

## Majority report

1.1 On 16 March 2005 the Senate referred to this committee the provisions of the Occupational Health and Safety (Commonwealth Employment) Amendment (Promoting Safer Workplaces) Bill 2005, to report to the Senate on 10 May 2005.

1.2 The committee agreed to report to the Senate on evidence provided in submissions alone. Four submissions were received and are listed in Appendix 1.

### Background to the bill

1.3 The Occupational Health and Safety (Commonwealth Employment) Amendment (Promoting Safer Workplaces) Bill was re-introduced into the 41<sup>st</sup> Parliament by the Minister, the Hon Kevin Andrews MP, on 9 March 2005, following the lapse of the 2004 bill when Parliament was prorogued for the 2004 federal election. This bill amends the Occupational Health and Safety (Commonwealth Employment) Act by the insertion of a new section 11A.

1.4 This bill overrides the Australian Capital Territory (ACT) Government's *Crimes (Industrial Manslaughter) Amendment Act 2003*, which commenced on 1 March 2004. This Act amends the *Crimes Act 1900* by inserting a new Part 2A which adds two new offences of industrial manslaughter: section 49C (industrial manslaughter – employer offence) and section 49D (industrial manslaughter: senior officer offence).<sup>1</sup> Under Part 2A, Commonwealth authorities, Government business enterprises (GBEs) and employees of such bodies may become liable for prosecution for the industrial manslaughter offences contained in the part.<sup>2</sup> The charge of industrial manslaughter offences carries a jail term.

1.5 The main purpose of this bill is to exempt Commonwealth employers and employees from the current ACT industrial manslaughter laws and any similar legislation that may be introduced by other jurisdictions in Australia.<sup>3</sup> The Minister stated in his second reading speech that the amendments reinforce and emphasise the Government's approach of 'preventing workplace injuries, rather than punishment after the event'.<sup>4</sup>

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1 ACT Parliamentary Counsel, *Crimes (Industrial Manslaughter) Amendment Act 2003*, A2003-55, p. 2

2 *Explanatory Memorandum*, 69917 Cat. No. 0501704, 2004-2005, p. 1

3 Parliamentary Library, *Bill Digest no. 131, 2004-05*, 17 March 2005, p. 2

4 The Hon. Mr Kevin Andrews MP (Minister for Employment and Workplace Relations), 'Second Reading Speech: Occupational Health and Safety (Commonwealth Employment) Amendment (Promoting Safer Workplaces) Bill 2005', House of Representatives, *Debates*, 9 March 2005, p. 7

## Commonwealth law covering this matter

1.6 Evidence provided by the Department of Employment and Workplace Relations (DEWR) stated that the Government has a strong commitment to the health and safety of Commonwealth employees in departments, statutory authorities and GBEs while at work. It has established a statutory framework in the *Occupational Health and Safety (Commonwealth Employment) Act 1991*. Amendments to the OH&S Act in 2004 have improved OH&S outcomes in all Australian workplaces by preventing workplace injuries and fatalities by encouraging voluntary compliance, but also including strong sanctions for non-compliance.

1.7 These amendments include encouraging voluntary compliance; creating a dual civil and criminal penalty regime; introducing remedies of injunctions, remedial orders and enforceable undertakings to enable Comcare to work towards removing risks before an inquiry or fatality occurs; and, substantially, increasing penalty levels to bring them into line with community standards.<sup>5</sup>

1.8 The matter of achieving voluntary compliance is under the jurisdiction of Comcare, which is able to accept written undertakings in relation to an obligation under the Act. These undertakings may be accepted whether or not civil proceedings have commenced. If they are not complied with, a direct order of the Court can be enforced.

1.9 With regard to the issue of monitoring and compliance, Comcare or an investigator may apply to a court for an injunction against a person who has breached the Act or its regulations. The court can place various injunctions on a person restraining them from performing acts in breach of the legislation or asking persons to perform acts to prevent a breach.

1.10 Those acts which result in death or serious bodily harm, especially if there is evidence of reckless or negligent actions by employers to an employee, incur a maximum penalty of \$495 000. A person who breaches a duty of care to another party, or there can be seen to have been negligent or reckless leading to death or serious bodily harm to another party may also be charged with a criminal offence. The maximum penalty is \$333 000.<sup>6</sup>

1.11 The committee also notes other evidence provided in the ACT Government's submission which outlines the punitive sentencing under OH&S laws in Queensland and Western Australia, ranging from six months to three years depending on the extent of the offence.<sup>7</sup> It also notes evidence from the ACTU, and supported by the CPSU, which states that it is necessary to have industrial manslaughter legislation due

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5 Department of Employment and Workplace Relations, *Submission 1*, paras 15-19

6 DEWR, *Submission 1*, paras, 23-29

7 ACT Government, *Submission 4*, pp. 8-9

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to the barriers preventing prosecution of corporate employers in the event of workplace deaths. However, Government senators are not convinced by the argument of the ACTU that the ACT law provides incentives for employers to work towards safer workplaces.<sup>8</sup>

1.12 The committee considers it more likely that the introduction of the manslaughter legislation will create a climate of blame rather than one of prevention. The Government's policy of further education, advice and improved compliance strategies, is the best method for achieving safer workplaces.

1.13 Government business enterprises and agencies where industrial accidents are likely to take place are relatively few in the ACT. Supervision of OH&S regulation by Commonwealth authorities is rigorous, more so than would be found in most private enterprises. The committee believes that there is no demonstrative need to have such matters included in the umbrella Act introduced into ACT legislation. Work which would be likely to be dangerous in GBEs or government agencies are covered by the OH&S regulations and work practice standards are unlikely to deteriorate to an extent that employers would be liable for criminal offences.

1.14 The committee considers that the ACT's industrial manslaughter law is unbalanced in that it singles out employers and senior officers, unlike the OH&S Act which covers the conduct of persons, including manufacturers, suppliers and all employees. Those employed in CGBs are also subjected to criminal penalties, along with all Commonwealth employers. The committee is aware that the 2004 amendments removed statutory immunity from criminal liability for employees of the Commonwealth and Commonwealth authorities, and that this reflects the common law position that officers, servants and agents of the Crown can be charged under criminal law for acts of wrongdoing.<sup>9</sup>

## Conclusion

1.15 In considering the evidence to this inquiry, the committee majority concludes that the Government's increased emphasis on preventing industrial accidents by education and voluntary compliance is the preferred approach, rather than the system of the ACT Government on punitive sentencing. The ACT Government, ACTU and CPSU have not demonstrated that the threat of punitive sentencing under the industrial manslaughter legislation offers increased protection for workers.

1.16 In line with Government's policy, Government party senators agree that criminal penalties should be reserved for serious contraventions of the OH&S Act and that severe penalties currently exist. The committee believes that under the ACT Crime Act the maximum penalty of 20 years imprisonment is excessive, and is not consistent with the law in other jurisdictions within Australia.

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8 ACTU, *submission 2*, paras, 5-7

9 DEWR, *Submission 1*, paras, 26-29

**Recommendation**

**The committee majority recommends that the Senate pass this bill.**

Senator Judith Troeth  
Chair