



Speech by


## Jann Stuckey

MEMBER FOR CURRUMBIN

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### ELECTRICAL SAFETY AND OTHER LEGISLATION AMENDMENT BILL

 **Mrs STUCKEY** (Currumbin—LNP) (4.52 pm): I rise to speak to the Electrical Safety and Other Legislation Amendment Bill 2011, which was introduced into the House by the honourable member for Greenslopes, the Minister for Education and Industrial Relations, on 8 March this year. He is leaving already. Before I proceed further, I would like to thank the minister and his departmental staff for providing me with a briefing recently. This was with Jennifer Dunn, the associate director, private sector IR; Julie Dahl, from the Department of Justice and Attorney-General; Mick Logan, the director of the Electrical Safety Office; Jordan Watts, the principal policy officer of the Electrical Safety Office; and staff from the minister's office. Mind you, when six staff turned up for our briefing I was a bit surprised, as this bill is not purported to be overly complex or to contain a large number of clauses.

However, I might say at the outset how disappointed I am that the government has sought to merge two very different and completely isolated issues into the one bill. Surely electrical safety reform is deserving of its own bill, particularly as Queensland is the lead state. Just what is Labor trying to hide by tacking on unrelated industrial relations and workers compensation amendments to the back of what are long-awaited and welcome changes to electrical equipment safety? Or is this another case of Labor's ongoing incompetence when it realised that some five-year-old awards matured and it had not prepared? So it had to hastily tack amendments on to an electrical safety bill that was several years in the making.

Although I am thankful that the minister has been considerate enough to circulate 14 amendments prior to the commencement of this debate on the bill currently before the House, I want to place on record my serious concerns at having so many amendments rushed through at the 11th hour with minimal scrutiny. We have no idea whether these additional amendments have been allowed to be scrutinised by stakeholders such as the Local Government Association. I remind honourable members that, to date, the LGAQ has not received additional feedback in relation to its concerns that were forwarded to the minister.

I restate, just for the minister's sake, my appreciation for the briefing from his staff and also the forewarning, although brief, of the amendments. It is concerning that these amendments would have been presented to the parliament only to be further amended, because there was every likelihood that local government employees would not be afforded coverage under the amendments as they stood. We are now being asked to take at face value these new amendments—and we are not talking about one or two but 14 of them. I am not prepared to oppose outright this rushed attempt to supposedly correct the bill. However, I do not support the manner in which this stack of amendments has been added hastily, and I would seek some assurance from the minister that this practice will not become more prevalent.

The explanatory notes state that the bill's objective is to amend the Electrical Safety Act 2002 and the Electrical Safety Regulation 2002 to implement a new Electrical Equipment Safety System, EESS. Queensland is to be the first state to enact this legislation, which will then also be enacted in other Australian states and territories as well as New Zealand, but there is no guarantee that other states will not have some differences in their legislation.

In addition to this national model legislation, the bill also establishes a national register of safe electrical equipment. The national register will be made available to register responsible suppliers and level 2 or 3 in-scope electrical equipment, to record information about certificates of conformity, and to access information in the register. As Queensland currently holds the position of chair of the Electrical Regulatory Authorities Council, ERAC, it is leading the implementation of the ERAC equipment review and it will operate and maintain the national register on behalf of all participating jurisdictions. With human safety the top priority here, the LNP considers a move to a national uniform electrical equipment safety system to be a positive step. I congratulate the minister on bringing electrical safety legislation before the House.

This bill relates to new electrical equipment and not second-hand pieces. When sales of used equipment occur, I understand that there is in place already a requirement on the seller to tell the buyer the status of their purchase—that is, that it is second-hand. Our current electrical safety system has served us well for over 60 years, during a time when most electrical equipment was manufactured and supplied by large Australian based companies. In more recent times offshore manufacturing often takes place in Asia and it is imported into Australia and New Zealand by smaller suppliers with little technical expertise. The internet and websites like eBay introduce challenges for safety as these methods of purchase are comparatively uncontrolled.

For whatever reason, the current electrical safety system could not keep up with the rate of changes, nor the rapid growth of technology. It was because of this situation that ERAC made the determination that a review was overdue and proceeded to employ the services of CaSServ, Conformance and Standards Services Pty Ltd, to conduct this important examination of the industry in 2007. This extensive review of the electrical equipment safety system in Australia took place between April and December of this year. This review earned the company the 2007 Project of the Year Award of the New South Wales Institute of Management Consultants. Forty-six recommendations came out of the report and between 35 and 40 of them are included in the bill before us. Some recommendations have already been implemented and others will be implemented in the future, as timing has been reliant on federal government agencies which, it seems, need to be pushed along a little.

In order to better understand the history that has led us here, I will read this impressive and detailed report. The executive summary opens with the following statement—

There is a general view in the Australian and New Zealand communities that the 'Government looks after the safety of the community' but is this the case for products and equipment (including electrical equipment) used by members of the public?

Writers of this report contend that the abovementioned view comes into question when a spate of incidents related to the safety of imported toys around 2006-07 were exposed. Goodness only knows what these respected industry experts would have contended had they been asked to report on the implementation of the pink batts installation fiasco, a truly awful example of a poorly administered federal Labor program from an electrical safety perspective. The CaSServ report looked closely at the safety of electrical equipment used by consumers and also was mindful of not inflicting unnecessary costs that would affect manufacturers and suppliers. Generally Australians and New Zealanders enjoy affordable electrical equipment that meets high safety standards, and that is as it should be, as unsafe or improperly used equipment can result in cruel shocks, disfigurement and in some cases death. This report acknowledges a very modest increase in compliance costs, especially for existing suppliers who already ensure compliance under current requirements. Exactly how much this modest amount is remains to be seen. It will need to be modest as many small- to medium-sized businesses are really struggling to make ends meet due to rising prices for electricity, water, licences and petrol. Only last night on the news a consumer survey reinforced just how much people are hurting trying to make ends meet on these basic items under this incompetent Bligh Labor government.

In 2009 Victoria took the lead with Energy Safe Victoria commissioning a regulatory impact statement as is required by the Subordinate Legislation Act to analyse the proposed regulations and remake those from 1999 as they expired after 10 years in 2009. A number of alternatives were canvassed and these included removal of all government regulation in this area, letting the current regulations expire and rely on general consumer safety regulation, increasing certification and enforcement, a minimum regulatory approach or remaking existing regulations with improvements. It would appear that this last alternative was the one that was selected.

I note in the Victorian RIS of 2009 that cost recovery is an issue with equipment safety approvals and monitoring as costs not met. Does this mean that the modest cost increases will address this? I would ask the minister to address this query in his reply. The report lists the costs spent per week on individual electrical items at \$32.73. Cooking stoves and microwaves cost \$2.31, other electrical appliances \$8.07, home computers \$5.42 and audio visuals \$10.02. It would be interesting to do a comparison here in Queensland, but I bet the costs would be higher with spiking electricity prices.

Under present laws approvals are handled by individual states and territories which leaves open a door to inconsistent practices and procedures such as different acceptance requirements for various

certifications as well as substantially different fees, charges and processing time for approvals resulting in unnecessary forum shopping. In addition, uncoordinated and underfunded surveillance and enforcement arrangements placed further opportunities for unsafe and non-compliant items to circulate in the marketplace.

It always intrigues me to read of some of the overly simplistic instructions on gadgets, some bordering on ridiculous. I guess the fact that so few people read them right through before plugging in their new appliance for its first use is cause to keep language on packaging plain and direct. The English language does not always translate other languages into common sense, which produces instructions that are hysterical if it was not such a serious matter.

As I have stated, a changing marketplace with regular global access for consumers to a wide range of products sees more purchasing of imported equipment. During my briefing on this bill I was reassured that imported equipment is required to carry clear instructions that avoid mixed messages that could see the product used in an unsafe way. Undoubtedly, a number of honourable members have watched old movies where the villains would kill their victim by tossing an in use heater or fan into a full bathtub. Usually this was occupied by the femme fatale in the movie. I can still remember the incessant parental warnings about hairdryers and water being a lethal mix. They were right. Like these old movies, the existing 60-year old system was showing signs of its age and was out of date and in need of an overhaul.

The ERAC commissioned report also defines the three classification levels of equipment: high, being level one; medium, level two; and low, level three. These categories will need to be declared before the product is placed on the market. Level one equipment will require a certificate of conformance, level two a supplier's compliance folder with specified support documents and for level three no specific evidence of conformance is needed but suppliers must be satisfied their goods comply with those in their responsible supplier's declaration.

This bill also establishes the concept of a responsible supplier of electrical equipment. As the words suggest, in its literal meaning people and businesses allowed to use this term are providers of equipment that meet relevant safety standards for low-risk equipment. Low-risk equipment makes up 80 per cent of the market and relies on responsible supplier declarations. This self declaration model was reportedly working well overseas. Rules and penalties to govern responsible suppliers are included throughout this bill. In particular, responsible suppliers will be required to be registered and pay a registration fee. Sections in this bill detail the prescribing of fees for the registration of responsible suppliers and level two or three in-scope electrical equipment.

Queensland will be given the authority to collect fees on behalf of all participating jurisdictions and then distribute the registration fees back to the participating jurisdictions under an agreement to be decided between them. Section 48K stipulates that the chief executive may make rules, to be gazetted, about registration and declarations of responsible suppliers, the recording of any information in the national register or change of any information recorded in the national register. New section 103B provides the term of registration for level three in-scope electrical equipment will be for one, two or five years. If a responsible supplier's registration lapses for a period during the term of the equipment's registration, then the equipment's registration will also be suspended for that period. New section 204A establishes the fund for in-scope electrical equipment registration fees called 'the fund'. The purpose of the fund is to record the fees received by the chief executive for the registration of suppliers and equipment included in the national register.

There are a range of penalties included in this bill for breaches, graduated between 20 and 40 maximum penalty units. A number of new sections are included in this bill that cover offences including failing to comply with reporting requirements, giving false information or making false declarations, failing to update details in the national register and selling medium- to high-risk equipment that is not registered. A new offence will also be created for responsible suppliers who sell low-risk electrical equipment without being registered or if the equipment is not electrically safe. The maximum penalty is 40 penalty units. However, a defence has been created if a responsible supplier can prove they obtained the equipment from a registered responsible supplier.

Responsible suppliers will have six months from the commencement of this bill to comply with these new rules and obligations. Ideally the commencement date was to be 1 July 2011 but because there was a new Liberal National coalition government in Victoria the date has not yet been finalised. However, the new EESS is expected to be operational within 12 months.

In his second reading speech, the minister states that house fires started by electrical fires tragically claimed 15 lives across Australia and New Zealand. This figure, I was told by departmental staff, is estimated using fire research data. About 20 per cent of fires across Australia are considered to be caused by electrical equipment. The number of deaths per state is not easily defined in this data but the figure is accurate. Queensland will be the state leading this legislation and Victoria will host the database looking after the IT side of things. After the Queensland Health payroll debacle caused by poor governance, incompetent ministers and flawed IT systems, it is probably a good idea for Victoria to manage this. Whilst

a national register and regulations are commendable, they do not give a guarantee that a new system with random checks will uncover unsafe and dishonest practices any more frequently. Check testing is further made difficult in places such as markets where unscrupulous vendors can sell their potentially unsafe wares to unsuspecting customers. The check testing program for night lights, bathroom heaters, et cetera, will be nationally coordinated. Electrical safety inspectors will, in some cases, purchase items off the shelf and lab test for safety standards to make sure the second, third and hundredth batch of product is meeting the same standard as the first batch. If the product fails, one more retest is done.

We are told that the cost of this check-testing will come back through the legislation. I ask the minister in his reply to inform the House if this is another one of the modest costs mentioned by the report that is to be borne by the suppliers? Also, will fire alarm testing fall under this new legislation? Internet purchases present unique challenges where the supplier is not known or there is an overseas supplier and there are border issues. The EESS legislation will ask the person who introduces the risk to Australia to address it. This procedure has been lacking in the past.

Considering the significance of this reform and the fact that Queensland is the lead state for it, the government has an obligation to articulate clearly its communication plan. I understand that this is still in the planning stages and will include such approaches as journal articles, forums in regional centres and a website. The regulatory impact statement was advertised in newspapers but did not get a good response. I am told it was an expensive exercise, so other methods of communicating the changes must be found soon. Clearly this Labor government has fallen short here, as it does not have yet a communication plan properly identified or worked out. This is typical behaviour from Labor. Members will remember the rushed pool safety laws and the poor planning regarding costs and availability of qualified inspectors. However, staff expect a fairly smooth transition to the new EESS but anticipate some communication issues with independent suppliers, retailers and those who are not members of associations.

With the passage of this bill it is to be hoped that the number of accidents associated with electrical appliances and subsequent levels of fires, electric shocks, deaths, burns and other injuries will reduce significantly. From the minister's second reading speech I note that transitional arrangements have been included to ensure that the supply of electrical equipment to Australia and New Zealand is not interrupted. I ask if the minister would be kind enough to outline what is entailed here and the timelines involved.

I move now to the amendments unconnected to the Electrical Safety Act that relate to industrial relations and workers compensation. Key changes proposed in this legislation are to ensure that local government employees are not disadvantaged by the termination of federal transitional instruments on 27 March 2011, remove individual agreements from the industrial relations system, clarify procedural and other requirements for workers compensation and regulatory authority Q-Comp appeals and make the workplace ombudsman role a temporary position that can only investigate matters at the request of the minister.

We on this side of the House strongly believe that local council workers deserve stability and must be properly covered and properly paid. In order to ensure this occurs, procedures must be handled appropriately. The LNP is keen to see that this is achieved. That is why I am calling on the minister in his reply to table the legal advice that shows clearly that these 18 local councils will in fact be adversely affected when the federal awards expire and that making this blanket change across local councils will not adversely affect the many other councils. Up to 18 local councils will be affected when workers' awards expire on 27 March 2011. Ten are Indigenous and are covered by municipal officers. This government again proves that it is loose on the figures, stating that 'up to' 18 local councils will be adversely affected. Doesn't it know? How many individuals does this involve? A couple of hundred? It is all very well for the Bligh government to say that it is fair dinkum about protecting workers' rights, but it does not bother to find out how many workers are involved in agreements that are due to expire.

A criticism of the IR part of the legislation as presented is with the timing, particularly with regard to the changes to local government industrial relations matters. The state government has had 2½ years to do what it is proposing now, yet it has sat on its hands and done nothing. One of the biggest complaints from the key stakeholders is that local councils have been working to achieve consistency after the Etheridge decision, but the government will not listen. It wants to move the goalposts again by changing legislation. In its well-constructed analysis, Mandalay Technologies states—

In a 2008 decision by Justice Spender of the Federal Court, it was determined that Etheridge Shire Council, situated in far north Queensland, was not a trading organisation and therefore not a 'constitutional corporation'.

Whether the decision that the Etheridge Shire Council is not covered by the Workplace Relations Act—now the Fair Work Act—has general application to local councils in Queensland became moot when the Queensland parliament passed legislation to bring all local councils into the state system. As a result, state industrial legislation applies to council employees in Queensland. However, if the Etheridge decision is followed by the Federal Court and other jurisdictions, many local councils throughout Australia will also remain under state industrial commission jurisdiction.

Two primary points were made by the court in the Etheridge decision. The first was that Etheridge does not fall within the definition of a trading or financial corporation under the Constitution because the predominant or characteristic activity of the body is not trading, whether in goods, services or finance, but rather that of a local government. In addition, the framers of the Constitution clearly never intended to give the Commonwealth government the same extensive range of powers over local governments as was granted over corporations.

The court found that even the commercial activities undertaken by the council, which included operating a visitor centre, leasing a child-care centre, hostel accommodation, land and water sales, roadworks, private works, office space and residential property rental, entirely lack the essential quality of trade. Almost all of them run at a loss and they are all directed to public benefit objectives within the shire. The court said that their scale, even in monetary terms, was so inconsequential and incidental to the primary activity and function of the council as to deny to the council the characterisation of a trading corporation. However, this may still leave the door open for larger councils to be held to be trading corporations. The result at the time saw this Labor government introducing legislation, the Local Government and Industrial Relations Amendment Act 2008, to the effect that local councils would no longer be corporations.

As a consequence of this legislation, local councils in Queensland fall outside the new federal Fair Work Act and associated legislation because they are no longer constitutional corporations. One other state has chosen to follow the same path as Queensland, with New South Wales passing the Local Government Amendment (Legal Status) Act 2008—New South Wales—to decorporatise local councils in that state from 13 November 2008. The LNP shadow local government minister, the honourable member for Warrego, said at the time—

This bill changes the constitutional corporation status of local government. Quite frankly, it places at risk \$80 billion worth of assets held by local government. The councillors and staff are further put at risk simply because not enough homework has been done.

The honourable member for Warrego went on to say—

As a corporation, local government had perpetual succession, a common seal and they sue or can be sued in its name. The government is taking that away. It is decorporatising local government. At this stage the best legal advice that we have is that the government has not put in place responsible and appropriate mechanisms to allow local government to operate effectively and safely. If the government does have some legal advice, we would like to see it. No doubt someone has sought crown law advice. It would be extremely interesting to see it, because I do not believe that that crown law advice would support this legislation. There is no way in the world it could support it.

Here we are again being asked to support this Labor government as it kicks local government in the guts once more. The proposed changes have aroused suspicion since Labor has had—

**Mr Dick:** That's a bit harsh.

**Mrs STUCKEY:** I am glad the minister is listening. The proposed changes have aroused suspicion since Labor has had a couple of years now since the Etheridge case and more since the federal fair work laws came into place.

I now want to put on the record some of the concerns expressed by the Local Government Association of Queensland, which has been trying to get a straight answer from the government regarding these changes, but to no avail, although I do understand that the amendments that the minister circulated may address this in some way. The LGAQ writes—

Under the Queensland industrial relations system, the Act and commission have 'rules' for the establishment of a state award and these rules are comprehensive ...

The LGAQ goes on to say—

There are a number of problems with Federal awards (unaltered) applying to Local Government not least of which are that:

- They are replete with interpretation issues;
- They maintain entitlements that are inconsistent with chief regulating provisions under the State IR Act; and furthermore
- They have not been established in accordance with the QIRC's 'Rules' for the creation of state awards.

They continue—

Simply supplanting old transitional federal awards into the state system as proposed would thus create significant interpretation complexity for Local Government Employers. In addition, it is possible to anticipate that once the unaltered, unfixed relativities, and inconsistent with Qld regulation federal awards are made awards of the state, one or two of the other principal unions will make application for the rates in the awards to which they are respondents be matched with those in the "deemed by feat" State awards; thus leading to the leapfrogging of higher wages and conditions to other state awards which also regulate Local Government employment.

The LGAQ expressed they would dispute that local government employees subject to transitional federal awards would be award free upon the ending of the federal transitional provisions. The state award system is extensive and it maintains local government specific awards—the employees award—whilst

most other awards apply as common rule and in many instances make specific reference to applying to local governments.

The LGAQ has provided a list of state awards to the commission as part of their award review process that would apply to callings of work employed by local governments and local government entities across Queensland. They say that if federal transitional awards were transplanted as state awards we would have the perverse situation where, in many instances, there would be two state awards placed on the same footing that would be regulating the same classifications of work but which maintain significantly different conditions of employment. An example of some of these callings that would be subject to dual regulations would include local laws compliance officers, stores persons, rangers, horticultural workers, childcare workers, nurses, parks and gardens persons, soil testers, early childhood teachers, and water and sewerage workers to name but a few. There may well be many more callings, particularly if a skills based classification structure were introduced into the employees award, as has always been the intention of this award.

I once again ask if the minister in his summing-up would explain to the House how imposing an award introduced in 1993 will improve the working conditions and dual regulations of the workers that I have mentioned. I pose this question on behalf of the LGAQ which is hoping the minister can answer it because it does seem to have gone unanswered to date.

With reference to the federal transitional Queensland Local Government Officers Award 1998, I also ask if the minister would inform the House how this state would propose to interpret the calculation of long service leave entitlements for part-time and long-term casual employees in the context of the substantive provisions under the Industrial Relations Act 1999, given the difficulty of interpretation under the award and, in particular, given the different quantum of leave entitlement under that award applying to only some local government employees? This is particularly problematic for the interpretation of entitlements for female employees with carer responsibilities who, over their career in local government, may be engaged in a range of different employment categories and callings.

In addition, I ask: what provisions would trainees, other than school based trainees, be paid under? To what extent would the QIRC have jurisdiction to amend or alter references in such awards to Public Service directives that otherwise have no application to local government employers and are beyond the QIRC's jurisdiction? It was, after all, this state Labor government which freely gave up our remaining IR matters to the federal sphere, yet now it wants to pull back the control of local government awards. Perhaps it is because the state industrial relations system has become redundant. Our IR commission is twiddling its thumbs and the Workplace Ombudsman has no reason and no powers to exist. It seems that, after spending millions of dollars on the Workplace Ombudsman, a purely political creation, it has now proven to be a drain on taxpayers and little more than a lame duck. The amendment to make the Workplace Ombudsman a temporary position that can only investigate matters as referred at the discretion of the minister echoes this sentiment. So much will rely on a judgement from the minister, and this is concerning as ministers in the Bligh Labor government are not known for their prudence, competence or carefulness. The Ombudsman's role will now be reduced—

**Mr O'Brien:** Why aren't you the parliamentary leader, Jann?

**Honourable members** interjected.

**Mr Watt** interjected.

**Mr DEPUTY SPEAKER** (Mr Powell): Order! Member for Everton!

**Mrs STUCKEY:** It is a rare day when I receive any accolades at all from the other side of the House. I will take those interjections, thank you. As far-fetched as they may be, I will take them.

The Ombudsman's role will now be reduced to interim status that is formed at the request of the minister and directed by the minister, and that means it stands at very real risk of being compromised through political interference. I would be very interested to hear what the total operating budget of the Workplace Ombudsman has been for the 2010-11 year. In addition, I would be keen to hear how many matters it has investigated and taken action upon in the last year. It has a chance here to prove that it is not a lame duck. Clearly, this amendment is evidence that the Workplace Ombudsman role became redundant after this Labor government sold out our IR system in 2009.

The bill before the House also makes a number of minor deletions and changes to the Industrial Relations Act 1999, an act that since this government sold out our system to the Commonwealth has really become a relic of a former system. How does this Industrial Relations Act continue to apply to every other worker outside the Public Service in Queensland, or is this act now just the government employee industrial relations act? The LNP wants to make sure that we are getting the best value for taxpayers' money in the outcomes and results of the QIRC. Taxpayers want to know that the commission is active.

The proposed amendment regarding appeals to the QIRC for the particular Q-Comp/WorkCover matters is being clarified after the Hetmanska and Q-Comp decision that was handed down in November 2006. As the Scrutiny of Legislation Committee *Legislation Alert No. 3 of 2011* reiterated, this decision raised questions about the application of the 21-day limit to appeal the Q-Comp decision and raised some ambiguity. However, the government proposal seeks to go further by trying to close appeals to the QIRC when the appeal relates to points of law or want of jurisdiction. It would seem the government is trying to close off further access to WorkCover claims, garnering speculation that all is not well in the ailing compensation scheme.

I also want to put on the record the concerns of the parliamentary Scrutiny of Legislation Committee regarding attempts to limit the right of appeal by an aggrieved person to the Industrial Court in matters under the workers compensation scheme. They highlight the issue on page 5 of the latest *Legislation Alert*, where they point to the fact that these amendments would limit the right of appeal to a point of law or want of jurisdiction. I think more important are the serious concerns raised by the Bar Association on this very point. The Bar Association is concerned that the government is using a case to justify closing off a full right of appeal when in fact that case was in no way related to a need to limit the access to a full right of appeal. I do note—and I am happy to be corrected if I am wrong—that the Attorney will be seeking to move an amendment to this particular provision that will ensure persons still have that right of appeal whilst clarifying the 21-day period, and I thank the Attorney for taking on board these concerns if that is the case.

In conclusion, the LNP welcomes the advances in electrical safety put forward. However, we hold serious reservations regarding the rushed and last-minute attempt to award conditions for local government employees, and I am concerned about attempts to block appeal access for Q-Comp/WorkCover decisions to the Industrial Relations Commission. These concerns will form part of a watching brief on this minister and the government.