsible.

It is no good to stand there with contrition and say, "We're deeply sorry about this worker or that worker who has unfortunately perished in our corporation." At the end of the day, those people might have a week of discomfort over the issue and the corporation might get a fine after three or four years in the courts, which it accepts and writes off against tax. It means absolutely diddly squat to the company and the corporation, or, indeed, the people who were ultimately responsible for that person's death. In that regard, "unknowingly" is really the point—I did not know because I did not bother to investigate; I did not know because I did not look at the documents that were in front of me. That is not an excuse. "Unknowingly" is probably the crux. If a person was found to have knowingly instituted a program, and, indeed, went out of their way to carry out or instruct operations within their corporation to do something, that would be even worse. I suggest that if someone does something knowingly, we throw the book at them and chuck them in jail. If it is done unknowingly, we should make sure that they should have known. There are incidences all through the mining industry of pollution or accidents for which those responsible say, "Oh, we didn't know." Why did they not know? It is because they did not look; they could not be bothered.

The role of penalties is to act as a deterrent, and that was quite clearly identified in the 2008 and 2009 reports of the national review into model occupational health and safety laws. We know that this offence is recognised in other places, such as the United Kingdom and, indeed, in our own country, in the Australian Capital Territory. I think that it should be recognised in Queensland as a result of the Dreamworld incident. I understand that there is the potential for Queensland to look at establishing some responsibility for that.

This offence applies when an employee dies in the course of employment or is injured in the course of employment and later dies. In the goldfields, we have a lot of drive in, drive out employees. When companies instruct their employees to drive back to Kalgoorlie for a night's rest then drive back to work the next morning, that means employees are most probably getting only a few hours rest.

Debate adjourned, pursuant to standing orders.