

SPEECH

Senator Chris Evans

Minister for Workplace Relations

ACTU OHS and Workers' Compensation Conference

Royal on the Park

Corner Alice and Albert Streets

Brisbane

9.05 am Wednesday 13 April 2011

Acknowledgments

I pay my respects to the Jagera and Turrbal people, the traditional owners of the land we are meeting on.

Ged Kearney—President, Australian Council of Trade Unions

Jeff Lawrence—Secretary, Australian Council of Trade Unions

Ladies and gentlemen.

Introduction

Thank you Michael for your welcome.

It's a pleasure to be among so many people dedicated to protecting the safety of others.

What the union OHS officer and the health and safety rep do in the workplace is often unseen and frequently unrecognised, but it's always valued.

It is work highly valued by the Australian Government and we share your passion to see major improvements to worker health and safety, and workers' compensation arrangements around the nation.

And those improvements can't come too soon when we consider the very sobering figures in relation to workplace safety.

The stark fact is that each year more than 300 Australians are killed at work. Many more die as a result of work related disease and each year over 140,000 Australians are seriously injured at work.

The cost to our economy has been estimated at \$34 billion per year. The cost to those injured and to their families, workmates and friends is inestimable.

I don't need to tell you that our current health, safety and compensation systems are in a sorry state — they are unnecessarily complex and costly. Inconsistencies between jurisdictions mean that some workers are at risk of poorer safety standards than their counterparts in other states.

At the same time, these inconsistencies increase the complexity, paperwork and costs for the 40,000 Australian businesses that operate across state boundaries.

But as all of you would be aware, Australia is undergoing a period of historic change in work health and safety.

The OHS laws of our nation are being harmonised—a reform that has been some 30 years in the making.

A reform that was strongly supported by unions and business organisations. A reform that the previous Coalition Government failed to deliver.

OHS harmonisation

For workers—safe and healthy workplaces are a right that must be protected.

Unions have an ongoing role in making sure these rights are protected and understood.

For business—harmonised OHS laws reduces the complexity and red tape of nine different OHS systems. It will also result in savings of \$179 million each year.

The Gillard Government understands the importance of this reform. We are determined to continue to invest in the workforce, and to invest in the safety of that workforce.

In 1985, the Government established the National Occupational Health and Safety Commission. After winning office in 2007 we immediately set about establishing a new body—Safe Work Australia—to continue this vital work.

Over the past 3 years the Government has worked in partnership with the states and territories, business groups and the ACTU to achieve a new legislative framework.

It will replace 10 separate pieces of legislation and more than 400 OHS regulations and codes of practice currently in operation across Australia.

Unions have long acknowledged the confusion that arises from the variations between states and territories—both for employers and employees.

Workers' lives and health are at stake, and so too is the efficiency of our economy.

This confusion has hampered both the productivity and the safety of workers.

But not for much longer.

New laws

The Australian Government, the ACTU and other key parties will have much to be proud of on 1 January 2012 when the harmonised laws come into effect.

Occupational health and safety and workers compensation reform will increase profitability and productivity and better protect the lives and health of Australians.

We remain firmly on track to achieve this historic outcome.

Our commitment to drive this reform through by the first of January 2012 remains rock solid.

But you only have to look at recent media coverage to understand that this battle is not yet won.

From Tony Abbott and Eric Abetz we have seen alarming indications of backsliding and weakness on the part of the Coalition when it comes to this reform.

We have all seen that Mr Abbott has failed to silence the many senior members of his party who continue to demand a return to the extreme policies of the WorkChoices era.

Indeed sitting inside Mr Abbott's Shadow Cabinet are the architects of WorkChoices – the champions who refuse to let go of their ideological agenda and who continue the chant the WorkChoices mantra.

We need the support of each and every one of you to ensure that this historic reform is not lost.

Just as we fought together to bring an end to WorkChoices – so the fight for your rights at work continues.

A national system that enshrines greater protection for all workers is worth fighting for.

The legislation must not be slowed or hampered by the Coalition.

And we need your support to ensure this happens.

The fight must be won for the future of all Australian workers.

Road to reform

The road to OHS harmonisation has been a long one. I want to take the opportunity today to thank the union movement for the hard work it has done to get us to this stage.

I know that during the process the union movement has voiced its opposition to some of the proposed changes in the model Act.

The Australian Government listens to the union movement's informed voice when it comes to work health and safety.

I know two particular areas concern you.

The union right to prosecute for breaches of health and safety duties; and, the reverse onus of proof.

The Government set up a transparent process to extensively consider these, and a host of other issues. In particular, we established an independent group to conduct the National Review into Model Occupational Health and Safety Laws.

The review found there was no overall benefit to retaining either provision.

On the union right to prosecute, the National Review considered that this right should be limited to the regulator so that the conduct of the prosecution is transparent and in line with clear, publicly available prosecution guidelines.

As a safeguard against regulator mistake or inactivity, the National Review also recommended that persons could ask a regulator to bring a prosecution and, if no prosecution is brought, have the regulator's decision reviewed by the Director of Public Prosecutions. This is reflected in the model Act as agreed by Workplace Relations Ministerial Council.

With respect to the reverse onus of proof, the Review concluded that, consistent with criminal law principles, the prosecution should bear the onus of proof. It is also consistent with the approach taken under a range of other legislative frameworks which do not apply a reverse onus of proof where heavy penalties are available.

I know some of you are unhappy with this decision. But I can assure you there are safeguards against regulator inactivity. There is a right to review a decision by the regulator not to prosecute.

Serious OHS infringements are criminal matters and that is how they will be conducted - with the proper scrutiny required of a public authority.

And I genuinely believe that the new and improved work safety arrangements will result in safer workplaces, more efficient businesses, and improved productivity.

Improvements

There can be no doubt that the harmonised laws are a significant improvement on existing OHS laws.

For example, the primary duty of care now extends to persons conducting a business or undertaking. This duty is owed to 'workers'. This is a broader group of people than 'employees'.

The harmonised laws also recognise that no worker should miss out on the protection that these laws bring.

Businesses will no longer be able to escape the safety duties owed to their workers.

Labour hire and casual workers will benefit from improved OHS coverage.

The new national OHS framework will be supported by a new compliance and enforcement policy.

All governments will adopt this policy. This nationally consistent approach to applying the new laws will greatly assist our regulators.

More enforcement

The range of enforcement mechanisms will also be wider under the new laws.

New options include enforceable undertakings, remedial orders, adverse publicity orders, training orders, injunctions, compensation orders, and community service orders.

This means that a corporation may have to comply with an adverse publicity order by paying for a newspaper advertisement stating the nature of their breach of a health and safety duty.

There are significantly higher penalties for breaching the duty of care provisions in all jurisdictions. This means that in

Tasmania, for example, the highest penalty for a corporation rises from \$150, 000 dollars to a new maximum of \$3 million dollars.

The changes give rights to workers in some jurisdictions where these rights have never previously existed.

All workers will now have a statutory right to cease unsafe work.

In New South Wales, health and safety representatives will now be able to issue provisional improvement notices. This gives them another tool to improve safety matters in the workplace.

And to simplify arrangements in bigger organisations, the model laws allow for multiple health and safety representatives for a work group.

In the Commonwealth jurisdiction, for the first time there will be union right of entry for health and safety purposes.

This means that authorised Community and Public Sector Union officials will be able to enter workplaces to inquire into suspected work health and safety contraventions and consult

with their members—a statutory right they previously didn't have.

All of these are changes for the better which will deliver safer workplaces for Australians everywhere.

Regulations and Codes of Practice

When the harmonised OHS laws begin on 1 January 2012, we would like them to be part of a package of legislation.

Work is underway to ensure the model regulations and codes of practice are ready by then.

The period for public comment closed last week and Safe Work Australia received 1298 submissions.

Thank you to those of you who made submissions.

The next step in the process will see the regulations and codes revised in light of those submissions.

The ACTU has requested further consultation on the regulations and codes. I am keen for that to occur and will work with them to establish a process to satisfy union concerns.

ACTU concerns

As you know, OHS laws don't sit in isolation. They are part of a complex framework of laws governing our country.

I am aware the ACTU is concerned about the starting point for discussions on the possible harmonisation of workers' compensation arrangements.

I know you don't want any proposals that result in inequities across jurisdictions.

While I acknowledge the ACTU's concerns, I believe the measures agreed to in the *Safe Work Australia Action Plan 2010–2013* provide appropriate safeguards.

These measures will be tested against criteria to ensure they will actually improve outcomes for workers and employers.

The criteria are:

- equity for employees or employers
- certainty in the application of the legislation
- clarity and consistency of process

- clarity of information for workers and employers and
- improved relationships between workers, employers and others.

Safe Work Australia has established temporary advisory groups to start the process towards harmonisation of workers' compensation.

I strongly encourage the ACTU to actively participate in these discussions.

Landmark changes

In closing I want to make some more general remarks about the current workplace relations system.

Since coming into office Labor has worked with determination to reshape the industrial relations landscape in this country.

We have abolished Howard's WorkChoices laws which stripped away basic worker entitlements.

We have introduced the Fair Work Act - the most significant reform of workplace laws in this country in more than 100 years.

Where the Coalition failed, Labor has delivered a single, national system for around 96 per cent of the private sector.

Almost 4,000 complex, outdated awards have been consolidated into 122 modern instruments. This is a 97 per cent cut in the number of pages of award regulation.

As a result of our changes it is estimated there will be a net benefit to Australian business of around \$4.83 billion over the next 10 years.

And I want to make it very clear to you today that the new system is working.

We now have a record number of enterprise agreements covering more than 2.3 million Australia employees and the number of days lost due to industrial disputes is on the decline.

Despite these tangible results, on an almost daily basis I am confronted by media reports which typically feature a business organisation, an employer or a union blaming the Fair Work Act for their failure to achieve a desired outcome.

These constant calls assume that there is a legislative quick fix for every problem encountered. But every time there is a call for change it is greeted by an equally strong opposing view.

At the heart the system is an enterprise bargaining framework designed to meet the unique needs of individual workplaces and employees.

This system requires the parties to act maturely, constructively and responsibly.

The constant preoccupation with legislative quick fixes distracts from the real opportunities provided under the Fair Work system.

The Government has no intention of making major changes to this legislation. The Act has only been in operation since July 2009 and many of the provisions have not been utilised or fully explored.

This new system provides real opportunities for all parties to engage and improve productivity outcomes.

We believe that genuine productivity gains can be made when employees and employers work together to create more flexible and innovative ways of working together.

That is why collective bargaining based on the principle of good faith negotiation is at the heart of the new system.

I am always bemused when parties negotiate and settle agreements only to then complain to me about the outcomes of their agreement.

Employers must take advantage of the opportunities to drive productivity gains through their enterprise agreements.

Unions must recognise the opportunities to maximise outcomes for their members through bargains that increase the productivity of the enterprise.

Failure to achieve these outcomes is less a reflection on the provisions of the Act and more an indication that the parties are yet to have fully explored the mechanisms and opportunities available to them.

The Government wants to foster a mature and rational debate about the real challenges of productivity growth and our strengthening economy.

We want to work with unions and industry to drive further productivity growth.

In our growing economy this is the best way to contain inflationary pressures, maintain fair wages growth and employment opportunities for local workers.

Conclusion

In closing I want to thank the ACTU members for your contribution to reforming the national OHS system. I personally value you and your work in improving both OHS and workers' compensation arrangements in Australia.

Labor shares your passion to protect workers and to ensure safe and healthy workplaces.

Our priority is the safety that Australian workers deserve.

Our joint challenge is to promote safe workplace cultures.
Workplaces in which workers understand both their rights and obligations in creating safe working environments.

We look forward to your continued support as we look to finally achieve national harmonised occupational health and safety laws.

Laws that will enshrine ...

Thank you. [Ends]