

Opposition Senators' report

2.1 With the introduction of the ACT Government's *Crimes (Industrial Manslaughter) Amendment Act 2003 on 1 March 2004*, the ACT Government became the first jurisdiction to legislate an offence of industrial manslaughter. This triggered the Government's introduction of the Occupational Health and Safety (Commonwealth Employment) Amendment (Promoting Safer Workplaces) Bill in the last parliament, and its re-introduction in the current parliament.

2.2 The Opposition agrees with the rationale behind the ACT Government's legislation and supports the evidence provided by the ACT Government, ACTU and CPSU submitted for this inquiry. These submissions oppose the Commonwealth's bill which overrides the new insertions into Part 2A of the ACT Crimes Act, allowing for the prosecution of employers in Commonwealth authorities and Commonwealth government business enterprises on the charge of industrial manslaughter. A further concern for the Opposition is that this bill will also override any state or territory plans to introduce similar legislation.

2.3 The Opposition is concerned about the Government's action. It erodes the ACT Government's power to protect the community without federal intervention. The CPSU supports this view and states that:

...ACT territorians, like all Australians, have the democratic right to vote for their chosen representatives...to enact legislation that best represents the policies of that government.¹

2.4 Reasons for the ACT's legislation are outlined in the submission of the ACT Government. The ACT Government's evaluation of OH&S laws identified problems in regard to private employers who are responsible for OH&S administration, and who could evade the responsibility of breaches of OH&S legislation by hiding under a corporation blanket. The same possibility exists for similar evasion by managers and senior executives in the public sector who are responsible for ensuring the enforcement of OH&S rules. The ACT authorities also responded to public opinion that the charges and penalties were deficient in cases where accidents resulted in deaths in the workplace.

2.5 The ACT Government blamed cost-cutting as a threat to compliance with OH&S with regulations. Employers were likely to cut costs in areas which are classed as 'frills', such as OH&S, and fail to maintain an appropriate level of supervision over OH&S measures.²

1 CPSU, *Submission 3*, p. 4

2 ACT Government, *Submission 4*, p. 3

2.6 Prosecution of corporate employers is difficult. The ACT industrial manslaughter legislation now provides an improved mechanism to facilitate prosecution of companies and individuals. In defining a corporation as a legal person, able to be prosecuted for a criminal offence, the ACT Government intends that the law will be a forceful deterrent to those companies which evade their responsibility in providing a safe workplace. The Opposition believes that this is an innovative move to encourage corporations to apply effective OH&S principles and procedures.

2.7 Under current OH&S legislation it is easy to prosecute companies for any breach of the OH&S laws. Fines, rather than jail terms are imposed on these companies because the legislation does not differentiate between breaches which results in minor injuries, or death. In the case of breaches which result in workplace deaths, these have proven difficult to prosecute and do not impose appropriate penalties.

2.8 The *Occupational Health and Safety Act 1989* (ACT) provides a fine for failure by an employer to 'take all reasonably practicable steps to protect the health, safety and welfare at work of [their] employees' attracts a maximum penalty of \$25,000 for an individual employer or \$125,000 for a corporate employer.³

2.9 Those who argue for the industrial manslaughter laws state that more substantial penalties would be effective as the charges would be seen as genuinely criminal rather than quasi-criminal under the current OH&S regulatory regime. Clearly the existing OH&S legislation is:

... 'remedial rather than punitive in nature', ie they are there to improve the conditions of work, not to make the employer or employee suffer penalties for breaches of the law.⁴

2.10 Changes to the law in regard to workplace deaths, so as to put these within the criminal jurisdiction, will emphasise the value which society places on human life and on the dignity of employment. Current attitude to safety in some workplaces carries with it the notion of employees as assets which are attached to a business. This is not much further advanced than a past practice of seeing employees simply as units of labour, and by extension, the property of employers. The symbolism of industrial manslaughter legislation is therefore of equal significance to regulations enforcing practical OH&S measures. With prosecution administered by the police and Director

3 Bills Digest No. 135 2003-04, *Occupational Health and Safety (Commonwealth Employment) Amendment (Promoting Safer Workplaces) Bill 2004*, p. 3: extract from 'Section 27, *Occupational Health and Safety Act 1989* (ACT)'

4 Bills Digest No. 135 2003-04, *ibid.* p. 3

of Public Prosecutions, rather than by an OH&S inspector, industrial manslaughter legislation ensures that workplace death is understood to be an intolerable risk, treated with greater severity than that of other OH&S infringements.⁵

Recommendation

Opposition senators recommend to the Senate that the bill be rejected.

Senator Gavin Marshall
Deputy Chair

5 ibid.

