

**MINES SAFETY AND INSPECTION AMENDMENT BILL 2009**

*Declaration as Urgent*

**MR W.R. MARMION (Nedlands — Parliamentary Secretary)** [4.24 pm]: In accordance with standing order 168(2), I move —

That the Mines Safety and Inspection Amendment Bill 2009 be considered an urgent bill.

The reason for this motion is that the purpose of this bill is to introduce a levy, and for the levy to be in place by early 2010. Passing the bill today will allow time for it to be considered and passed by the other place. This will allow regulations to be drafted early next year. The bill was introduced to this house some two weeks ago to allow for some consultation. I understand that the Minister for Mines and Petroleum has consulted the shadow spokesperson for mines; I also attended a briefing on the wording of the legislation. The bill was delayed as a consequence, and an agreement was reached on an amendment. That amendment will be put during consideration in detail today. The bill was also delayed to allow the Labor Party caucus to discuss it this morning, and there has been consultation with industry and with UnionsWA. I support this bill being considered an urgent bill.

**MR M. McGOWAN (Rockingham)** [4.26 pm]: I indicate to the house that the opposition will support this legislation being brought forward now and treated as urgent, despite the fact that it has not laid on the table for the ordinarily requisite time. In supporting this motion, I indicate to the house that this is the first of a couple of bills, as I understand it, to which this procedure will apply this week. I also indicate to the house that this follows the same procedure used last week on a number of occasions. Indeed, the member for Mindarie was required to speak on significant and complex legislation, copies of which he received on the same day or the day before. We did not get the opportunity to put that legislation through the caucus, so we had to retrospectively consult on and deal with the legislation, through the caucus, after it had already been dealt with by this house.

That is very poor parliamentary practice, and I made that point plain last week. It is very poor parliamentary practice for the government to bring on legislation in this manner and expect the house to deal with it. The opposition will allow it to occur for this bill, but I indicate that the Leader of the House has, according to the letter he sent to me, put forward 14 bills to be dealt with today, tomorrow and the next day. I make it clear that the opposition will deal with each bill on its merits, and we will debate them so that they receive proper consideration in this house. If the government wants to call that filibustering, it can call it filibustering, but it is not; it is proper debate of legislation so that the house, members of the Labor Party and the people of Western Australia will know that Parliament is not just a rubber stamp, and that the legislation that comes before it receives proper consideration.

The Leader of the House said that the government has to do this because the opposition either stops legislation or slows down the progress of legislation through the house. I have a copy of the legislation that has been passed by this house since 15 September—a six-week period. The opposition opposed a number of these bills; we opposed the Waste Avoidance and Resource Recovery Bill, which imposes a tax on the households of Western Australia. We opposed the stop-and-search legislation—that quasi-fascist bill brought into this house by the Minister for Police. We opposed those two bills, but we have supported 20 bills that have come through this house since 15 September—bills which were often quite complex and difficult, and which often required considerable debate. There have been 18 bills passed through this house since 15 September, so if the Leader of the House is saying that the opposition blocks legislation just for the sake of opposition, the evidence does not support that assertion. This house has passed 20 bills, some of which have gone through the upper house. We did not slow down any of that legislation; we gave it proper debate, but we allowed the legislation through in a timely and reasonable manner.

However, we will not allow 14 bills to pass through this house this week without appropriate consideration. If the house has to sit round the clock, 24 hours a day, it does not bother me; I am happy to stay here to ensure that the legislation passed by this Parliament is dealt with appropriately. The opposition will not be corralled into a rubber-stamping exercise, or allow the opposition and Parliament of this state to be treated with contempt by the government in its attempt to put through that amount of legislation in such a short period. We will be debating this bill properly. This piece of legislation deserves proper debate. This legislation provides for a tax on every mining company in Western Australia. Although we might support it, it imposes a tax on every mining company in Western Australia with more than 10 employees and it deserves proper treatment and consideration and proper debate, rather than going through this house in a matter of a few minutes, as the government would like to see happen. We will give this bill proper and appropriate consideration.

Mr Bill Marmion; Mr Mark McGowan; Mr Rob Johnson; Mr Fran Logan; Mr Mick Murray; Mr Bill Johnston;  
Mr John Kobelke; Ms Janine Freeman; Mr Colin Barnett; Acting Speaker

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**MR R.F. JOHNSON (Hillarys — Leader of the House)** [4.30 pm]: I listened to what the manager of opposition business said, and I find it ironic that he keeps attacking me. It is not uncommon —

**Mr C.J. Barnett:** Unfair!

**Mr R.F. JOHNSON:** It is totally unfair. The question we are considering at the moment is that the Mines Safety and Inspection Amendment Bill 2009 be declared an urgent bill. The reason is that this bill needs to pass through both houses of Parliament, and it is the practice every year at this time of the year that we need to pass bills through this house before the Christmas break—certainly this is one of those bills. The manager of opposition business has called on me publicly to make members sit for 25 weeks. When did the Labor government ever sit for 25 weeks? I will answer that; it is a rhetorical question. The Labor government never sat for 25 weeks. In 2001 this house sat for 18 weeks. In 2004–05 it sat for 20 weeks. In 2007 it sat for 19 weeks.

**Mr M. McGowan:** Did we try to ram through 14 bills in three days?

**Mr R.F. JOHNSON:** I will come to that. In 2008, which was a classic case, the Parliament sat for nine weeks and then the Labor government threw in the towel. We sat for nine weeks! The Liberal-National government had to make up the parliamentary sitting that year by adding another four weeks to the sitting period before Christmas last year. We had to do it because the Liberal-National government was on the front foot and we wanted to get in here and hit the ground running. The Labor government sat for nine weeks. I think it had scheduled only 19 weeks—or maybe 17 weeks, I cannot quite remember—but it certainly was not 20 or more weeks. That was a government that had been in office for ages. The average number of sittings weeks in the time of the Labor government was 19.9 weeks.

**Mr M. McGowan:** You scheduled 17 at the start of this year and you flick in a week here and a week there.

**Mr R.F. JOHNSON:** The manager of opposition business goes on about rushing in bills to get them through and not properly debating them. Let me tell the member for Rockingham that in late 2001, when Labor had been in government for almost a year, the Legislative Assembly debated the Criminal Investigation (Exceptional Powers) and Fortification Removal Bill and Acts Amendment (Criminal Investigation) Bill 2001—the anti-bikie laws in response to the Hancock bombing. These bills were rushed into the house with much fanfare by Premier Gallop, but were ultimately handled by Mr McGinty as Attorney General. The Legislative Assembly also sat through to mid-December 2001, mainly to debate the Acts Amendment (Lesbian and Gay Law Reform) Bill 2001. The Labor government kept us here right the way through to mid-December on that bill. That must have been a critical bill to get through this house before Christmas! I can go on and on and give more examples, which I am more than happy to do at some stage, but, at the end of the day, we need to get through bills in this house.

I want to clarify comments made by the manager of opposition business. I sent the member a list of 13 bills, but the member tells me it is 14 bills and I will not dispute that.

**Mr M. McGowan:** The Appropriation (Consolidated Account) Recurrent 2009–10 Bill 2009 and the Appropriation (Consolidated Account) Capital 2009–10 Bill 2009 are two bills that you expect to be debated cognately.

**Mr R.F. JOHNSON:** That is the normal practice, and we followed that practice under the Labor government.

**Mr M. McGowan:** But it is two bills, therefore it is 14 bills.

**Mr R.F. JOHNSON:** But they are debated cognately and the member knows what that means.

**Mr M. McGowan:** My statement stands as correct; it is 14 bills.

**Mr R.F. JOHNSON:** We cooperated with the previous government in this practice every time. I do not expect us to get through all those bills, but I sent them through to the member as a courtesy, so that if we had to swap and change any bills, we could do so. I do not expect to get through 13, or even 14.

**Mr C.J. Barnett:** Couldn't be fairer.

**Mr R.F. JOHNSON:** Absolutely. I am Mr Fair. I really am. I sent the member a list so that the opposition could be aware of the sorts of bills the government would like to try to get through before Christmas. I do not expect to get through all those bills by the time we rise at the end of this week. However, let me put it this way: I am hopeful we can get through the bill we are discussing now and that the opposition supports. I am told arrangements have been made behind the chair that providing the government accepted the amendments put forward by the opposition spokesperson, we would get through this bill expeditiously. Not many members need to speak on this bill. When we were on that side of the house, we normally had only one person—two at the most—who would speak on a particular bill where there was some expertise needed. The member for whatever it is—I cannot remember—talks on everything but he does not know about anything; he is irrelevant, in my view.

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Absolutely irrelevant! I suggest that there are probably only two members opposite who have some knowledge of this bill and its implications. I ask members opposite to act responsibly as an opposition to deal with it and to support it and let us get it through this place to the other place so that they can deal with it and then it can become law, because this is talking about mines safety.

**MR F.M. LOGAN (Cockburn)** [4.34 pm]: After listening to what the Leader of the House just put to the house, I have to jump to my feet and contest the points he put forward. The Leader of the House quoted statistics that highlighted the number of weeks that the house sat during a few of the seven and a half years of Labor administrations going back to 2001. However, the Leader of the House should pull out of those statistics an example of any extra week of sitting in those years that resulted in the then Leader of the House walking in and expecting the opposition to pass 13 or 14 bills—and it does not matter whether it is 13 or 14. It did not occur. This is the first time that has occurred.

**Mr R.F. Johnson:** In 2003 we sat for 24 weeks.

**Mr F.M. LOGAN:** Regardless of how many weeks we are sitting, the Leader of the House is asking the opposition on the extra week's sitting week—this is what this week is—to deal with some urgent and critical pieces of legislation that he believes should be passed. The Leader of the House is expecting the opposition to pass 13 or 14 bills.

**Mr R.F. Johnson:** That is what you did in government.

**Mr F.M. LOGAN:** That has never been done before. That is the point that the opposition manager of business in the house has been making to the Leader of the House. With respect to this bill and the urgency —

**Mr M. McGowan:** I am very fair.

**Mr F.M. LOGAN:** The member for Rockingham is a very, very fair person. We are more than willing to help the government out with pieces of legislation, and we will be agreeing to the Mines Safety and Inspection Bill 2009. As to whether this is an urgent bill, which is the point that the Leader of the House is making, that is very, very debatable.

The Leader of the House referred to the fact that there had been some consultation on this bill, and I will be talking about that in debate on the bill. However, consultation on this piece of legislation has been very, very minimal; and with respect to the urgency of this legislation, the Chamber of Minerals and Energy has argued that this bill, particularly the taxing powers of this bill—the levy—should not come into force until the new financial year beginning 1 July 2010. That would allow companies' budgets for the following year to be sorted out to take this levy into account. It would also give time for the industry partners—that is, the employers and the unions that will be affected by this bill—to be able to sit down and discuss and be consulted properly on the content of the framework of the risk management approach to safety in mining and the mines legislation. At the moment, that has not occurred at all. I will be referring to that later.

To argue that this is an urgent bill is debatable because industry does not see it as an urgent bill; they would prefer that it did not come in. If it is going to come in, those companies would prefer that to occur in the new financial year. I think the Leader of the House is stretching the point a lot to argue that this bill is urgent. It may well be urgent for Hon Norman Moore in the upper house and for the department because it wants to raise the money. And that is what this is all about. It is urgent for the government to raise the money, but is it urgent for the industry itself and for improving mines safety? I argue that it is not.

Question put and passed.

#### *Second Reading*

Resumed from 11 November.

**MR F.M. LOGAN (Cockburn)** [4.39 pm]: As I just indicated in the previous debate on the urgency motion, we will support the Mines Safety and Inspection Amendment Bill. However, we will also seek to introduce and debate an amendment that stands in my name on the notice paper during the consideration in detail stage. I also highlight that as a result of the discussions that the Leader of the House has already referred to, a government amendment to this bill has been agreed to. That amendment emerged as a result of those discussions and it too will be introduced during the consideration in detail stage.

As I indicated in the debate on the urgency motion, the Mines Safety and Inspection Amendment Bill 2009 is a taxing bill. The bill allows the Department of Mines and Petroleum to apply a levy on companies in the mining industry that employ more than 10 people. That levy will be based on the equivalent of one full-time employee. It is a per capita levy across all mines in Western Australia that employ the equivalent of 10 or more full-time employees. The levy is the equivalent of a full-time employee because that takes into account casual and part-

**Extract from Hansard**

[ASSEMBLY - Tuesday, 24 November 2009]

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time workers. Effectively, the total hours worked by casual and part-time workers adds to the equivalent of a full-time employee and the levy will be accounted to that one full-time employee.

The levy has come about as a result of the extensive review of mines safety in Western Australia that was undertaken by Stephen Kenner and resulted in the Kenner report. The Kenner report recommended significant changes to the way mines safety is applied in Western Australia. It recommended moving away from the current environment of regulatory control by the department over the mines whereby mining inspectors occasionally visit the mines and ensure that the companies are complying with the occupational safety and health regulations and policies, to a system that is based on risk management. Effectively, that means the responsibility for managing mines safety lies with the employer of the mine and the monitoring of the manner in which occupational safety and health is applied on the job is undertaken by the department through its inspectors.

Last year was a horrendous year for mines safety in Western Australia. As early as October last year, the union movement was calling upon this government to increase the number of inspectors in the mining industry to a level that reflects the size of the mining industry in Western Australia. The mining industry in Western Australia is the biggest mining industry in Australia. It employs more than 70 000 people. A pitiful number of mining inspectors were expected to police mines safety across the vast number of mines that operate from Kununurra in the north to Esperance in the south and across all the districts of Western Australia. The union movement argued that there should be an increase in the number of inspectors, and that was agreed to by the employers. The union movement claimed that at least 40 more inspectors were needed in Western Australia to bring us to parity with the per capita inspector-employee ratio of New South Wales and Queensland. Queensland has a very large mining industry, although it is not as big as Western Australia's. Nevertheless, it has significantly more inspectors on the ground than Western Australia, which has a much larger industry that is spread out over a much greater distance.

The unions pointed to the lack of inspectors on the ground as being one of the prime reasons why mining safety took a serious downward turn last year. During the year from September 2008 six people died in the mining industry. Those tragic events show that five of the six fatalities occurred in the early hours of the evening. Of the six people who died in the mining industry last year, five deaths occurred in the early hours of the evening when the workers were on night shift. I hope that the additional inspectors in the new framework for safety in Western Australia undertaking the risk management approach will take into account the fact that the workers in the industry work night shift and will also take into account the hours of work and the way in which those people in the mining industry work. I hope that also as part of the inspection regime the inspectors place those factors ahead of the way in which work policies are carried out at the mine sites.

**Mr C.J. Barnett:** Are you saying that those accidents happened at the end of the shift or at the beginning?

**Mr F.M. LOGAN:** They happened around about the middle of the shifts. Five of the six deaths occurred when the workers were working on night shift. A study of the circadian rhythm cycle shows that humans concentrate less when working on night shift. That has been demonstrated. I hope that the risk management approach and the policies that are applied at the workplace that will be confirmed by the new inspectors will ensure that consideration is given to the way people work, the hours that they work and the hours that they have worked so as to not place those workers in an unsafe environment. I believe that the current regime of working and the length of hours worked, particularly on night shift, leads to a lack of concentration. I believe that is a causal link behind the deaths of at least five of the six unfortunate employees who were killed last year.

As I indicated to the house earlier, the union movement had been calling for more inspectors. As a result of the Kenner report and the government's response to it, it was agreed that a new regime of mining safety needed to be put in place in Western Australia. That regime will be based on a risk management approach. New inspectors need to be employed over and above the current number of inspectors who are employed by the department. It has been suggested that an additional 37 inspectors be employed. The opposition supports and congratulates the government for taking on additional inspectors. We also support the approach to overhaul safety in the mining industry in Western Australia.

That brings me to the costing for the 37 new inspectors. Completely overhauling the way safety is applied in the workplace is a significant cost burden for any government. At the moment the government expends about \$11.9 million on mining safety in Western Australia. This is a significant additional cost to the government. The government proposes to defray some of that cost by imposing a levy on the mining industry. With its significant turnover, it would be a minimal cost to the industry. The levy is the basis of this bill. As I indicated to the house earlier, the new levy will apply on a per capita basis. It will apply to each FTE employed in the mining industry. It is commendable to see how the determination of who pays has been defined in the explanatory memorandum to the bill, although not so much in the second speeding speech; that is, it applies to full-time employees, contractors, labour-hire organisations and administrative staff at the mines. That is a commendable approach

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because there is a significant amount of contractor mining in the industry. If companies could get out of the levy by saying, "We don't employ these people so don't come to us for the money, go to someone else", the whole scheme would be unworkable and difficult to enforce. An across-the-board approach means that the government can say that if people are on a company's mine site and come under the Mining Act, for the purposes of the levy, they are full-time employees. The government does not care who employs them or about the status of their employment. For the government, if those people come under the Mining Act, the company, as the principal player under the Mining Act, is responsible for the collection of the money and the payment of that money to the government. We commend the government for applying the levy in that way.

Apart from the questions that I have for the parliamentary secretary, the member for Nedlands, one of my criticisms relates to stakeholder liaison. The unions, the employer associations, the Chamber of Minerals and Energy and a number of major employers in the industry are very, very concerned that the bureaucracy is getting way ahead of the government in the construction of the new risk management approach to mining safety. The department has done significant work on what the approach should look like, without consultation with the key players who will apply the outcome of the legislation in the workplace. The minister has always been very clear about that criticism that has been applied to the department. Those groups are still concerned that the minister is not listening to that criticism. They are also concerned that the government will proceed with raising the levy, getting the levy underway and getting the money through the door without the companies seeing what they are paying for because there will be no framework for occupational health and safety in the mining industry until at least 1 July next year; nevertheless, they will be paying for it upfront. The groups were very concerned that the government is taking that approach to this whole rework of occupational health and safety in the mining industry. Although the groups were informed about the legislation and the fact that it would be introduced to Parliament, they had no input into what it looked like, how it would be applied, when it would be applied, who will pay and how much they will pay. None of those questions was answered before the bill was drafted, finalised and taken through cabinet. Now we are debating it in the house. I say to the parliamentary secretary that one of the issues that comes out of the failure to consult is the costing of the levy; that is, how much is expected to be raised by this levy? We know that it applies to full-time equivalents in the mining industry. We know it will apply to all people who work on a mine site who are captured by the Mining Act. There is a formula for how many dollars are paid by the company itself but there is no clear overview of how much a company will pay per full-time employee.

One of the other issues relates to the way the levy applies. The levy will not be applied pro rata. A company will be assessed and it will have to pay the levy for the full year, regardless of when its mine site commenced. A mine site may well have started up part of the way through the levy financial year, which I believe has to be paid for by 1 September each year.

**Mr W.R. Marmion:** Payments are due on 30 September, with invoices sent on 1 September.

**Mr F.M. LOGAN:** Sorry. That is right. The invoice is sent on 1 September and the payment is due on 30 September. That is the financial year of this annual levy. If a company happens to get its mine up and running in between those dates, there is no pro rata approach. I accept that and I understand that is done for the sake of simplicity of application of the levy. That is not the point I am raising. Once this bill has been passed—let us assume that the government achieves the impossible and it goes through this place today, goes into the upper house as an urgent bill, passes before the end of next week and then comes into force before Christmas—will the levy be applied straightaway, will it be applied for the whole year or will a pro rata approach be taken for this year? I put it to the parliamentary secretary that he could not backdate the bill to 30 September 2009 given that it will not even be passed until —

**Mr W.R. Marmion:** My understanding is that it will apply from 1 January 2010.

**Mr F.M. LOGAN:** I thank the member for Nedlands. That is one thing that has not been made clear. I thank him for that clarification. Assuming that the bill is passed before Christmas and comes into force before Christmas, the parliamentary secretary is expecting the application of the levy to immediately apply from —

**Mr W.R. Marmion:** The regulations will have to be drafted. It will take some time in the new year for the regulations to come into effect.

**Mr F.M. LOGAN:** Can the parliamentary secretary give some estimation as to when he thinks the actual levy will be applied? There are a significant number of employers who are facing a very large bill.

**Mr W.R. Marmion:** I was going to raise it during the consideration in detail stage. My understanding is that the levy will be around \$125 and will apply for six months of the current financial year commencing 1 January, if the bill is passed.

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**Mr F.M. LOGAN:** I thank the parliamentary secretary for that response. I will confirm that again once we are in consideration in detail.

I would also like to know how many people will be employed to manage the levy. There are going to be 37 new inspectors employed by the department itself for the purposes of assisting to manage the new risk management approach to mining health and safety. I hope that this levy does not allow the use of those inspectors for the purposes of collecting and managing the levy. The job of the new inspectors, along with existing inspectors, is to be out on mine sites ensuring that policies are in place for workers' safety and to ensure that the workers' safety is real, tangible and appropriate, and being applied on the job. I want an assurance from the parliamentary secretary that the new inspectors to be employed will not be used simply for tax collection purposes to manage and administer the levy or deal with the levy in any shape or form. That is not what that money is there for. That money is for maintaining the levels of current inspectors and taking on an additional 37 new inspectors. It is also to ensure that the inspectors are at the mine sites and not keeping their bums warm in offices in West Perth or in Collie, but actually on the job ensuring workers' health and safety and ensuring that we avoid any more deaths in the mining industry. I would like the parliamentary secretary to respond about how many people will be employed to manage the levy.

I would also like to know the cost of running the levy. It appears from the explanatory notes that the cost of running the levy will be sought from the levy itself—the levy itself will pay for the cost of running and managing the levy. The member for Nedlands has worked in the public sector and he has worked in government departments. He knows that costs can blow out, he knows that building empires can lead to more and more people being put on in particular parts of a department and suddenly the cost of running and managing a very simple fund becomes more and more expensive. The whole reason for establishing the fund starts to become undermined because the fund starts using up more of its money to look after itself. It is a critical issue. We want to know exactly how much the parliamentary secretary believes it would cost to manage the fund.

I also want to raise the issue of the proposed amendments. The first proposed amendment will come from the government. I would like to put on record why it comes about. The proposed amendment, in the member for Nedlands' name, is an amendment to clause 4, to insert a new section 105B "Mine safety account", which basically details that moneys collected under the levy will be put into a special purpose account—that is, a trust—under the department and qualified under the Financial Management Act 2006. That was not proposed in the bill; hence the reason for the proposed amendment. As that was not part of the original bill, that was one of the reasons why the Labor opposition and the spokesperson in the upper house for mines and petroleum, Hon Jon Ford, made it very clear to the minister that under no circumstances will we support this bill. We see it as a new tax and we see it as an unfair levy that has been brought in without any consultation whatsoever. We see it as simply a money gathering exercise by the department to fund its own operations.

We will go back to some of the issues we highlighted in the Waste Avoidance and Resource Recovery Amendment Bill; that is, our argument that it is a new tax. Why is it a new tax? It is a new tax to fund the operations of the Department of Environment and Conservation, which was one of our key points when debating the WARR amendment bill. This bill has the same hallmarks; the hallmarks of another government department seeing an easy way to fund its operations by whacking industry for more money. There is no accountability whatsoever. That was one of the key reasons we opposed the legislation in its initial form. After consultation between Hon Jon Ford and Hon Norman Moore as to how this bill could be agreed to by the Labor opposition, this proposition was put forward to ensure that there is some accountability for the collection of money. Accountability would allow the Parliament to have some oversight of how much money is expended, how much money it costs to run the levy—which is one of the issues I have just referred to—and how that money is distributed by way of the employment of inspectors. Is the money that is being collected spent for the purpose for which it was collected? That is the reason we argued strenuously. If the government is going to raise this levy, it should ensure that the department keeps its sticky fingers off it and it goes into an independently audited account that is held accountable to the Parliament in terms of inspection of the way the money is used within the account. That is the background to this proposed amendment. Although it is a government amendment, it is an amendment that is forced on the government by the rejection of the bill in the first instance.

The second proposed amendment is in my name. It is again to clause 4, and it is to insert a new subsection (2) after line 9 on page 3. That would reverse the onus of the way in which regulations are dealt with in the house; that is, rather than the regulations coming into force from the time they are tabled in the house, the regulations will not come into force until such time as 14 days after they have sat on the table of the house, assuming there has not been a disallowance motion moved to reject those regulations. Members heard earlier that the regulations of the Mines Safety and Inspection Amendment Bill are yet to be drafted, and the actual application of the fundraising will not occur, I believe, until after the introduction of those regulations. This amendment will ensure

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that once again there will be some accountability in the way in which the fund is applied and that there will be some level of consultation with the parties, particularly the parties that have to pay the levy, to ensure that what goes into the regulations will benefit the industry. Therefore, this provision is there as a failsafe mechanism, as asked for by the unions and employers in the industry, to ensure a level of accountability in the application of the regulations and in the establishment of the fund into which employers are bound to pay significant amounts of money. That is the reason that this amendment will be put forward.

I have been advised by the parliamentary secretary that the government does not agree with this amendment and I believe that the government will vote against it in this house. I hope that when the amendment is moved again in the upper house—because it will be moved again in the other place—the government will see sense by that stage and support this amendment, because it is a sensible amendment to ensure accountability in the way in which this new tax will be applied to what is effectively the biggest industry in Western Australia. For the government to simply say, “No, we’re not going to agree with this” is a slap in the face for Western Australia’s mining industry, which is looking for this level of accountability from the government in the way that the regulations and the new taxing powers will be applied. At the end of the day, people in the mining industry will have to stick their hands in their pockets and fork out very, very large lumps of money to pay for this new levy. For people in the mining industry to be told by the government, “Just pay the money; trust us, everything will be okay” and for them not to have any input into the way in which the regulations will be framed is unacceptable, member for Nedlands. It is absolutely unacceptable. I believe that if the government continues to oppose this amendment that we seek to make to the bill, it will experience a significant backlash from the industry about the way in which it has approached the bill because, as I pointed out before, there has been a significant lack of consultation on the way in which this bill has been drafted and brought into this house. There has been a significant lack of consultation on where the whole regulatory framework is going and what it will look like because it has been driven by the department as opposed to the industry itself.

Finally, with reference to consultation, I would like confirmation from the parliamentary secretary, the member for Nedlands, that the failure to consult that has occurred up until this point will not occur in future. In fact, I would like the parliamentary secretary to put on record—I believe his minister has agreed that he should put it on the record—that liaison with the industry and industry stakeholders, such as the unions, will occur under a new advisory panel and new working groups that will work together with the government on establishing a workable framework for occupational health and safety in the mining industry, because to exclude employers and unions from helping to create that framework is simply nonsensical. At the end of the day, it will not work if they are not on board; it simply will not work. The object of the exercise, and of applying the recommendations that came out of the Kenner review, is to save lives and avoid accidents and injuries in the mining industry. That can only occur by the parties on the ground—that is, the employers, workers and unions—working together to ensure that the regulations and the occupational health and safety policies that have been created are workable and applicable to that mine site and that workplace. The role of the government is to ensure that it works with those parties. For the legislation to work properly, those parties have to be involved from the ground up. The point, member for Nedlands, that the unions and employers in the mining industry have been stating up until now is that they were not involved at the very beginning of the creation of the regulatory framework for a new occupational health and safety system in the mining industry. They have to be involved from the ground up. I would like the parliamentary secretary to put on the record that the government will commit to involving those critical stakeholders in the process of creating the new system of occupational health and safety in the mining industry from the ground up.

**MR M.P. MURRAY (Collie-Preston)** [5.17 pm]: I rise to support at least the objective of the levy, although probably not the levy and the detail of it. I had 24 years in the coal industry, working 12 years underground and 12 years on the surface, along with six or seven years in construction work as well. Therefore, I have seen people severely injured. Two of my shift mates—although I was not at work at the time—were killed. I certainly have a close understanding of the rigours of mining. Some people say that it is acceptable to have a small number of deaths; I do not believe that. I believe that everyone, especially in the mining industry, in Western Australia should be able to go to work and come home safely to his family. I think it is very important that we have that attitude and not an attitude that a small number of deaths is okay.

It seems that from time to time in the mining industry, in both open cut and underground operations, we have a spate of injuries, serious injuries and deaths. I believe that happens because after a while there seems to be a drop in the pressure to ensure occupational health and safety. We have this drift and then we get a jolt from a number of deaths and that gets us back on board. A lot of it is about cost; that is, the cost to companies and government in administering the safety regulations. But, to me, this is the full circle.

When I was working underground, we used to have check inspectors who were employed by the government. In Collie about 11 inspectors worked out of the mines department and half of them were people who were elected

**Extract from Hansard**

[ASSEMBLY - Tuesday, 24 November 2009]

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from the shop floor. If a person had a deputy's ticket, he could put his hand up and say that he wanted the job as a check inspector. Check inspectors worked alongside the government agency people as well, so here we are again looking at people being paid by the companies to be check inspectors. It was a much sought-after, very highly prized and prestigious job because the check inspector had a huge amount of power. If a miner had a problem underground, he could ring the check inspector, who would come down. Especially if there was a roof fault, the miners could stop work and call the check inspector, who would come down and sit with the unions and management to work through what the procedures would be if they were to work through that fault, or, in some cases, whether they would pull out of that area altogether. It was about working together. I believe that the companies paid the extra amount over and above the government wage structure because the miners got paid more, so those people did not lose wages. They took their job seriously. The check inspectors during the day and the deputies at night used to inspect areas for safety reasons. They really minimised the number of major accidents. Certainly, there were a number of daily accidents in underground mining, especially when axes were used to cut the props off to hold up the roof before the roof bolting. Many fingers went missing. One of my favourite stories is about walking along the flats down to the safety unit and seeing blood all over the wall. It was a bit like being in the fire brigade. I had to smash the glass to get the key to get the bandages. I thought, "Someone's been hurt", so I rang the surface and said that someone had been hurt and I was told that such and such had cut off his finger and then I was asked whether I could look for his finger. I said, "Okay; I'll do that. What do you want me to do with it?" and I was told to bury it, as he wanted to get the insurance money. That is just one story, but a number of people still limp around Collie or have crook backs. Those injuries are related to underground mining. A few people get injured in open-cut mining.

I have a problem with some of the ways that companies address the issues. We used to say that if a person had an injury, the company reduced the lost time injury frequency rate by asking that person to come to work to reduce the number of days off recorded. We had a saying that people would come to work and get hung on a peg behind the door and they stayed there all day just to get the numbers down. I believe that that happened a lot, because people used to come to work with broken legs. Those people did not really do anything productive. They might have folded papers or something like that just so that they were not on the books and so that the numbers were kept down for the lost time frequency rate to enable the company to say that it had lost only 100 days in the previous year. In reality, guys were in recovery mode sometimes for up to three months and were not productive at all. Those figures should have been on the books.

As I have said, we had elected safety representatives and then things changed. At the moment in Collie there are about three check inspectors who are government employees; that number is down from 11 check inspectors. There are no inspectors from the companies as such. We then went to safety committees. How could people get on a safety committee? The companies wanted to appoint their people to the safety committees, but we were lucky that the legislation provided that a ballot had to be held and people could put up their hand to be on a safety committee. But by gee did the companies fight against having union representatives on those safety committees. The companies did not want those people on the safety committees because they were outspoken and did not comply with the company line. At times they pulled up the job and said that it was not safe, when others may have deemed that it was safe. On safety matters, it is the first thought that this is not safe that counts, not the second thought that this may not be safe, because by then it could be too late. That was provided for in legislation. We moved another step forward with the committees. There was training that went with them. Again, there was an argument about whether the training would be done through a government agency, a private agency or a union agency and whether a safety representative could provide that training. The legislation has not been strong enough to make sure that there is proper and reasonable training and so these problems have come up. It was always my belief that some of the more meek and mild people were singled out to be on these committees because they would just say yes and things would go through unchecked. It is probably not fair to say "unchecked"; things were not checked to the nth degree. Some of the things that should have been done were not done.

We have moved on from there and now we are coming to the next phase of a levy. Again, my concerns about where the money will be spent have been raised by the member for Cockburn. Over time money has not been directed at the problem. We need many hands and feet at these mines. In recent times there have been more mining injuries in underground mining. There is pressure on workers, such as those who worked on the construction of the new tunnel, to make sure that the job is done on time and on budget. That puts a lot of pressure on workers not to say no when they probably should think again and think about their own health and safety first. There have always been problems with contractors.

One of the problems with the bill is that it has no detail. I made that very clear when I spoke about the regulations. Some people who live in Mandurah travel to Collie for work. It is quite different in the north west, because generally those workers are accounted for as they travel from one job in one town to another. That other



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town might be 200 kilometres away, but at least those workers are accounted for as they travel from one place to another. I do not believe that is the case at the moment, although it is being worked on. If a person lives in Mandurah and travels to Collie four days a week for 12-hour shifts, it makes for a very long week. Believe me, after working the night shift—the heebie-jeebies hour—a person’s head will nod and he will want to have a sleep, but he has to jump in the car to drive home. Sometimes people do not even know where they are while they are driving home, because they had breakfast before they drove for a couple of hours to work, and then they worked a 12-hour shift, had a shower and then drove home. They are extremely long days, especially if people have to work night shift. Will an accident that happens on the way home be provided for under this system? I do not think it will, because companies will not want that recorded on their books. Not all companies are saying that that is not their responsibility. Recently, there have been some moves to address that problem in my area by making the workers live in town. When we see unexplained accidents on the road, it is assumed that people have gone to sleep, veered across the road in their car and run into another car coming the other way. We need to be able to check that those things are not related.

I also have concerns with the ability of third and fourth-tier contractors to pay the levy. A person might be a subbie for a day, but he could be subbing to someone else who is subbing to someone else, if that makes sense. There is a tier of contractors all the way down the line. Where will a subcontractor fit in that pecking order? Where will a subcontractor fit if he comes onto a site for only a day or for only two hours? Who will pay the levy in that case?

**Mr W.R. Marmion:** The mining company will pay the levy based on the number of workers, and any subbie or contractor who comes on site will be totalled up.

**Mr M.P. MURRAY:** That is where I see the problem. If a mining company needs a hole to be dug with a backhoe, and the backhoe operator is brought in, will that go up or down, or will the company push it aside to save money and say, “He’s just one of the regular numbers”? It will be very difficult to keep control of that.

**Mr W.R. Marmion:** If someone comes on site, he will be captured.

**Mr M.P. MURRAY:** Worsley will have 2 000 construction workers on its site. It is probably a construction site at the moment, not a mine site. There have been times when that has happened at a mine site. It will be very difficult to keep control of that. I would like to see the detail of that before the legislation is passed.

**Mr W.R. Marmion:** They already supply the number of people on the site in lost time injury accidents, so they have the record of the numbers on-site.

**Mr M.P. MURRAY:** I hope the parliamentary secretary is right, but I see some flaws there.

Another issue that concerns me is the levy. I am not sure whether the levy will be collected on a three or six-monthly basis or weekly. If a smaller company goes broke one week—this happens on a reasonably regular basis—the following week the trucks are rebadged with a different name and are back on the job, but sometimes with the same drivers. Has that been wiped off or will it cause a problem?

**Mr W.R. Marmion:** No, it won’t. The trucking company won’t be paying the levy; the mining company will be paying it.

**Mr M.P. MURRAY:** The mining company will pay it. There is still a problem with the level. When that problem comes up, will the mining company, in its billing system, charge the people down the line for the people who come in? I do not know, because there is no detail. What I am trying to say is that the mining companies may pass the levy on to the subcontractor, and that subcontractor will pass the levy on to the next subcontractor. I do not know, because there is no detail in front of me. I would like to see some details about how this levy will work. I think that is very important, because we know that there is desperation in the industry. Some businesses will be so desperate to survive that they will take the short cut of not paying the levy, which would become a safety issue. It would be about dodging the levy or allowing someone else to pay it for them. How that will be dealt with does not emerge in any detail that I can see in this legislation.

I have had representations from the coal industry about input from the unions. The unions play a major part—not just a small part—in safety, particularly in the mining industry. They have played that role quite well over the past 100 years. That sort of consultation is very much needed at the top end, at the middle management level and at the ground level of the big companies. People on the ground are able to say what they need and how much the levy should be because they know what has to be done. Sure, the regulations will come in later, but I am concerned that that will go only so far before the companies say, “This is too expensive for us; how do we lighten the load? Should we perhaps not increase the levy next financial year?” That will result in people being dropped off at the end and we will end up with the same problem. I am not sure whether the levy is increased according to the consumer price index —

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**Mr W.R. Marmion:** The levy will be based on the budget. The number of FTEs will be divided to come up with the annual rate per employee per company, and they will be sent a bill. It only applies to companies with greater than 10 FTEs.

**Mr M.P. MURRAY:** If there is a downturn in the gold industry, for example, a goldmining company might take the concessions so that its levy does not increase, but the end result might be the loss of three or four safety inspectors. That is my concern.

**Mr W.R. Marmion:** The levy will obviously go up to pay for an increase in the budget if the number of employees goes down.

**Mr M.P. MURRAY:** I hope the member is right.

I suppose this is the second time round on this issue. It was in place, and then it was wound back; the onus was put on companies. We have heard all sorts of horrific stories about shortcomings in companies' workings because there was no-one to check the checker. That is a problem that I have seen previously. We have to make sure that every gate is shut, because this is a major safety issue. There tend to be spikes; deaths can rise very sharply and come down very sharply. Why is that? It is because people drop the ball and it becomes a bit too expensive to be able to follow through on safety measures. That is why I think that the levy is a great idea. Members should not think that I am against the levy; I am just concerned about the checks and balances that have to be in place to make sure that we get those people on the ground. That is really where it is. The money should not just be eaten up along the way in administration and that sort of thing. If we do not do that, we will still have spikes from time to time. We also need more research into safety so that we can find out some of the causes of accidents. We should not just be saying, "Don't do that again". We should be examining the background of accidents and not just relying on the recommendations of the Coroner's Court. We need to conduct research into the background circumstances of accidents; some of those inspectors are very good and have been in the industry for many years. They can advise people well in advance of accidents, not when it is too late. Recommendations come from the Coroner's Court, but not all of them are acted upon; when the next accident happens, people ask why it happened when it could have been avoided by the implementation of an earlier Coroner's Court recommendation.

I have difficulty giving my total support to the bill due to the fact that there is no provision for communication with unions and middle management along with senior management. The bill is also lacking in detail, and that always makes it difficult to support all parts of the bill. I make it very clear that I will have reservations about supporting this bill until I see the final detail.

**MR W.J. JOHNSTON (Cannington)** [5.36 pm]: I will start by making some observations about my own background. I listened with particular interest to comments made by the Leader of the House about the relevance of members' contributions. I make the point that mining safety is an issue with which I have been involved for a very long time. As I made clear in my inaugural speech, I am a former vice-president of the Western Australian Trades and Labor Council. I played a key role in the union movement's monitoring of mines safety, and I remember working on inquiries with a number of people from the Australian Workers' Union in the 1990s. The records of some of those inquiries reveal that there were some effective cover-ups on mine sites. Employees would give evidence to health and safety inquiries that fitted in with reports that had already been written by their employers.

Mines safety has always been a very important issue. I was a member of the Trades and Labor Council's occupational health and safety committee, as was the member for Nollamara. I had specialist knowledge of the area of workers' compensation. There is no separation of mines safety from workers' compensation. It might also interest the Leader of the House that I was an official of the National Union of Workers, which covers people employed in certain aspects of the mining industry—particularly on the conveyor belts, as the member for Cockburn would know. The National Union of Workers is an amalgamation of a number of smaller unions, one of which was the Rubber Workers Union. There is a company in Western Australia called JLV Industries Pty Ltd with which the member for Cockburn was involved, as was I, through the NUW. It was at the forefront of world technology in the mining industry at that time. I know that technology has moved on, but I just make the point that these are all issues of which members on this side have direct and personal knowledge. As a Labor member of Parliament, it is very important to put on the record the role that unions play; that is something that the Labor Party is proud to do. We have had more than 100 years' connection with the labour movement. There are no former officials of the Australian Workers' Union in this chamber. I was not an official of that union, but I worked very closely with the former secretary, Tim Daly, when I was with the Trades and Labor Council. It is important to recognise the contributions made by unions such as the Australian Manufacturing Workers' Union, the Constructions, Forestry, Mining and Energy Union, the Australian Workers' Union and the Electrical Trades

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Union in the area of mines safety. It is important to include those contributions in the parliamentary record. I know that the parliamentary secretary acknowledges the contributions that those unions make.

When we look at health and safety issues, it is important to remember that only three per cent of the costs of workers' compensation actually fall on employers, whereas 50 per cent of the costs of workplace injuries fall on the workers and their families. It is estimated that 47 per cent of the costs fall on the broad community. There is no question that Labor members of Parliament have a responsibility to debate these important issues. This bill provides for a new approach to mines safety in this state. It gets away from the black-letter law approach to regulating mines safety and moves to the more contemporary approach of the safety case. It is not true that all unions support the move to the safety case approach, but it is true that that is considered a more contemporary management style. Although the safety case approach does not escape criticism, the idea of putting more obligations back on companies so that they are responsible for their own behaviour and less reliant on government inspectors to be everywhere and know everything is consistent with the sorts of things that the member for Collie-Preston commented on from his experience of working in the mining industry. Once upon a time, one expected that there would be a government regulator at every step of the mining process, but that is no longer possible. This legislation is recognition of the new approach. Even though this bill effectively has only one clause in it, which is about the way to raise revenue, it is a complete change in the philosophy that underpins mines safety regulation in this state. When we are considering a bill with just one clause, it is important to understand that it is not just the regulatory process that we are dealing with; we are dealing with a complete change. It is interesting to go back to last year and look at the criticisms made by the now Treasurer about the safety case approach in the offshore petroleum industry. It is not without its critics. I know that the new government promised a royal commission into the Varanus Island explosion but decided not to proceed down that track and to continue with the National Offshore Petroleum Safety Authority inquiry. We all know that a number of court cases have delayed the finalisation of that process. However, it is important to recognise that the then opposition raised criticisms of the safety case approach. It is interesting, looking at the questions that I asked of the Deputy Premier in his role of representing the Minister for Mines and Petroleum in the budget estimates hearings, that even the Deputy Premier made strong qualifications on the safety case approach.

This is a new style of safety regulation and it is not without worries and criticisms. It will be important that unions and employers are involved in the process from here on in. This bill is about not just the collection of revenue, which is very important, but the management of the safety case approach. I urge the parliamentary secretary, on behalf of the Minister for Mines and Petroleum, to ensure that there is a continuing and proper strong role for trade unions. I know from my own background as a union official—as I described it—that often employees will use a union when they might not be prepared to come forward themselves. Providing a strong and continuing role for unions in the safety case approach will be important to its success.

The other thing about the safety case approach is that it rejects the idea that the mining industry is inherently unsafe. Once upon a time, we all said that the mining industry was unsafe and we must expect accidents to happen. The safety case approach says that, with proper training in systems, mining should not be unsafe. That should be celebrated. It is an important change to the way in which we view the industry. If we look at the history of mines safety, starting from hundreds of years ago, there was an expectation that there would be deaths, which is unacceptable in a contemporary industry.

We also have to think about the direct and personal cost of deaths on individuals. I read with interest the parliamentary secretary's second reading speech and his comment —

Although the lost time injury frequency rate in mining has fallen over the previous decade and the rate of fatalities has declined to a relatively low plateau —

He made those upbeat comments, but then went on to make some negative comments. He also said that any death is a tragedy.

There is a lack of focus in the community on the direct impact on people of the deaths of workers who go to work; that is, those people who say goodbye to their loved ones and do not come back. I made the observation earlier, based on research carried out by the Australian Council of Trade Unions, that only three per cent of the cost of workers' compensation falls on employers, and members can see that getting deaths not to a low plateau but to zero is essential. Every injury also leads to untold suffering. I know from my own experience as a workers' compensation officer dealing with cases, for example, of people who were getting significant over-award payments but who became injured and went onto the statutory rates. They experienced a massive drop in income; in fact, up to half their income disappeared. People who are doing their job, working hard for their employer, raising a family and buying a house suddenly have their income cut because of the way in which the workers' compensation system bases their income not on what they actually earn but on what their award provision provides for. As we all know, award provisions are minimum, and very few people earn that minimum.

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I wanted to make those general comments because it is important these issues are on the record on behalf of the Labor Party in looking at this new approach to safety and mines.

I will ask some questions at this point and the parliamentary secretary can address them how he chooses. I will continue with his comments in the second reading speech that —

over a similar period, recent events indicate —

I will emphasize this —

that production pressures, a less skilled workforce and other factors may be driving an unacceptable upward trend.

I wonder what evidence exists for the parliamentary secretary's comment about production pressures and a less skilled workforce driving up injury and fatality rates in the mining sector. I will make two comments about that. The first is that it would be unacceptable that production pressure is driving fatality rates up. If that was true and that was the standard, companies would be putting the interests of their commercial operations ahead of the interests of saving workers' lives. The second issue is the comment about the less skilled workforce. It is clear that, under the current legislation, it is already the obligation of the employer to provide that training. I am wondering whether the parliamentary secretary can comment on that or provide any evidence to support that. If that is true, is it intended to have sanctions for those types of employers? If we are going to move from a black-letter law regulatory framework to a safety case approach, are we going to say that there are some employers we do not trust with the safety case approach? If the parliamentary secretary has the information available—as he is not the minister it may be that he does not have these things to hand—maybe he can address later in the process of the bill whether there is any intention to deal with those employers that are not fulfilling their current obligation.

Obviously the Labor Party has been calling for an increase in the resources of the inspectorate for some time now. Again, the parliamentary secretary might want to respond later in the debate about any expectation of trouble in finding appropriately qualified people to fill these additional roles in the inspectorate and whether there is any plan in place to deal with that. I am not going to the questions asked previously about financial issues and consultation, because this is a separate issue and I asked similar questions in the budget estimates process. I do not know how long the parliamentary secretary will have to deal with those issues. He might be able to provide that information subsequently. That is a critical issue and, as I said, I raised it during the budget estimates.

I refer now to the question of the levy being a tax. I imagine that the government has made it a tax so that there will be no question about the authority of the state to collect it. Is there any question about whether if it is a fee it will be subject to the goods and services tax and if it is a tax it will not be? I am not sure whether that is the case or whether it is a matter of enforceability. The parliamentary secretary can answer that. I also wonder how it fits into the Liberal Party's pre-election commitments on taxation matters. The Liberal Party promised to cut taxes by \$250 million. It has delivered \$100 million of that \$250-million promise so far. I wonder whether this increased tax must be offset against further additional tax cuts or whether it is another example of the Liberal Party having said something in opposition because it was a good idea and then not worrying about it when in government because it is too hard to implement.

I do not expect the parliamentary secretary to have knowledge outside of the matter of the Department of Mines and Petroleum, but can he answer on behalf of the government whether the safety case approach of applying the levy to fund the system is being looked at in other occupations, such as the construction industry? If it works in the mining industry—we are yet to see whether it does—the model might be applied to other industries so that we remove the burden of health and safety obligations from the community and onto the employers so that they meet their obligations. The Labor Party will support the bill, subject to the government accepting the amendments that have been discussed.

**MR J.C. KOBELKE (Balcatta)** [5.51 pm]: I rise to say a few words in support of the Mines Safety and Inspection Amendment Bill 2009. As the former Minister for Consumer and Employment Protection with responsibility for workplace safety, including mines safety, I have a very real interest in this legislation. I am very proud of the previous Labor government's record for not only getting rid of workplace agreements, which I believe had implications for safety in the workplace, but also implementing major occupational health and safety reforms. We introduced provisional improvement notices, which the Liberal Party opposed. They have worked well and, to my knowledge, there is widespread acceptance of them. The Liberal Party totally opposed the introduction of PINs to improve health and safety. The former Labor government also introduced workers' compensation bills. They were part of the major reform to look after injured workers. We also extended

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occupational health and safety to cover police for the first time ever. We have a proud record of introducing legislation to improve safety in the workplace.

We want to support the government's efforts to improve safety in the resources sector. This might not be the approach that would be expected of this government. The way the government has done this has raised questions about why it has done it this way and whether it is genuine. Perhaps we are suckers, but we will accept that the government is being genuine and we will back these amendments in the hope that the extra inspectors and resources will help improve safety in the resources sector. The contribution of the resources sector to our economy is incredibly important. The major miners and a range of contractors and supply companies are world leaders in the resources industry. It is therefore incumbent upon us to be leaders of safety in that industry. We have a long way to go to make sure that we have outstanding safety measures in place in the mining and resources industry. There are high standards of innovation, productivity and management across our mining and petroleum companies and we must be sure that we do everything we can to ensure that our health and safety standards are of an equally high standard.

When I was the minister responsible for safety generally, mines safety was under my portfolio for only a short time. The former Labor government inherited a system with mines safety separated from the general occupational health and safety portfolio, just as this government has done. I will return to that in a moment. When I was the minister responsible for WorkSafe, mines safety was a separate organisation in the Department of Mines under the various names it has had over the years, and it did not get the resources that it required. The resources went into promoting mining and supporting the expansion of the mining industry. Resources were taken out of the area of mines safety. Many years ago, the industry and the Chamber of Minerals and Energy of Western Australia's safety committee expressed their concern that the government was not putting enough resources into mines safety. They said that they wanted to do things better for their industry. They are professionals who are committed to safety in the mining industry. They could see that the government was not putting in the necessary resources to make sure that the inspectorate was as effective as it could be. In fact, it fell a long way short of that. During our term of government there were spikes in the number of deaths that occurred in that industry. The number of deaths is just the pinnacle of the triangle. We must make sure that we deal with serious injuries, minor injuries and even near misses if we are to treat safety seriously in that industry. We are now talking about doing that for the resources industry.

The drivers of some of the spikes in major accidents and deaths in the industry relate to a range of factors. When there is a major change to the resources industry, there is likely to be an increased number of accidents and deaths. Those changes can be produced by a range of things. One of the factors under the Court government was, as I alluded to, the introduction of workplace agreements. A lot of skilled people in the mining sector refused to work under a workplace agreement and they got out of the industry. Therefore, workers were promoted perhaps five or 10 years before they would otherwise have been promoted and they had to take a leading role. That was particularly the case for underground workers. I believe that was a contributing factor to the number of fatalities and serious accidents that occurred at that time. Over the past few years there has been a huge expansion in the industry and people with less experience have come into it. The change and the lack of experience has been a contributing factor to the number of deaths and accidents that have occurred.

We saw throughout that period a move to employees working for long shifts; they were being rostered to work 12-hour shifts for extended periods. As the minister, I held an inquiry into those extended working hours with a view to introducing a regime with a cap on the number of hours that people could work. One mining company was reputed to be employing people to work for 13 weeks straight on 12-hour shifts without taking a day off. I spoke to a subcontractor at a Chamber of Minerals and Energy dinner when I was the minister and the subcontractor asked me what was wrong with people working for 13 weeks straight. I pointed out that there was a lot wrong with it because the workers are unable to maintain their concentration and perform at good levels and it affects their ability to work safely. When the boom occurred and there was a shortage of skilled labour, quite a few companies reduced the hours that people had to work so that they could hang on to their workers. When people could get a job somewhere else because of the shortage of skilled labour in the mining industry, a lot of mining companies reduced the number of hours that their employees were required to work. The companies did that not only for the safety of their employees, but also because they wanted to hang on to their skilled workers. The companies had to look after their employees and consider their lifestyles. There were a range of issues around that but I will not take up the time of the house by going into it in detail.

The minister is saying that in addition to this bill, he is talking about a safety case approach. I can see the benefits of that. However, I see real problems if the minister believes that a safety case approach is a fix-all, because it is not. No system is perfect. Every system has advantages and disadvantages. If this approach is not implemented properly, there will be more disadvantages than advantages. If the safety case approach is to be applied to small operators, we might find that they do not have the wherewithal to implement it properly. The

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safety case approach has the potential to be an improvement for the very large companies that have a lot of professionals who are looking after the health and safety of their workers. However, that might not be the case for the smaller companies.

*Sitting suspended from 6.00 to 7.00 pm*

[Member's time extended.]

**Mr J.C. KOBELKE:** Before the dinner break I had briefly covered some of the broader issues of occupational health and safety, particularly mines safety. I want to conclude on those issues before I discuss some of the specific issues of the Mines Safety and Inspection Amendment Bill. When I was the minister responsible for WorkSafe, we had a mines safety division that sat by itself. It was the aim of the Gallop government to make sure we had fewer agencies so that we were more focused and coordinated. The current government is spreading out and creating extra agencies at millions of dollars in extra costs. Members opposite can argue for that; I am not going to go into that now. But that was clearly a focus of the then Gallop government. We also wanted to make sure we delivered better outcomes, so we brought together within WorkSafe both energy safety and the mines safety division. Part of the driver of that was the inquiry that was held just before or about that time into fatalities at the BHP Billiton hot briquetted iron plant just outside Port Hedland. That led the company to reassess whether it would commit to continuing with that HBI plant. As we know, in the end BHP walked away and closed it down at a cost to the company of something approaching \$2.5 billion. It was a very expensive decision. I am sure that involved in that decision were issues of productivity, but the key stated issue—I take it as being true—was that BHP was not convinced it could run the plant safely. That was part of the backdrop that led us to bring that mines safety division within WorkSafe. We were then confronted with the problem that the number of inspectors and the resources available, which had been inadequate for years and years, needed to be stepped up. At that stage, however, we were experiencing part of the boom period in the resources sector. Not only was it very difficult to employ additional people with the necessary skills, but also we could not retain the skilled people we had because they were offered so much more money to work for the industry. We therefore put in place attraction and retention bonuses and a range of other measures to try to keep and attract more people. About that time I moved to other portfolios and did not have the opportunity to see it through. I understand that the problems continued, and that we had to pay more money to retain people in that area. The skills WorkSafe needed were skills that were very much needed by the resources industry. The industry could pay far more than we could pay in government to keep those people.

That leads me into part of the reason I think the government is saying, "Let's get the industry to pay for it." That does not necessarily address the salaries and the attractions that will be in the remuneration packages to make sure we can recruit those people. That will ebb and flow, depending on the demand for skilled labour in the industry. It is a real problem for mines safety to make sure it has the money to attract and retain those people. Figures have been used that are clearly not in the bill, but the government has stated that, I think, 40 extra staff is the target.

**Mr W.R. Marmion:** I'm not sure.

**Mr J.C. KOBELKE:** In the briefing, we were given a figure of approximately that; I do not have the exact figure. I certainly support the government in that. That obviously grows from the fact that the figures are still not very good. In the minister's second reading speech he draws from material in Commissioner Kenner's report on the safety regime. The figures he uses there are that the ratio of inspectors to mining industry employees are one to 550 in New South Wales, one to 880 in Queensland and one to 1 800 in the resources industry in Western Australia, the leading mining state in the nation. Those figures clearly illustrate the problem we have in making sure we do expand the inspectorate. That is the clear intention of the government and we certainly want to support it.

We also support the mechanism provided in this bill, which is to ask industry to help pay for it. The difficulty we have is that this government does not have a track record of actually taking workplace safety seriously. We hope it has been on the road to Damascus and found enlightenment and now realises that it is important. We certainly want to support it and genuinely hope that is the case. However, when we look at the way the government is doing it, we have to say that it fits in more with what it has done in some other areas, which has been simply to raise revenue. That certainly causes us concern. The member for Cockburn has spoken about moving some amendments with the aim of providing a bit of assurance that this is not just another means of taxation—another grab for money. From my knowledge of members opposite, I believe they are good people with the best of intentions. However, we run into difficulty when good people who intend to do good things get caught up in government, with all its power, and they make grabs for money in a way that suddenly gets too narrowly focused on where to get the money from. They do not give the required attention to an area such as workplace health and safety to make sure they put in place the proper regime and the full consultation with all the key stakeholders to

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really deliver improved safety in the workplace. Safety in the workplace should not involve just a grab for money; it should be about working in partnership with the key players to actually change the culture to improve health and safety. It is not just about money. Money is needed for the inspectors to run the programs, to drive the profile of health and safety in the workplace. Yes, we need the money, but it is not primarily an issue about money. It is about changing the culture in workplaces to make sure they are safer. I have a real concern that this government is about grabbing money, even if the money is to go back into promoting health and safety in the mining sector. That is what the government has stated, so let us take it at its word.

We have seen recently with two other pieces of legislation that, while the government has talked the talk about some bold schemes, have simply been cons. I am referring to legislation that has been about increasing taxation. That is clearly true about the increase in the waste levy. That legislation is a total sham. It has nothing to do with improving recycling and waste avoidance; it is simply a grab for additional money to be channelled into consolidated revenue. That has been amply demonstrated, and I will not go there now. It causes us concern when we can see an example such as that, when even government supporters in local government know it is a con. That legislation is about increasing taxation; it is not about the clear intent of the waste levy, which is waste avoidance and recovery. Similarly, the increase in the levy for central city planning is simply a con to get more money. The government has not even outlined where that money will be spent.

We are cautiously supportive of this bill in the hope that it is not another example of a government simply seeking to increase revenue rather than being fully and totally committed to improving health and safety in the workplace. It needs to be committed to those things, and we support it in doing that. We hope, despite recent experiences, that that is what the government will do with the passage of this bill. The government has drafted this bill in a rather slipshod way. It has not dealt with it in the normal way, which again causes concern that perhaps what it is doing with this bill is not its stated intention. The bill seeks to insert a new section 105A in the Mines Safety and Inspection Act 1994 that will provide a head of power for regulations to put in place a levy that we are told will be used for this purpose. Some amendments will try to tie that purpose down, but that is not what is outlined in the original draft. New subsection (1) states —

Regulations may be made under section 104 to provide for a levy, which may be of the nature of a tax, to be payable to the State for the costs of administering this Act.

It clearly says that this is a tax payable to the state. We are seeking to put that into a trust fund. The intention was to impose an additional tax. New subsection (2) states —

To the extent that the regulations provide for a levy that is a tax, the regulations may impose the tax.

This is clearly a taxing bill. That is what it is about. We trust that the government will use that money to improve health and safety in the resources sector.

As I said before the dinner break, the minister is talking about a safety case approach and that sort of stuff. That is well and good if it is committed to and done properly. These high-sounding names count for nothing if the details and commitment are not delivered to make them work. I will not go back into that area of the debate. Let us assume that the minister of the day provides a real commitment to improving health and safety. We need to see that consultation with the key industry players in the approach to be taken. There will be differences of opinion over the approach that should be taken. We need to work through that and get that commitment to ensure it works; otherwise, it can be high sounding and full of good intentions but it will not deliver safety in the workforce and save lives in Western Australia. We have to ensure that when people go to work they are safe and they do not leave their family in a situation in which that family loses a father or mother in the workplace or someone in their family gets injured and they spend the rest of their lives living with the consequences of something that happened in the workplace that should not have happened. We need to ensure that that is done. We are putting that aside and trust that the government will act in that way because there is no mention of that in the regulations. The regulations provide for that head of power to impose a tax. As I said, this is a pretty shoddy way of doing things. In large part, section 46 of the Constitution Acts Amendment Act 1899 relates to the relationship between the two houses. Subsection (7) states —

Bills imposing taxation shall deal only with the imposition of taxation.

I put it to the house that that is not what we have in this bill. What we have here is simply regulation-making power that bundles a whole lot of stuff together, not just the imposition of taxation. The regulations can deal with circumstances in which liability to pay the levy is imposed; how the amount of the liability is to be assessed; on whom liability is imposed to pay the amount assessed; when payment becomes due and how payment is to be made; who is exempt or partially exempt from liability to pay the amount assessed; the right to object to an assessment and how the objection is to be dealt with; and the consequences of failure to pay the amount; and

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how amounts outstanding may be recovered. All those powers are contained in the regulations; it does not just deal with the imposition of taxation.

**Mr W.R. Marmion:** They all relate to the money. That is totally wrong.

**Mr J.C. KOBELKE:** The member is a bit new to this place. There are two areas involving safety for which we have industry-based funding regimes in place—first, offshore petroleum safety, which is covered by the National Offshore Petroleum Safety Authority, and, secondly, energy safety, which comes under the Energy Safety Act 2006 but there is another very short act—the Energy Safety Levy Act 2006. Section 46 of the Constitution Acts Amendment Act was taken into account when the levy was framed so that people working in the energy industry would pay the energy safety levy to fund the inspectorate and the regulation of their own industry. In that case, we ended up with the levy act and the safety act because section 46 dictates that that is how we should do it. That is not the only example. There are many more. I will give one more example. The Building and Construction Industry Training Fund was set up in 1990 to impose a levy on industry to support and promote training in the industry. Again, there are two acts—the Building and Construction Industry Training Fund and Levy Collection Act 1990 and the Building and Construction Industry Training Levy Act 1990, which contains only a few sections. Section 4 states —

Subject to this Act, a levy is imposed in respect of construction work undertaken after the commencement of this Act.

The Building and Construction Industry Training Fund and Levy Collection Act provides the details of the application of the fund, the investment of moneys, the power to borrow from the Treasurer, payment of the levy, the penalty for late payment, recovery of levy and other amounts. They are not in the levy act. The parliamentary secretary can go through a dozen or so provisions and he will find that there are two acts to ensure clear conformity with section 46 of the Constitution Acts Amendment Act. As I pointed out, subsection 46(7) states —

Bills imposing taxation shall deal only with the imposition of taxation.

**Mr W.R. Marmion:** Which this does.

**Mr J.C. KOBELKE:** No, it does not; it goes beyond it. We are not caught constitutionally because subclause 46(9) states —

Any failure to observe any provision of this section shall not be taken to affect the validity of any Act whether enacted before or after the coming into operation of the *Constitution Acts Amendment Act 1977*.

No judiciable action can be taken against an act that fails to comply with section 46. It is a clear example of where we have a slipshod government, which again causes concern that the clear focus of the government is to increase taxation rather than improve safety in the workplace.

We certainly want a big improvement in safety in the resources sector. We support this bill because it provides a mechanism of funding, which, if directed, as the government is undertaking, totally and fully to safety in this industry, we will have much greater resourcing to ensure we have improvement in safety. We are not looking for the passage of this bill or the imposition of a levy; we are looking for a clear commitment from this government to take safety in the resources sector seriously and not use this bill as a front simply to gouge money out of the industry. That is the real concern. I have not been involved in this area; it is no longer my portfolio. I understand that there has been woeful consultation with the industry. That causes me great concern. Plenty of major players in the industry would be willing to sit down and do a deal with the government. They would not mind having to pay for it but they would want to know that they are not being gouged and that a whole lot of waste will not occur with the bureaucracy that will run it. Why do we not have two bills—one to establish the levy and one to set up some sort of industry board involvement with a clear trust fund so that all the money raised goes only to safety in the resources sector? That is not what we have before us. What we have before us in this bill is a general taxing power. That power is badly drafted, and not in conformity with the way things should normally be done. It is a taxing power for the government to tax the resource sector so that the government can put money into its own pocket. That causes grave disquiet. I have indicated that we will be proposing some amendments to the bill to seek to address that matter. It is on the basis of these amendments that we will be supporting the bill. However, these amendments are really just trying to patch up what has been a poor job by the government in consulting with all the key players—industry and unions, and obviously the people who are experts in safety—and making sure that they have a clear plan for what they are going to implement and how they are going to implement it; and in making sure that those people have some say, even if only in an advisory role to the government, in determining how the levy is set and how the levy is expended. None of that is contained in this bill. We are simply taking on faith that the government has good intentions. As I have said, I can give many examples of how the stated intention of this government does not conform with what it has actually done. I trust



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that, in this case, the government will be true to its word. As I have said, the men and women who are working in this area have good intentions. I hope we do not find that their good intentions will go out the window and that the money that will be raised from this levy will become just another form of revenue for a government that is cash-strapped. The government is cash-strapped because it has not managed the budget. Government expenditure has been growing at an unsustainable level. That has not happened because of outside influences. It has happened because of the government's own decision making. Clearly there are problems with revenue. But that is not what has caused the financial problem in this state. The financial problem in this state is that the government is likely to have a budget deficit this year. That is because of the profligate spending of this government. As I have mentioned, in this area alone, the government has re-jigged departments and has set up new departments. That has cost the government millions of dollars. The government has the right to do that. But the government has not gone through a planning process to set priorities for where it wants to spend its dollars, so it is spending dollars here, there and everywhere, without a proper assessment of priorities. The government now has a problem, because it is facing a huge blow-out in expenditure. I put the government on a warning. If the government thinks that this bill will be a cash cow that it can use to try to prop up a budget that is going into freefall, it has it very wrong. I think that when it comes to putting in place the regulations, the government will find it very difficult if it does not show through its actions that its commitment is to safety and not to just another method of taxation. I say that because this government has a track record of increasing charges and increasing taxation so that it can get itself out of a hole that it has dug for itself with its profligate spending.

**MS J.M. FREEMAN (Nollamara)** [7.22 pm]: Mr Acting Speaker —

**The ACTING SPEAKER (Mr P.B. Watson)**: The member for —

**Ms J.M. FREEMAN**: Nollamara.

**The ACTING SPEAKER**: I was going to say that!

**Ms J.M. FREEMAN**: The member for Balcatta is often taken as being the member for Nollamara. That is because he has a proud history of having represented the people of Nollamara at one stage. I take on that responsibility from him very gratefully. He also has a proud history, having once been the minister responsible for occupational health and safety, of having a very good and clear understanding of the issues in the mining industry.

I also want to speak on the Mines Safety and Inspection Amendment Bill and tell members a bit about my background. I have been very fortunate in that I have worked with the member for Balcatta at different times on these sorts of issues. I have also been fortunate in that I have sat on the Commission for Occupational Safety and Health. That is a bipartisan commission that provides the fundamental foundation for occupational health and safety in the state of Western Australia. Occupational health and safety in Western Australia is based on the Robens principles. I have spoken about those principles previously in this house. The Robens principles arose out of the situation in Great Britain in the 1970s, when there was a large number of regulations dealing with occupational health and safety. Robens was able to consolidate those regulations into a concise model for occupational health and safety. The Robens model is also based on bipartisanship and the need to ensure that everyone has the same objectives. I have also worked on the Hooker review, and on some of the discussions post the Ritter review. The Ritter review was in response to a number of deaths that had occurred in the mining industry. Those were major reviews of the occupational health and safety system. The Leader of the House challenged those members of the house who wanted to speak on this bill tonight to make sure that they had a background and an experience in the mining industry, so I wanted to make sure that my credentials were out there for all to see.

As the member for Balcatta has said, the need for this bill arises out of the separation of mines safety and general occupational health and safety that occurred under the previous government. The amalgamation was as a result of the Ritter report. That is a very important report on mines safety. One of the greatest contributions of the Ritter report is that it stressed the importance of consolidating these two areas. It is important, however, to ensure that the resourcing in the mining sector for occupational health and safety, and in particular for inspectors, is not at the expense of general occupational health and safety. We need to understand that many areas in the mining industry, such as machinery and equipment, will not be covered by this bill. This bill relates only to the mining industry. A great number of industries feed into the mining industry in Western Australia. Those industries also contribute to the growth of this state and the income that is provided to this state. Those industries will not get any advantage from the additional resources that will flow to the mining industry as a result of this bill.

One of the benefits of speaking on a bill such as this is that it has encouraged me to read the most recent review of occupational health and safety in the mining industry. It is good that there are scheduled reviews of both the Mines Safety and Inspection Act and the Occupational Safety and Health Act. That is an extremely important

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aspect of both mines safety and general occupational health and safety. Commissioner Kenner's review of the Mines Safety and Inspection Act comprises some 592 pages, so it makes for long and arduous reading, but it provides a very concise and detailed analysis of the act and of the mines safety environment. It was not immediately apparent to me on reading this report—perhaps I read it too briefly—that this bill arises directly from the recommendations of the Kenner review. The Kenner review recommended that additional resources be allocated to mines safety. He also highlighted the parlous state of resourcing of the Mines Safety and Inspection Act, and in particular the number of inspectors in Western Australia in comparison with other states. The member for Balcatta gave the exact figures for the number of inspectors, so I will not repeat those. The Kenner report also talked about the fact that Queensland is about to introduce a levy. In Western Australia, the ratio is one inspector to 1 700 workers. That can be compared with Queensland, where the ratio is one inspector to 880 workers, and New South Wales, where the ratio is one inspector to 150 workers. Even before the levy was introduced in Queensland, Queensland had a better situation with its resources for its mines safety inspections; it had a better level of inspectors in that area. Queensland also had difficulty maintaining employees, which was one of the crux issues. As I understand it, the hope is that this bill will address that issue, although that is not clear. It is interesting that Kenner's review stated that it is a worldwide problem, not just a statewide problem, and the review goes into the difficulties faced as a result of that. In a way, that is a good reason to levy the industry. I think we have to accept that for this industry we take good people, train them, give them specific skills and then value-add to them. The industry, which is always hungry for good, competent people, then takes those people and places them in the industry. Therefore, it seems to me to be a quite reasonable proposition that the industry should contribute to some of that training and some of that development. In addition, it is in the industry's best interests to ensure that the department that regulates and inspects the industry has the proper capacity to do that.

When I read the recommendations of the Kenner review, I was interested to see that the position of special inspector should include, but not be limited to, a number of different skills. There was a list of about 15 different types of technical skills that the special inspector was required to have, from geotechnical, mechanical, electrical and structural engineering skills right through to ergonomic, occupational hygienist and interviewing skills, gathering and securing evidence skills, and organisational and human behavioural skills. That is a lot of skills that are required.

I know that there are many contentions around safety case. I have been involved in discussions about safety case. I was privileged to be involved in some debates and some discussions with the National Offshore Petroleum Safety Authority about the review of safety case-type structures. The member for Balcatta is right. It is not enough to just use terminology such as "safety case" and abuse it and what it means. Certainly, the Geelong power station, which had the major explosion, had safety case. Part of its problem was that all its engineers were based in Melbourne and none of them was actually at the coalface where the people were facing the problem. The whole of the Melbourne central business district suffered as a consequence of that. Therefore, we need to be careful. In that case, I think it was called risk management, but it was a pretty similar situation. If we go down the path of safety case or something similar, we need to be careful that we do so in a manner that will ensure that the industry can still be regulated, properly monitored and properly checked. However, it will mean that we are not asking an inspector to go into and forensically examine a workplace; we are not asking an inspector to be able to take apart a piece of machinery or understand its capacity to work. With this bill and levying, we need people to have specialist skills, and I accept that. However, we should not make those skills so specialised that these people become the ones doing the job. Their job is to be able to monitor and critically assess the processes, whether it be safety case or risk management.

I attended the briefing that was given by the department. I thank the people who attended to give that briefing. They stated quite clearly that very little consultation had occurred in the drafting of this bill, or even in the establishing of this bill as such. That came as a complete shock to me, because that is not the nature of occupational health and safety, as I understand it. It is just not the culture of occupational health and safety. The culture of occupational health and safety is one of consultation. When I drilled down into that a bit, the comment was that a business case had been established about what the people wanted to do to implement a better safety system in mines safety, and there would be a levy so that the business case could be delivered; the levy is the money so that the business case can be delivered. To me, that seems a bit like the cart-before-the-horse type of stuff, because what we should be discussing is: what is the new system of safety and how do we resource it? We should not be saying, "Let's make money to resource something that we are yet to know about, that we are yet to discuss and that we are yet to talk about in terms of safety systems and safety systems analysis." Again, it strikes me as being a bit concerning because of that. It was even more concerning when it became clear that although the advisers were saying that this money would be specifically for occupational health and safety in the mining industry—mines safety—there was no quarantining of that. I understand that will be addressed through the amendments. I congratulate the government on recognising that that is an important part of this legislation.

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I understand from speaking to certain people that it is about a \$250 levy a year for principal employers, but that does not appear anywhere in the detail. What also is not in the detail is how much will be raised from this levy. There is no detail on what sort of amount that will be. That is in stark contrast with the sort of information that came out of Queensland. Queensland had identified that it would raise about \$19.5 million in 2008-09 from its levy, and that would be in addition to the \$26 million cost for the provision of safety and health services for the industry. We need to be able to answer the question about how much we anticipate the levy will raise for the next financial year. Because the levy will commence on 1 July, there will be a bit of a gap year. I would like it confirmed on the record that the amount will be in addition to the current budget allocation for the mines safety and inspection areas; therefore, it will not simply be a replacement—a bit similar to what we saw with the waste levy bill. I understand that that should not be hard to do, because the department knows, on the data already provided, who it will levy. Therefore, those details are already available, from what I can ascertain after speaking to the department.

The mining industry certainly is an industry that seems to be able to afford a levy. As I said before, the industry contributes a lot to our state, but our state also contributes a lot to the industry. As I understand from the Kenner report, in 2007-08, a figure of \$58.6 billion represented the total sales in the mineral and petroleum resources area, with the value of mining resource production being some \$39 billion in 2007-08. Therefore, there is the capacity for us to say to the industry that safety is integral to the operations of any processes in Western Australia, and this levy will ensure that.

[Member's time extended.]

**Ms J.M. FREEMAN:** The member for Balcatta raised the issue of taxation. That was certainly a question which I had on my mind and which I asked when I went to the briefing. The officers at the briefing made it very clear to me that the Mines Safety and Inspection Amendment Bill 2009 is a taxing bill; they basically said that it gives the government the capacity to tax. That is really interesting, because as a new member of the Delegated Legislation Committee, I am trying to grasp the concept of what is a tax, what is a fee and what is an excise. I have not got it completely clear in my mind yet, but certainly this bill appears to give the government a capacity to tax. What is interesting is that this is actually a taxing bill that amends the substantial act, which is the Mines Safety and Inspection Act 1994. My question is: does that then make the Mines Safety and Inspection Act 1994 a taxing act; and, if so, does that mean that the other house cannot amend any part of the act? As I understand it, that raises the issue of the ability of the other house to amend this bill. Maybe I am misunderstanding the process, but if this bill amends the act and it becomes a taxing act with taxing powers, and if the upper house is unable to amend such an act, that makes a bit of a mockery of the process, especially considering that the Minister for Mines and Petroleum is in the upper house. It strikes me as somewhat inconsistent, and it could have easily been remedied, as outlined by the member for Balcatta, by having a separate levy act. That separate levy act could have then specifically ensured that it was quarantined, as this bill will, for the purposes of that act.

Because of my role as a member of the Delegated Legislation Committee, I am also concerned that so much of this bill deals with establishing regulations, yet the regulations will have to be looked at in terms of the objects of the Mines Safety and Inspection Act. We will be looking at regulations to try to work out whether those regulations and the circumstances in which they will be imposed fit in with the objects of the Mines Safety and Inspection Act, otherwise they will just be regulations of which there can be no parliamentary review. The same consideration should be given to the amendment of the regulations as for other amendments, and they should be allowed to sit on the table of the house for 14 days and not come into operation until that period of time has passed. I think that is a very good provision, because occupational health and safety is an issue that should always be bipartisan and we should ensure that we are moving towards the same objective. If a regulation is brought into operation and it is later seen not to fit within the objects of the act, or it becomes contentious and has to be disallowed, for the period of time that it was in operation a lot of money might have been spent that might be difficult to reclaim. Also, good faith can be lost in those processes. I think it is a very sensible amendment, because so much of occupational health and safety is done on good faith. Good faith also includes the capacity for those on both sides of politics to be able to have input into the process. This bill is dictated very much by regulations, so there should be a capacity to properly review the regulations and that capacity should not be undermined by the fact that those regulations can come into operation before the 14-day disallowance period.

The Kenner report made many recommendations, and it is very important that they are all considered, not just a few that can be narrow and slotted into such a bill as this. The report covered many areas, including the ability of mine inspectors to tape-record interviews and issue infringement notices. One of the important recommendations of the report was that workers should be able to request that mine inspectors attend at the mine without them having to reveal who they are. The member for Collie-Preston talked about the period when he worked on the mines and how important it was to have the capacity to bring a mines inspector to the workplace without being

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stigmatised for, or feeling intimidated about, raising an occupational health and safety issue. The Ritter report raised as a major issue that there was a real fear and—perhaps he did not use those words, because he would have been much more judicious in his language—a reluctance to make a complaint about health and safety issues in the mining industry because it was run on the premise that workers should not make a fuss and should just get on with their work and produce results, otherwise they might be looked upon less favourably. I think it is really important that mines safety inspection officers have the ability to enter workplaces without notice, so that employers cannot contrive situations—not that many do, but there are those who do.

As a former organiser in the contract cleaning industry, I remember the days when we could go into workplaces without giving prior notice. The bad employers make the good employers suffer. I would work with the good employers to ensure that good occupational health and safety practices were used, and that chemicals were used safely and proper equipment was provided. I then had the misfortune to do the same job in the period when we had to give notice of a visit. It was very surprising how quickly things would be cleaned up and first-aid kits would appear. The workers would tell me that those things had not been there the day before. It is really important that we ensure that these inspectors have that capacity to enter workplaces without notice, which, as I understand it, is another recommendation of the Kenner report. The Kenner report also covers workplace bullying, which is extremely important to consider, especially when workers want to raise issues of safety and health.

Another question that the member for Balcatta asked, to which I would also like an answer, was about the anticipated number of additional inspectors that the payment of this levy will provide.

My final comments are that these amendments should be looked at in a context of national harmonisation. Most mining companies are large multinational and national companies, and we cannot continue to disregard the very good work being done nationally by the federal government towards a harmonised occupational safety and health system. Any such system should ensure that any levy imposed should be across the board. If Queensland begins to charge a levy, New South Wales begins to charge one, and Western Australia begins to charge one, then there has to be future harmonisation of that. That could become a major issue. It is a major issue that large national companies confront with workers' compensation premiums and multiple premium settings, regulations and laws. Whilst what the government is doing now is welcomed, and whilst the Labor Party supports additional resourcing for mines safety inspection and inspectors, we need to be cognisant that occupational health and safety is a national issue that needs to be pursued nationally and it is one that this government cannot turn a blind eye to. If it does, all the workers and the companies will suffer, because we will not all be working to achieve the same outcomes; we will be working under different regulations and from different perspectives. I commend the parliamentary secretary for accepting one of the amendments, and I urge him to look very closely at the second amendment related to the regulations.

**MR M. McGOWAN (Rockingham)** [7.51 pm]: As shadow spokesperson for state development, I am happy to contribute to this debate on the Mines Safety and Inspection Amendment Bill 2009. I acknowledge the superior knowledge and the contributions of people with far greater expertise and experience in this area than me, particularly the last four or five speakers from the opposition. The opposition has indicated its support for this legislation, and expects that it will pass through this house this evening. However, some very important issues have been raised by members of the opposition about the mechanics of how the legislation will operate and the issues surrounding the regulation-making power. I am pleased that there has been some negotiation between the government and the opposition to resolve these issues. I know that Hon Jon Ford and Hon Norman Moore have had considerable discussions over the past week or so to try to resolve some of the issues and see whether this legislation could go through the Parliament this year. I know that the government wanted opposition support for the legislation in order to pass it, and I know that Hon Jon Ford did a great deal of work in consulting with various people, particularly from the industry and the unions, to determine the opposition's position on this legislation.

The mining industry is Western Australia's biggest employer. I would be surprised if it was not the nation's most successful industry. It is the biggest export industry of any state in Australia and it is a very important employer of our citizens and an important part of the wealth and prosperity of our state. It employs many tens of thousands of people directly, and tens of thousands more indirectly, in Western Australia, in every single one of our electorates. The mining industry operates in very diverse and difficult locations, and in some of the most extreme climates on the planet. It uses a high degree of technical expertise and mechanisation, combined with a largely very skilled workforce that is very well remunerated by community standards.

There are more than 300 mines in Western Australia. Between 2000 and 2008, 170 new mines opened in Western Australia. Some would have closed during that period, but in general terms over the past eight years the mining industry has doubled in size, and doubled the number of mines throughout Western Australia. When an

**Extract from Hansard**

[ASSEMBLY - Tuesday, 24 November 2009]

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industry doubles in size, it creates a greater demand for services associated with that industry. There was a greater demand for services related to safety, and all the issues relating to mines safety and inspection came to the fore. One of the most significant problems over the past eight years has been large increases in the productive capacity of the private economy, and the government services needed to go with that had to catch up. We often found that the private economy—the industry itself—absorbed the people carrying out the government services associated with it, and then became very agitated about the fact that there were not enough people providing those government services. We experienced this throughout the entire economy. We would send teachers to mining areas to educate the children of people working in the mining industry, and then the mining industry would employ the teachers and ask why the government could not provide teachers. We would send another teacher out and exactly the same thing would happen again. This happened over and over again in every field. The success of the private economy meant that the public sector was having difficulty keeping up. Despite all the efforts to ensure that the public sector could keep up, the mining industry and, I might add, the property development industry would always complain about the lack of service, and then when the government provided the service, they would take the staff themselves. Their excuse was always that if their company did not do it, some other company would. Although they acknowledged that they were a large part of the problem, they blamed other competitors for the fact that they were part of the problem.

Of course, when the industry turns down, as it has, some of the people who left the public sector probably wish they had not, because they had greater security, they often had more holidays, and they had the capacity to go somewhere else with their employment. There has been some concern amongst those people that they might have chosen the wrong option at some point. One often has to make a cost-benefit analysis when deciding whether to take that leap, and there may be some benefits in staying with the greater security of the public sector as opposed to the private, even though the remuneration might be greater in the private sector. We suffered the exact same problems with mines inspectors. By their nature and experience, they are often quite attractive to the mining industry, and they will often be snapped up by mining companies to perform largely the same tasks as they would have done for the state government. That was a large problem that ministers in the previous government, such as the member for Cockburn, the present Leader of the Opposition, the former member for Willagee and the member for Balcatta, had to grapple with—trying to secure people to perform these jobs in these locations, when those people were often being picked up by companies that were offering money that the public sector could not match, even though there were other extraneous benefits available to them. That is the context of what has happened over the past eight or so years when the economy has been more successful than at any point in the past. As I said, 170 new mines opened up around Western Australia in that eight-year period. South Australia went from five to 10; we went from under 200 to over 300. Our mining industry was extraordinarily successful over those eight years, but it meant that there was a huge demand for these sorts of services.

This bill represents a new approach to the provision of mines safety inspectors. Up until now they have been funded from the consolidated account—the government has provided a service to the industry, funded by the government. This is a new approach, under which the government will now impose a tax on the industry to pay for the inspectors who will service the industry. I agree in principle with that approach. It is a reasonable proposition, as long as a few parameters are met. Firstly, the levy must be used for the purpose of paying for the mines safety inspectors; all of the money must be used for that purpose. I know that that was one of the issues that particularly agitated Hon Jon Ford, and he secured the amendment that will mean—provided the government agrees to it—that a separate fund will be set up for the levy and the funds in it can only be spent on the purposes of the mining inspectors. It is absolutely necessary to ensure that a situation does not arise as has occurred with the waste avoidance and resource recovery legislation, under which the fund that was originally set up for those purposes has been siphoned off for other purposes. We would not like that to happen in this area, so that amendment secured by the shadow minister is crucial to this legislation working effectively.

I have grave concern about the lack of consultation with industry on this bill. This legislation appears to me to have been rushed into this place. If the Chamber of Minerals and Energy of Western Australia, the major companies that employ people in the mining industry around Western Australia—BHP Billiton Limited, Rio Tinto and the like—and the union movement, which represents many of the employees in this sector, have not been consulted, then there has been a serious problem with the drafting of this legislation. There should have been full and frank consultation with the companies on which this tax will be imposed. It is an absolute minimum requirement. If major corporations such as BHP or Rio, predominantly in the iron ore industry, and Woodside or Chevron thought that they were to be taxed to the extent of approximately \$200 per employee per year, surely they should be asked about it before the tax is actually brought in. They might even be asked about how effective it would be, how the administration of it could be made easier for them to administer and be assured that the cost increase would not increase to such an extent that it would cause them difficulties. Members should bear in mind that some of these companies employ thousands of Western Australians. I do not know how

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many people BHP and Rio employ, but I presume that it would be in the tens of thousands of Western Australians. Therefore, the levy per employee—roughly \$200 per person—adds up to millions of dollars of tax payable by those companies. I know that they are big companies and can look after themselves. However, it would have been not only common courtesy but also good public policy on the government's part to have consulted with them on the creation of this levy. I would like the parliamentary secretary to explain why those companies that will be taxed were not appropriately and fully consulted in the formulation of this legislation.

This is a new arrangement by which the levy/tax will be created to provide for these new mines safety inspectors. The levy will be applied to every employee. It is designed to replace the existing arrangement by which about \$11.9 million is spent each year by the government to provide an inspection service around Western Australia. I would like the parliamentary secretary to explain what will happen to the existing arrangement once this legislation comes into play. Is the government taking away the effort it has been putting in? If so, the windfall to government would be roughly \$12 million per year, or \$48 million over a four-year period, and it would withdraw its effort from safety and security in the mining industry and transfer that effort to the industry. If there is to be that windfall gain to the government, I would like to know where that money will be spent. Will there be a reduction in the relevant agency's budget, which I think is the Department of Mines and Petroleum?

I understood that the original plan was that the inspection service would be in addition to what is already provided. Is the government moving away from that arrangement and going back to a situation in which government pulls out all effort, which the private sector takes up? Will the companies be taxed and be required to provide the service that the government was formerly providing? Will that mean that over four years the government will make approximately \$50 million? If that is the case, where will that money go and what will happen to the service that the government formerly provided? Will it be a direct transferral of what has traditionally been undertaken by government to the private sector? They are the two questions I have on this bill. It has not been a satisfactory process.

The opposition has proposed a way of regulating to ensure that some of the questions that it has are appropriately considered by the Parliament and not put in place in the way that the government seems intent on doing; that is, imposing regulations just before a parliamentary break, which would mean that there would be no avenue to deal with a disallowance motion over that break. I know that the government will reject that amendment. However, we will support the legislation despite the rejection of what is a reasonable measure to ensure that regulations that provide some of the administrative arrangements around this legislation are appropriately answerable to the Parliament. I understand that the government will reject the opposition's proposal. We have been reasonable in this regard. I do not think that the government has been reasonable in its consultation with industry. As time goes by I will take this up with industry participants and give them an example of how they are being treated. They should be treated a little bit better, especially as they are the biggest employer in Western Australia. This government should have given industry more respect than it has done. Industry participants might want to consider some of their attitudes as a consequence. Having said that, in spite of its concerns, the opposition will support the legislation.

**MR W.R. MARMION (Nedlands — Parliamentary Secretary)** [8.06 pm] — in reply: I thank all members for their contribution to the second reading debate on the Mines Safety and Inspection Amendment Bill 2009. I will endeavour to address as many of the points raised as I can. Obviously, some of them will be debated in consideration in detail.

In summary, from what members opposite have said, members seem to support the idea of a levy and additional resources for inspectors in mines safety. There was a general theme of wanting certainty around where the funds will go, hence the agreed amendment, which I am sure all members will support. The amendment will provide the certainty that all funds from the levy will go to mines safety.

The other general concern that members expressed was that there could have been more consultation on this bill. Some members wanted to know specifically how much money will be raised from the levy. I will try to deal with most of those concerns as I address each speaker's contribution.

The first speaker, the member for Cockburn, raised pertinent points specifically related to the bill. Other members digressed, but the member addressed his comments to the bill. He mentioned that this past year has been a horrendous year for fatalities in the mining industry, hence the need for this levy. He mentioned the disparity between the number of inspectors in Queensland versus Western Australia. He raised an interesting point; that is, that five of the six fatalities occurred in the evening-night shift. Although it is not an issue that is specifically related to this bill, it is an issue that the Department of Mines and Petroleum should take up, and I am sure it will.

The member for Cockburn also mentioned that already each year \$11.9 million is spent on mines safety and the levy will raise more money than that amount, which will enable more inspectors to be employed. The levy is

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about providing not only additional inspectors but also safety inspections and audits, investigation of mine accidents, collection and reporting of safety and health statistics, provision of safety and health advice, collection and maintenance of mining employee health records and research into mining safety and health. The member for Nollamara mentioned the importance of research. The levy will go towards safety in the mining industry.

The member then raised the issue of a lack of consultation to date and I will deal with that now. In terms of consultation that has been undertaken prior to consideration of the levy bill, independent reviews have made findings and recommendations over a number of years that the resources safety division is under-resourced to meet its obligations as a safety regulator. This has been due to the unprecedented growth in the resources sector of this state in the past decade and increasing responsibilities resulting from the introduction of new laws. Many members raised that issue. In the latest review, Commissioner Stephen Kenner consulted extensively with industry, industry peak bodies such as the Chamber of Minerals and Energy and Unions WA. He noted that the ratio of mine inspectors to workers in Western Australia was significantly lower than in comparable inspectorates in Queensland and New South Wales; hence he recommended that there be a substantial increase in resourcing of the mines inspectorate, including targeted risk-based compliance to ensure that it could meet community expectations and the demands placed on it by the mining industry.

**Ms J.M. Freeman:** Was that about the levy?

**Mr W.R. MARMION:** That is prior to the levy. That is the background.

**Ms J.M. Freeman:** Yes, but it was about the levy.

**Mr W.R. MARMION:** No, this is consultation prior to the levy. In that background, peak bodies such as the Chamber of Minerals and Energy and Unions WA had already received details of the proposed levy scheme; they have therefore been consulted. It is based on a similar scheme that has been introduced in Queensland and I understand that there has been considerable face-to-face consultation on this matter. Further consultation will take place through the Mining Industry Advisory Committee, which is a statutory committee already established and tasked with providing tripartite advice to the minister. The minister will also establish a broader ministerial advisory panel that can provide comment, if required.

**Mr F.M. Logan:** Who will be on that panel?

**Mr W.R. MARMION:** I do not know who will be on that panel. The member can probably ask the minister that one.

Although not ultimately responsible for the safety performance of industry, the duty belongs to those who create the risks and must be managed in consultation with those who are exposed to the risks. The vision is for a proactive safety regulator working with industry to create an environment in which resilient safety cultures are the norm, and for companies, workers and the wider community to be confident that industry is operating as safely as possible. The purpose is to put the onus back on the companies.

I can give members some detail on the Mining Industry Advisory Committee. The Mining Industry Advisory Committee is an existing independent statutory body. Its terms of reference are summarised as follows: to advise and make recommendations to the minister on occupational safety and health matters concerning the mining industry; to inquire into and report to the minister regarding any matter referred to it by the minister relating to occupational safety and health in the mining industry; to make recommendations to the minister regarding the formulation, amendment or repeal of laws relating to occupational safety and health; and to repair or recommend the adoption of codes of practice, guidelines, standards, specifications or other forms of guidance for the purpose of assisting employers, self-employed persons, employees, manufacturers or other persons to maintain appropriate standards of occupational safety and health in the mining industry. That statutory advisory committee will be used by the minister in a great deal of consultation with industry in framing the regulations.

**Mr F.M. Logan:** One of the issues raised in consultation with industry stakeholders, particularly the companies themselves, is that if the moneys collected for the levy are held in a special-purpose account in the department—we have all agreed that is exactly what will occur with the amendment that the government is putting up—basically industry is looking for oversight of the expenditure of those funds; because remember the money is actually coming out of industry itself.

**Mr W.R. MARMION:** Industry will be consulted on how the regulations are formulated so that it will have input into them and will be able to comment at that stage on any concern it has. However, I would like to complete my reply.

**Mr F.M. Logan:** Yes, but this is our opportunity to ask you questions about the fund.

**Mr W.R. MARMION:** Is the member going to ask questions during the consideration in detail stage as well?

**Mr F.M. Logan:** We can do. We can do it now or do it at the consideration in detail stage.

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**Mr W.R. MARMION:** I have only 37 minutes left to get through all the comments made by other speakers.

**Mr F.M. Logan:** All right, we will leave it, but bear in mind that that will be one of the issues I will be raising in consideration in detail.

**Mr W.R. MARMION:** Sure.

A question was raised by lots of members on the actual levy itself. My understanding is that the levy will be set at \$125 for basically the first six months. One can infer that it will be about double that once it gets rolling into a full year. The member for Cockburn is correct; it will not be applied pro rata and he is correct that it is due to budget constraints. We need to do a budget; hence that is why it will not be applied pro rata. It will apply to all mining companies that have more than 10 employees as calculated under the full-time equivalent formula. The member made a point that we need to be vigilant on the administrative side of the levy. I take his point that that is the case with any government department. We must be cautious of administrative creep, and the member's concern was that it could be a possibility. That is a management issue and one that I guess the minister and the CEO of the department will have to keep an eye on.

The member for Cockburn mentioned that the first amendment to be made to the bill by the government will be supported by the opposition and that it will support putting the money into a trust to give greater certainty. Both the minister and the opposition spokesperson for mines are very happy to have that in the bill because the intention always was for the money to be specifically hypothecated for this purpose. We were advised that the bill as it was did provide that certainty, but we are happy to have this amendment in because we also want it to be certain.

**Mr F.M. Logan:** It's not that industry didn't trust you; it's just that they didn't trust you!

**Mr W.R. MARMION:** Ha, ha! I will move on to the next amendment.

The government will not be supporting the other amendment because we do not want to move away from tradition. We believe in fact that the regulations will take some time to be put into practice and they will probably not even eventuate until March or April next year. There will therefore be ample time for Parliament to consider them. The full business case has been presented to the Chamber of Minerals and Energy, Unions WA and the Association of Mining and Exploration Companies. They, therefore, have a pretty good idea already of what the regulations will be, but those bodies will be further consulted in the development of those regulations. The current process is that once they have been agreed following consultation with MIAC—which will review and scrutinise the regulations in consultation with industry and the unions—they will go through the Executive Council and be gazetted. However, the Joint Standing Committee on Delegated Legislation will have the opportunity to examine those regulations, and I understand there is a mechanism in place to allow a recommendation for them to be disallowed. This government will maintain that practice and will therefore not be supporting that amendment. I think I have addressed the member's main point, which is lack of consultation. I must stress that the aim of this bill is only to enable regulations to be framed.

I respect the member for Collie-Preston's six or seven years in industry and acknowledge his contribution to the debate. He did not criticise the levy itself; he agreed that the current legislation is not strong enough. His concern was about where the money will be spent. I can assure the member for Collie-Preston that the amendment both the government and the shadow spokesperson for mines have agreed on will ensure that the money will go towards mines safety. As I mentioned before, it will apply only to mining companies that have more than 10 employees on site. The little company with only a few people on site will not have to go through the administrative burden that the regulations will require. There had to be a limit and the limit of 10 employees is what was decided. I understand that the member for Collie-Preston supports the levy. He also suggested that there needs to be more consultation with the unions. I can assure him that consultation with the unions will occur during the drafting of the regulations.

The member for Cannington raised concerns about the current operation of the regulations and cover-ups on mining sites, which are not targeted in this bill. This bill is only about enabling regulations to implement a levy and to determine how it will be calculated and where the moneys will go. The member for Cannington took the opportunity to also raise some of his concerns about the industry.

**Mr M.P. Murray:** Is there any area precluding the mining company from passing on the levy to a contractor?

**Mr W.R. MARMION:** I am sorry; the member mentioned that point. I will probably take advice on that during consideration in detail. The levy will apply to companies that employ 10 or more people. How would we know whether a company was passing on the levy to a contractor? At the end of the day, the company will have to pay the levy, whatever it is. If somehow a company does something sneaky, who knows? It will be a case of following the money trail. One hopes that mining companies that have more than 10 workers on site will not



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stoop to that level. That is another good reason for having a reasonably high cut-off point. I will seek advice during the consideration in detail stage to clarify that.

The member for Cannington talked about workers' compensation and my last sentence in the second reading speech. I do not have a copy of the second reading speech. He referred to a possible conflict with the demand for production increasing pressure on accident levels. The member for Kwinana raised the same issue. The comment in the second reading speech was to give an example of the possibility of greater pressures in the mining industry, given that an additional 170 mines will be operating while the number of inspectors remains similar to the current level. Obviously there will be more pressure on inspectors. The point is that that is an indicator that we need to lift our game.

**Mr P. Papalia** interjected.

**Mr W.R. MARMION:** He is not listening, but I think he —

**Mr P. Papalia:** It's the member for Rockingham.

**Mr W.R. MARMION:** I am sorry; the member for Rockingham, not the member for Kwinana.

**Mr M. McGowan:** I am listening now.

**Mr W.R. MARMION:** I have finished; I cannot remember what I said.

The other point the member for Cannington made was that it is a tax. It certainly is a tax. We did not want to impose a fee that would incur the goods and services tax. I want to clarify that it is definitely a tax so that it will not result in any money heading off to the commonwealth. The member for Cannington's support was such that he indicated his hope for the same impost in the construction industry. I cannot comment on whether there are any plans for a similar levy to be introduced into the construction industry.

The member for Balcatta, who was a minister responsible for occupational health and safety, gave a good insight into his term as minister and how the mines safety division was merged with WorkSafe and how this government has turned that around. I think that placing the safety inspectors under the mines safety division will ensure mines safety gets a high priority. In light of the five or six fatalities that have happened in the industry, it is fairly important. The member for Balcatta asked a number of quite pertinent questions, such as: how will we pay to retain inspectors? I take the member for Rockingham's point. The member for Nollamara also raised that point and she referred to inspectors requiring 15 technical skills. The people who have those skills are quite exceptional; they are a sought-after commodity. In the boom period a few years ago, they were obviously poached. That is an issue that will have to be addressed. It is perhaps why it is very difficult to say how many extra inspectors could be engaged as a result of the money raised. Obviously, the issue of their remuneration will be a factor. The member for Balcatta obviously supported the increase in the number of inspectors.

He also suggested that members on this side of the house do not take workplace safety seriously, and I strongly disagree with that. I think workplace safety is a very important aspect of any workplace site, and I am sure all members on this side of the house treat it equally as seriously as do members on the other side.

I made a point about the importance of changing the culture. This bill is not about changing the culture, but I agree that improving safety is a cultural issue. This bill is about imposing a levy rather than changing workplace culture. The member for Balcatta indicated his concern about where the money will be spent. I can assure him that the amendment will ensure that the money will go towards mines safety. The member for Balcatta also raised the constitutional matter of whether there should be a separate act, which was nice of him! I understand that the State Solicitor has advised—the member for Balcatta predicated this in his answer—that there is no need for two acts. After initially suggesting that, in light of one of the clauses there should be two bills, the member for Balcatta then said that another clause in the Constitution ensured that that was not necessary. He was correct. He raised also the issue of consultation with industry. I think I have addressed that. He again queried why there were not two bills, as did the member for Nollamara. The advice from the State Solicitor's office is that that is not necessary.

The member for Nollamara is very experienced in occupational health and safety; she has a very good record in the industry. She raised a lot of issues that arose from the Kenner review, which basically recommended that there be more inspectors, and that is what this levy is about. It will generate more revenue for the government via the mining companies. That revenue will enable the recruitment of more inspectors, reviews and other things, as I mentioned before. I was impressed by the member's reading of the 15 technical skills required of a safety inspector. It highlights why they are, indeed, a rare commodity and hard to retain. That is something that we will have to consider.

The member for Nollamara raised the lack of consultation. Hopefully, that will be addressed during the formulation of the regulations. The member also suggested the possibility of having two separate bills. I think I

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have addressed that matter. The member also raised an important point about the need for inspectors to go onto a site unannounced. The member is right. When the regulations are drafted, they will address that issue. My understanding is that a greater number of inspections will take place without notice. I agree with the member's comments. The member has obviously had experience of how when notice is given of an inspection, the first-aid kits are there and the workplace is swept clean and nothing is left lying around. I think the inspectors are quite knowledgeable about that and will take that into account.

I thank the member for Rockingham for acknowledging that negotiations did take place between the government and the opposition before this bill was brought in. He pointed out the importance of this levy to the mining industry. He also raised the issue of the lack of consultation, which I think I have addressed. I highlight again that the Chamber of Minerals and Energy has been consulted, and so have the unions, and they will be consulted again. The member for Rockingham also posed a very good question about what will happen to the existing arrangements. The member is not looking at me, so perhaps I will not have to address that particular concern that he raised. Now he is looking at me.

**Mr P. Papalia:** Are you a cricket commentator or something? Get on with your speech!

**Mr W.R. MARMION:** This is my last point. I do not know that I have the answer to this. I acknowledge that the member for Rockingham has raised a very good point.

**Mr M. McGowan** interjected.

**The SPEAKER:** Order! If you want to interject, member for Rockingham, I suggest that you move to your seat.

**Mr W.R. MARMION:** Thank you, Mr Speaker. The member for Rockingham has raised a very good point, and I will finish with this, because I probably do not have the answer. He asked what will happen with the existing arrangements. I assume that what the member is implying is that if any money is left in the budget for the last part of this financial year, then when the levy comes in, there will be some extra money.

**Mr M. McGowan:** Yes, for each of the years.

**Mr W.R. MARMION:** There will be an overlap only in the first year, because, after that, the levy will be the only source of funds for that particular expenditure. The department will need to provide some funds for the community service obligations and for freedom of information and the like, but the money from the levy will not be pushed into that area. The money from the levy will be allocated specifically to the mines safety inspectorate. On that note, I commend the bill to the house.

Question put and passed.

Bill read a second time.

*Consideration in Detail*

**Clauses 1 to 3 put and passed.**

**Clause 4: Section 105A inserted —**

**Mr F.M. LOGAN:** Before I move to the amendment that I am seeking to move, I would like to raise an important issue. This clause deals with the regulations for cost recovery, so this is the most appropriate clause—in fact, the only clause—of the bill on which I can raise these issues. I want to come back to a question that I put to the parliamentary secretary during the second reading debate. I have referred to the concerns that have been expressed by industry about the expenditure of this money. The parliamentary secretary has highlighted that there will be two levels of consultation with industry about the framework for the new mines safety regime—the Mining Industry Advisory Committee, and a ministerial advisory committee. The Mining Industry Advisory Committee is a standing committee that is governed by legislation. That committee is a tripartite body, and it will continue to play a significant role in providing advice to the government on the creation of the regulations, as well as the future framework for mines safety. Although I asked the parliamentary secretary who the members of the ministerial advisory committee will be, the parliamentary secretary was not able to tell me, because he is not the minister. I can understand that. However, the parliamentary secretary has not addressed some of the issues that have been raised with us by the industry. One of those issues is how the moneys in this fund will be directed. These funds should be deposited in a special purpose account for the purpose of expenditure on mines safety. They should not be used to underpin the running of the department. The employers in the industry—the mining companies—have said to us that they will be putting in the money, and they would like to have some input into how the money is spent. That is not an unusual request. We can compare that with the levy that is struck in the fishing industry. Those funds are collected for the purpose of the operation of the Department of Fisheries, and in particular for fisheries research in Western Australia. That is provided for in a longstanding piece of legislation. The determination about how that money is to be spent in the fishing industry is made by a

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fisheries advisory body. Therefore, examples already exist of how industry can have input into the way money is spent when that money is collected by the government for a specific purpose. In the case of this mines levy, the money is to be collected for the purpose of improving safety on mine sites—that is, on the companies' own premises. Therefore, these companies clearly want to have an input into the way this money is spent. However, at this point I cannot see how they can have such an input.

**Mr W.R. MARMION:** It is a good question. However, there could be a counterargument that the last thing we want is an industry telling the regulator how it will spend the money. For example, we may set up an inspectorate, and we may have BHP Billiton saying, "Hello. We'd like to put all the money into research on mining safety and health and put no money into safety inspections." There is that side of it. That is one point, and I think it is reasonable that we separate that.

I am advised that the invited members of the ministerial advisory panel are the Chamber of Minerals and Energy, the Association of Mining and Exploration Companies, UnionsWA, the Australian Petroleum Production and Exploration Association Ltd, the Australian Pipeline Industry Association and the Chamber of Commerce and Industry of Western Australia. The member probably knows those organisations better than I do.

**Mr F.M. LOGAN:** Can the parliamentary secretary explain to the house what the role of the ministerial committee will be? I take the parliamentary secretary's point that there is always a danger of allowing industry to determine where the money should be spent, particularly in an area such as safety, because, obviously, we want an independent voice to say, "Hang on; we don't want Dracula advising how the blood bank is going to be used." I accept that. Nevertheless, those parties in the industry, particularly the parties to which the parliamentary secretary has just referred, which are the critical stakeholders in the industry, also want to have some oversight of how that money is to be spent. Does the parliamentary secretary believe that the ministerial committee or the industry advisory committee, to which the parliamentary secretary referred earlier, will have that role?

**Mr W.R. MARMION:** I think the member wants me to answer specifically how this panel will be used regarding advice on this bill. Is that correct?

**Mr F.M. Logan:** Yes, particularly in the expenditure of money—not in determining how the money will be spent, but advice on and some oversight of how the money will be spent.

**Mr W.R. MARMION:** The way I see it working is that the panel will be consulted on the regulations as they are drafted. The regulations will deal with how the money will be collected, what it will be used for and the penalties et cetera, as outlined in the bill. The panel will be consulted on that, so it will be able to advise the minister on areas in which it does not believe he has done a satisfactory drafting of the regulations. That is how it will be used.

**Mr F.M. LOGAN:** I thank the parliamentary secretary for that answer. In that case, I will move to the opposition's first amendment that we will be dealing with. I move —

Page 3, after line 9 — To insert —

- (2) Regulations made under subsection (1) shall only be made by the Governor where —
  - (i) the proposed regulations have been laid before each House of Parliament for a period of at least 14 sitting days of such House; and
  - (ii) during such period neither House of Parliament has passed a resolution disallowing any proposed regulation.

I think I have already explained to the house the reasons for putting forward this amendment, which is a reversal of the way in which regulations are normally dealt with. The regulations will come into force after the 14-day sitting period of each house of Parliament has elapsed, assuming that neither house has passed a resolution disallowing any proposed regulation. That is being put forward basically as a safety mechanism for industry. Although I accept the commitment that has been put forward in this house by the parliamentary secretary about the involvement of industry in the creation of those regulations and, I hope, in the drafting of those regulations, this is a safety net for the industry to ensure that it agrees with those regulations that will be tabled before the house. It will give the opposition an opportunity to move quickly to disallow, if called upon to do so by industry.

This wording is not unusual. I take the parliamentary secretary to the Energy Safety Act 2006 and the Energy Safety Levy Act 2006, under which a levy was set up for the purposes of running EnergySafety WA. It is very similar. That is a levy that applies to any of the people involved in the energy industry, which involves generation and transmission and, I believe, the retail area. The Energy Safety Levy Act contains a provision that

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is very similar to the one I am putting forward to the parliamentary secretary tonight. This is not an unusual occurrence, and its purpose is to ensure that the parties, particularly the industry parties, are satisfied with the regulations that will be applied to them by the government of the day.

**Mr W.R. MARMION:** The government believes that sufficient consultation and safety mechanisms are in place so that the regulations, when gazetted, will meet industry expectations. Indeed, if the opposition decides that it does not like the regulations, it can refer them to the Joint Standing Committee on Delegated Legislation, and my understanding is that they can be disallowed there. I know that that is not satisfactory or desirable from the member's point of view, but the government believes that under the current mechanism there will be sufficient scrutiny of the industry through the Mining Industry Advisory Committee and the ministerial advisory committee. Indeed, it will then be the responsibility of the minister, and, if he gets it wrong, it will be on his head. I believe, and the government believes, that the current process is sufficient. Once the regulations have been ticked off by the minister, in consultation with the Mining Industry Advisory Committee, they will go to Executive Council and then be gazetted. If the opposition is not happy with the regulations—presumably, it will be the industry that goes to the opposition and says that it is not happy with the regulations—the current process under which the opposition can go to the Joint Standing Committee on Delegated Legislation will suffice. Amendment put and a division taken with the following result —

Ayes (21)

Ms L.L. Baker	Ms A.J.G. MacTiernan	Mr E.S. Ripper	Mr M.P. Whitely
Mr R.H. Cook	Mr M. McGowan	Mrs M.H. Roberts	Mr B.S. Wyatt
Ms J.M. Freeman	Mr M.P. Murray	Mr T.G. Stephens	Ms R. Saffioti ( <i>Teller</i> )
Mr J.N. Hyde	Mr A.P. O'Gorman	Mr C.J. Tallentire	
Mr J.C. Kobelke	Mr P. Papalia	Mr A.J. Waddell	
Mr F.M. Logan	Ms M.M. Quirk	Mr P.B. Watson	

Noes (28)

Mr P. Abetz	Ms A.S. Carles	Mrs L.M. Harvey	Ms A.R. Mitchell
Mr F.A. Alban	Mr G.M. Castrilli	Mr A.P. Jacob	Mr C.C. Porter
Mr C.J. Barnett	Dr E. Constable	Dr G.G. Jacobs	Mr D.T. Redman
Mr I.C. Blayney	Mr M.J. Cowper	Mr R.F. Johnson	Mr M.W. Sutherland
Mr J.J.M. Bowler	Mr J.H.D. Day	Mr A. Krsticevic	Mr T.K. Waldron
Mr I.M. Britza	Mr J.M. Francis	Mr W.R. Marmion	Dr J.M. Woollard
Mr T.R. Buswell	Mr B.J. Grylls	Mr P.T. Miles	Mr J.E. McGrath ( <i>Teller</i> )

Pairs

Mrs C.A. Martin	Dr K.D. Hames
Mr W.J. Johnston	Dr M.D. Nahan
Mr J.R. Quigley	Mr V.A. Catania
Mr D.A. Templeman	Mr A.J. Simpson

**Amendment thus negatived.**

**Mr W.R. MARMION:** I move —

Page 4, after line 12 — To insert —

**105AB. Mines Safety Account**

- (1) An agency special purpose account under the *Financial Management Act 2006* section 16 is to be established for the department and called the Mines Safety Account.
- (2) The Mines Safety Account is to be credited with any levy paid under regulations mentioned in section 105A(1) including any additional outstanding liability and interest as mentioned in section 105A(3)(f).
- (3) Moneys held in the Mines Safety Account are to be applied in payment of the costs of administering this Act.

This amendment has been discussed with the opposition, and both the opposition and government agree to it.

**Mr F.M. LOGAN:** I think the parliamentary secretary has given us an undercooked explanation of the origin of this amendment by saying that it was discussed with the opposition. It has been moved by the government, but it occurs because of, as I earlier indicated, the opposition's rejection of and refusal to support the Mines Safety and

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Inspection Amendment Bill 2009 unless and until it had a provision that ensured that the moneys collected would be dealt with independently of the department's normal budgetary processes and be held in a separate trust account, being the special-purpose account identified in subsection (1) of this amendment. The industry stakeholders obviously wish this to occur because they want the moneys collected to be used for the purposes—as, hopefully, there will be agreement on—of the framework for the new occupational health and safety environment that will apply in the mining industry, and for no other purpose. The very fact that the levy came on industry so quickly and was applied so quickly without a significant level of consultation—if any at all—and the fact that the money initially appeared to be collected for and on behalf of the department itself, rather than for and on behalf of the industry, and the application of the regulations to the industry and safety at the industry level, was why the initial bill was opposed. This amendment was created as a result of consultation between the minister and the shadow minister. I think when it comes to congratulating anybody on this amendment, whilst it has been moved by the government, it is in fact a creation of the opposition and the opposition doing its job properly by holding the government to account and having this amendment not only created, but endorsed by the government and supported by the opposition. We claim credit for this amendment to the bill.

Whilst I am on my feet, I would also like to ask a question of the parliamentary secretary about the review of the fund itself. The act makes no mention of when, how and if the fund and this act will be reviewed. Obviously, the review processes of similar legislation vary from after 12 months. Sometimes it is three years and sometimes it is five years, and then after five years, but the act does not mention when a review should take place. There is a consultation process mentioned, which the parliamentary secretary highlighted earlier, but they are his only statements to the house. There is no structure specified as to what role those bodies will have, if any, in terms of a review of this act and the government's intention in terms of reviewing the effectiveness and application of what will be a substantial amount of money collected by way of this bill.

**Mr W.R. MARMION:** It is a very good question and I can answer it very easily—it is a great question in fact! The regulations will come under the Mines and Safety Inspection Act 1994, which includes section 110 which is a provision for a review of the act every five years. The act states —

The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after 1 December 2009 and every fifth anniversary of that day ...

**Mr M. McGOWAN:** I have a couple of points I want to make. First of all, I am pleased that this clause resolves some of the issues the opposition brought forward in relation to these laws, and those are to ensure that the funds raised by this levy are expended totally for the purposes of mines safety for our great mining industry in Western Australia, and to ensure that people who work in the industry are kept safe. It is a good initiative to ring-fence the funds generated for that purpose.

I have two questions; one is similar and one is slightly different to the questions I raised during the second reading debate. First of all, the amount of money secured by the levy is obviously to replace the amount of money put in by way of consolidated revenue. I want to confirm—and maybe the parliamentary secretary can confirm it verbally—that the \$12 million formerly spent annually by the state government has now been withdrawn by the government and will be replaced by this, so there is an effective \$50 million windfall out of this levy. My second point is that the levy is designed to rise and fall based upon the number of employees at a particular time of the year employed by each company, not just on the mine site. For a company running a mine, the levy will be calculated at a certain time of the year based upon the number of employees it has. The money will then go into the fund and will be used to employ the mines safety inspectors. It is a fairly simple and reasonable system. My concern, or question, relates to the fact that if the state goes through what it has been through in the past year, with many mines closing and a lot of people in the mining industry losing their jobs, there will therefore be a decline in the amount of money being collected by the levy. That decline in the levy will therefore mean that there will be less money to employ mines safety inspectors, unless the government has created something that defies the laws of mathematics. If there is less money coming into the scheme, how will the people employed currently as mines safety inspectors be maintained, or will they be on some sort of short-term contracts, and not be considered permanent employees? I am interested to know how, if the amount of money collected by the levy declines, and there is therefore less money going into account, the government will continue to employ the same number of people as mines safety inspectors.

**Mr W.R. MARMION:** I will address the second question first, because that is the easy one. It is a reverse levy. The levy will be calculated each year based on the budget related to the number of inspectors. To take the member's point, if there is a downturn in the industry and there are fewer workers on site, the levy will go up. If a company employs 100 workers, and it has only 50 after the downturn, and everyone is in the same boat, unfortunately the levy will be doubled for the next year. That is covered. I am advised, on the member's first

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question, that the amount of consolidated revenue fund money has yet to be determined. I cannot give a substantive answer to the question.

**Mr F.M. LOGAN:** I take the parliamentary secretary back to the question I asked earlier about the review of the legislation, because I cannot see how his answer can be legally applied. How can a section of another act—I think the parliamentary secretary referred to the mines safety regulations act—that is not being amended by this bill refer to a review of this legislation without it being specifically mentioned in this bill? Either a review term should be included in this bill, or a reference to section 110 of the mines safety regulations act should be included in this bill by way of reference, but the government cannot rely on another act and its specific powers of dealing with the review of that act as a way of ensuring that there is a review of this legislation. How does it work?

**Mr W.R. MARMION:** The regulations are constructs of the Mines Safety and Inspection Act. An independent review of this act covers the regulations, and they are totally captured by this act. They are not new regulations under another act; the regulations sit fairly and squarely under this act, so they will fairly and squarely be covered—110 per cent—by regulation 110.

**Mr F.M. LOGAN:** Basically, is the parliamentary secretary saying that these regulations that will be redrafted and brought back before the house will make reference to a review of the Mines Safety and Inspection Amendment Act review period?

**Mr W.R. MARMION:** They do not have to. Regulations are captured by the act, so there is no need to put in the regulations the fact that they are related to the act that they are already related to, because the act says that they will be reviewed every five years. There is no necessity.

**Mr F.M. Logan:** For the benefit of Parliament, the parliamentary secretary should read those out, because we have not passed this bill, so how will those regulations actually deal with this act?

**Mr W.R. MARMION:** This is an existing 1994 act. There are existing regulations, and all we are doing is putting a bill through that enables an amendment to the existing regulations to create a levy. The existing regulations are already under the act, and we are just putting another regulation under the act. I do not think I can make it any clearer than that.

**Mr M.P. Murray:** It is clear as mud.

**Mr F.M. LOGAN:** It is about as clear as mud, as the member for Collie-Preston said. This is the Mines Safety and Inspection Amendment Bill 2009. It is a stand-alone bill. It is not the mines safety and inspection amendment of that act—the act that the parliamentary secretary has before him. If it was, I would concur with what he is saying. To me, from the way in which it reads, this is a stand-alone bill. It says it is a bill for an act to amend the Mines Safety and Inspection Act to enable regulations to make provision for a levy. It is not a mines safety and inspection act to alter the regulations that the parliamentary secretary has in his hand. If it was, the parliamentary secretary's argument would be right, but because it is a stand-alone piece of legislation, it can only have a review period that relates to this stand-alone bill.

**Mr W.R. MARMION:** I refer to section 104, "Power to make regulations". The power to make regulations is in the act, and this is what we are amending. Again, this legislation, which grants the power to make regulations, must be reviewed, under section 110, every five years; so every five years the effectiveness of the department, including the regulations, and the new regulations that we are about to put in place, will be reviewed for their effectiveness. That is how it is.

**Mr M. McGOWAN:** Can I seek some guidance from the parliamentary secretary in relation to the levy? I understand the way that the levy will work. A certain number of inspectors will be employed, and the levy will be adjusted to ensure that that number of inspectors can be accommodated and paid for. I am seeking advice from the parliamentary secretary about how many inspectors the government expects to employ up front, and what the average impost will be per company, considering it is a flat rate per employee. A small company employing 20 people on some tiny mine site will pay the same amount per employee as a large company, even though the aggregate amount that the large company will pay will be much more. I am seeking a snapshot for the average company—or any company—about what it will cost per employee when it is commenced, so that the industry knows exactly what it will be paying in the first year.

**Mr W.R. MARMION:** The industry has this report, called "Business Case 2009: Delivering best practice safety regulation for the Western Australian resources industry", so it knows what is coming. The aim is to have an additional 26 mining inspectors.

**Mr M. McGowan:** What will the total number be—there will be an additional 26.

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**Mr W.R. MARMION:** There will be an additional 26. While I am answering the member's other question, I will get that information. The initial levy will be \$125 an employee and then it will go to about \$250 an employee. I have examples of what that will mean for companies. The recommended industry levy for a company with a workforce of 40 employees will be about \$10 000. Therefore, a company with 40 employees will be up for \$10 000 per annum. The levy imposed on a company with 8 200 workers on a mine site—I will not name a company that might have that number—would be in the order of \$2 million.

**Mr M.P. MURRAY:** The parliamentary secretary advised that there would be an extra 26 inspectors. As there is already office infrastructure in areas such as Kalgoorlie, Collie and, I think, Karratha, does the parliamentary secretary have any numbers, on a pro rata basis, of inspectors who will go to those areas? As I said previously, I am concerned about having a city-based group that fly in, fly out and are not on the ground doing the job. I would like to see that those numbers are distributed on an equitable basis to assist the officers who are already available.

**Mr W.R. MARMION:** Apparently it is difficult to say that there will be 26 inspectors, because that number will comprise inspectors, risk assessors and auditors at varying levels who go onto the mine site and check things out. I guess an auditor will look at compliance, whereas an inspector will carry out a thorough inspection. There will be a balance in getting the best mix to ensure that the safety mechanisms are in place and are being policed.

I have been advised that the early indication is that there might be six inspectors in Karratha; six in Kalgoorlie; ten in Perth; and four in a core investigations unit.

**Mr M.P. MURRAY:** My ears pricked up because already the parliamentary secretary is breaking down the number of inspectors we thought there would be on the ground. Already, the parliamentary secretary said there will be 10 in Perth. That would mean that, if the number reaches 26, there would be only 16 inspectors on the job. We want people out there doing the work on the ground.

**Mr W.R. MARMION:** They are out there. Six will be based specifically in Kalgoorlie, six will be based specifically in Karratha and 10 will be based throughout the state, even though their headquarters will be in Perth. They will be somewhere in the state carrying out their duties in the regions.

**Mr M.P. Murray:** How many will there be in the south west?

**Mr W.R. MARMION:** At the moment there is no intention to increase the number of inspectors in Collie.

**Mr F.M. LOGAN:** I come back to the review of the act. I understand the issue the parliamentary secretary raised in answer to my question about the provisions of the Mines Safety and Inspection Act 1994, including a provision for a review after five years. Although we all agree with the amendment, given that it is a significant change to the way that business is done and mines safety is funded and applied in Western Australia, I thought that there would be an earlier review than the review that applies to the act per se. If that was the case, we would then be in a position to determine whether the levy, in particular, and the account was working to the benefit of all concerned, at least after 12 months or a maximum of three years. The government should not simply rely on the existing provisions of the act, which is a standard review of the act every five years.

**Mr W.R. MARMION:** I have been advised that it will take at least 18 months to recruit the number of inspectors required. If we allow 18 months for that and time for the legislation to operate effectively—probably another year and a half—it will be time for the review anyway. At the end of the day we will have a system that brings in more money. I understand the issue of the effectiveness of the expenditure of that money. One would assume that with the extra money we would have a better outcome than we have now.

**Mr F.M. Logan:** We would hope.

**Mr W.R. MARMION:** Yes. Five years is probably a reasonable time after which to review the effectiveness of this legislation. I think that is where the member is coming from, and it is a very good point.

**Mr F.M. Logan:** It is the effectiveness of the establishment of a completely different structure that has not previously occurred in WA. The levy is in place in other states, but it has never been in place in WA. I refer to the term of review that exists in the act, which is a standard period for the review of the act and is very similar to what is in other acts. I would have thought that this review would have been brought forward to be held within a maximum of three years, because of the number of companies that are involved, the actual amount of money involved and the significant change from the current situation in which industry finds itself.

**Mr W.R. MARMION:** Five years is reasonable, given that the start-up time will be in 18 months. If industry is not happy with the way it is operating, there is the opportunity for the minister to review that aspect of the regulation.

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**Mr F.M. Logan:** There is a big difference between industry calling for a review of the act and the minister of the day and the department saying, no, they will not do it, and a provision in the act that compels the government of the day to do it.

**Mr W.R. MARMION:** The act says that the minister will do the review. The last review was the Kenner review in 2008, so the next one will be in 2013. By the time this legislation is proclaimed, the review will be in three years.

**Mr M.P. MURRAY:** I would like to go back a step. I am not sure whether I heard the parliamentary secretary correctly. Did he say that there will be no extra inspectors in the south west?

I will expand on that. We have Wesfarmers Premier Coal with 400 employees; Griffin Coal, 400; Bemax Resources, probably 100; Doral Mineral Sands Pty Ltd, probably 100; Worsley Alumina Refinery 1 200; Boddington, I am not sure of the number of employees; Talison Greenbushes Pty Ltd, about 60; and Alcoa Wagerup Refinery, about 1 000. I am sure the companies in the south west that will be paying this levy will be very disappointed. I am astounded by those numbers. Don't those people have the same rights as others?

**Mr W.R. MARMION:** The issue is that this is a risk-based process.

**Mr M.P. Murray:** So is mining.

**Mr W.R. MARMION:** Yes, very much so. If there were an issue in Collie, the department could send all 10 Perth inspectors to Collie if it wanted to.

**Mr M.P. Murray:** We don't want part-timers. That's the problem with the whole system.

**Mr W.R. MARMION:** It is not about getting a whole lot of inspectors and just parking them on site; it is about a risk-based assessment. If Collie was going really well and had no accidents, but Karratha was having problems and that was where the risk was, the department would deploy its resources where the risk was. That is the way the system is designed to work. There will be more inspectors anyway, so the department will be better off than it is now.

**Mr M. McGOWAN:** I had a question, which may well be the same question the member for Collie-Preston asked. The member for Collie-Preston beat me to it. I am interested in whether the parliamentary secretary can give us an indication of the spread and where the inspectors will be based. If that is information that the parliamentary secretary can read out or table, I will be very happy if he indicates the increase in each region or each mining precinct.

**Mr W.R. MARMION:** I have given this information already. I have to predicate my remarks on the fact that this is today's plan, but the actual deployment will be based on a risk assessment.

[Interruption from the gallery.]

**Mr W.R. MARMION:** I do not know where that noise is coming from, Madam Acting Speaker.

**Mr C.J. Barnett:** It is very distracting.

**Mr W.R. MARMION:** It is very distracting for somebody who is trying to do figures.

**The ACTING SPEAKER (Ms L.L. Baker):** We are addressing it.

**Mr W.R. MARMION:** I reiterate that it is intended that there will be six new inspectors in the Karratha inspectorate, six new inspectors in the Kalgoorlie inspectorate and 10 new inspectors deployed throughout the state. As I said before, the deployment is risk-based. Those inspectors can be deployed anywhere to where the risk is.

**Mr M.P. Murray:** You just showed up a major flaw in the system.

*Point of Order*

**Mr C.J. BARNETT:** I know that members are looking at the issue. I do not wish to be a party pooper, but when there are parties in the Parliament actually coming into the chamber, I think that is when some action should be taken to tell them to quieten down or shut the door.

**The ACTING SPEAKER (Ms L.L. Baker):** Thank you, Premier.

**Mr M. McGowan:** I think there is bipartisan support for it.

**The ACTING SPEAKER:** We are trying to get security onto it, Premier. We will just wait for the noise to subside.

*Debate Resumed*



Mr Bill Marmion; Mr Mark McGowan; Mr Rob Johnson; Mr Fran Logan; Mr Mick Murray; Mr Bill Johnston;  
Mr John Kobelke; Ms Janine Freeman; Mr Colin Barnett; Acting Speaker

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**Mr F.M. LOGAN:** I pick up on a point that was made by the members for Rockingham and Collie-Preston, and it comes back to the numbers that the parliamentary secretary has been referring to. My understanding of the announcement by the minister of the inception of the levy and the new safety case approach to mines safety on site is that the total number of new inspectors to be employed is 37. That is the figure that was given by the minister himself. I am at a bit of a loss to understand how there will be six new inspectors in Karratha, six in Kalgoorlie and 10 in Perth, bringing that number to 22. There seem to be 16 inspectors missing somewhere. I would like to know whether those 16 inspectors are real; and, if so, how they will be deployed in the field to carry out the role of inspector, which is critical for the purposes of achieving mines safety. With respect to the position that has been put by the department in advising the parliamentary secretary, my understanding is that the role of the risk management approach and safety case approach to mines safety is for the purposes of the application of mines safety policy on the job, not guidance for the department on how the department should run its affairs.

**Mr W.R. Marmion:** Yes.

**Mr F.M. LOGAN:** I do not foresee the department running on a risk management approach. I expect the department would work in accordance with the regulations and the act.

**Mr W.R. MARMION:** I agree. I do not understand the member's point on that.

**Mr F.M. Logan:** It's just that you referred to the department taking a risk management approach.

**Mr W.R. MARMION:** The inspectorate.

**Mr F.M. Logan:** Yes. I hope you're not talking about the inspectorate doing it in that way, because really that is for the application at the mine site and the way the policy should be applied at the mine site, as opposed to the functions of the inspectors doing their job.

**Mr W.R. MARMION:** On that point, the profile of the risk in each mine site is taken into account in the deployment of inspectors. In terms of the numbers, the 37 inspectors, which the member referred to as a figure that the Minister for Mines and Petroleum must have mentioned at some time, relates to the total number of inspectors not only in mining, but also in the petroleum and dangerous goods areas. Those are the 37 inspectors.

**Mr F.M. Logan:** I am sorry, could you just repeat that?

**Mr W.R. MARMION:** There are 37 inspectors—26 in the mining area and an extra 11 that relate to the petroleum and dangerous goods areas. I make one more point. In addition to the 26 field inspectors, another investigation unit will be set up so that there will be additional inspectors to troubleshoot special investigations.

**Mr F.M. Logan:** In total, how many mines inspectors—that is new and existing mines inspectors—will be in the field? I refer to the mining industry and not so much to petroleum.

**Mr W.R. MARMION:** I am advised that we do not have that information right now but if the member likes, I can get it to him tomorrow morning.

**Mr F.M. Logan:** Yes, we would like that information.

**Mr M.P. MURRAY:** I again labour the point that we are not changing the culture at all. Under the minister's scenario we are going to wait until accidents happen, then send people down south from Perth. That is not a culture change at all. As I said in my speech in the second reading debate, it is with great reservations that I support this bill. I have doubts about it. One of the biggest mining areas that is under-sung and under-sold is the south west. I am talking about sand mining, bauxite and minerals all the way through—you name it—and we are not going to get check inspectors on the ground where we need them. Could the parliamentary secretary explain why there is no change of culture, please?

**Mr W.R. MARMION:** There will be a change of culture within the organisation.

**Mr M.P. Murray** interjected.

**Mr W.R. MARMION:** Will the member let me finish talking?

**Mr M.P. Murray** interjected.

**The ACTING SPEAKER (Ms L.L. Baker):** Member for Collie-Preston, we do not need people speaking at each other across the chamber.

**Mr W.R. MARMION:** The safety case methodology is about changing the culture. It is a methodology. I have been advised —

**Mr M.P. Murray:** A Scarborough or a City Beach culture?

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**Mr W.R. MARMION:** What is that supposed to mean?

**Mr M.P. Murray:** That is where the numbers will be—in the city.

**Mr W.R. MARMION:** The safety case methodology works by dealing with issues in the mines —

**Mr M.P. Murray:** They will be fairies in the wind; you'll never find them.

**Mr W.R. MARMION:** The member for Collie-Preston can vote against the amendment if he likes.

**Mr M.P. Murray:** I can tell you now that we have been there; done that. I've had 24 years in the mining industry and I've heard it all before.

**Mr W.R. MARMION:** This methodology is supported by the unions and industry and it is supported by the Kenner report.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Title put and passed.**

*Third Reading*

**MR W.R. MARMION (Nedlands — Parliamentary Secretary)** [9.33 pm]: I move —

That the bill be now read a third time.

**MR F.M. LOGAN (Cockburn)** [9.33 pm]: I firstly thank the government for agreeing to the second amendment to ensure that there is some level of accountability with the moneys being paid into the levy. However, I must put on the record my concerns about some of the questions just asked of the parliamentary secretary during consideration in detail. Firstly, the concern that I think will now resonate around industry is that not all the 37 new mining inspectors will be used in the mining industry. I accept that the department covers more than the mining industry; it also covers pipelines and the oil and gas industry. However, I do not think it was expected that such a significant number of those inspectors would be used in different areas covered by the Mining Act safety regulations that are not part of the mining industry. I think everyone in industry, whether they be from the employees' side or the employers' side, were of the clear belief that 37 new mining inspectors would be employed. That is the way it was explained to the general public by the minister. The parliamentary secretary has said that not 37 new mining inspectors, but 26 new mining inspectors will be employed, six of whom will be in the Pilbara. That will be better than before, when none were employed in the Pilbara. Given that the majority of deaths that occurred in the mining industry last year were primarily in the Pilbara, having such a large number of inspectors based here in Perth rather than in the field where the mining takes place is a major concern, certainly to the Labor Party in opposition. I can assure the parliamentary secretary that it will be a concern also to the stakeholders in the mining industry. They were expecting that, in this new environment with our safety case approach to mining safety on the job, there would be significant regulatory inspection where mining takes place. Six inspectors will be employed in Karratha and six in Kalgoorlie, there will be no increase in the number of inspectors in the south west, and the majority of inspectors will be based here in Perth where no mining takes place. I accept the application of the Mining Act in terms of the Alcoa Kwinana refinery and a number of the other refineries down there. I am not suggesting there should not be mines inspectors in Perth, because they are needed for the companies covered by the Mining Act.

Western Australia is a big mining state and most of the mining takes place in the south west, in the Yilgarn-Craton area, which stretches in an arc around Kalgoorlie and the Pilbara region. That is really where those mining inspectors should be. As a former Minister for Mines, I know what it is like trying to encourage public servants to live in those places; it is very, very difficult. But somehow, by way of financial incentive or direction or whatever the government wants to apply, that is what must be done because that is where mining takes place; that is where injuries occur; and that is where inspections must be done to ensure that we minimise the number of injuries and deaths. From what the parliamentary secretary told the house by way of advice from the department, as the member for Collie-Preston just indicated, it does not appear at this stage that things will change dramatically. I hope they do, but it appears to me that it will be business as usual for the department, except that it will have a larger slush fund and more people to play with.

I was very disappointed to hear there will be no further increase in the number of mines inspectors in the south west. People overlook the size of the mining industry in the south west and the number of people employed there. The mining industry in the south west of Western Australia is a significant employer; it is not just about Collie coal. It involves all the other companies the member for Collie-Preston referred to. They need to ensure that they have a per capita approach to the number of mines inspectors and the number of full-time employees. It

**Extract from *Hansard***

[ASSEMBLY - Tuesday, 24 November 2009]

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is nice to have a per capita approach to the amount of money raised to fulfil the objectives of the levy; it would also be nice to have a per capita approach to the number of inspectors in the field compared with the number of employees who live and work in those areas. I believe that, if we truly want safety reform in the mining industry, that is how the Minister for Mines and Petroleum should reconstruct the department as part of the overhaul of the Mines Safety Act and the mines safety environment in the field.

I was very concerned that the government did not agree to the amendment I moved to enable Parliament to debate the regulations that will be drafted with the passing of this bill. The parliamentary secretary has asked us to rely on other measures for a review of those regulations.

That is not what industry wants. It is not just the unions that are saying this. The employer organisations and the employers themselves are also saying this. They would like to have parliamentary oversight of the regulations. That is not an unusual request. It has been done many, many other times in similar circumstances when a levy has been established. This is not an outrageous request. It is a logical request for further accountability over the establishment of this fund. A significant amount of money will be poured into this fund. Industry wants to have the ability, through the opposition, or through anyone in this Parliament, to have some parliamentary oversight of the regulations and to, if necessary, disallow the regulations. I am very disappointed that the government has not picked up our amendment. It will be put forward again in the upper house as part of the discussions in that place. Having made those two points, we support the bill.

**MR M.P. MURRAY (Collie-Preston)** [9.40 pm]: My comments will be along similar lines to the comments made by the member for Cockburn. I cannot understand how the life of a person in the Pilbara is worth more than the life of a person in the south west. This is a very rough figure, but about \$1 million will go into the levy from the south west. But there will not be one inspector for the south west—not one. People may say, oh, yes, we can fly an inspector down from Perth after the event. The people who say that obviously do not understand mining. These days, other than a bit of underground mining in Greenbushes, all the mining in the south west is open cut mining. If a high wall starts to creak, and if a pig-headed boss says that the employees must keep working it, and the employees cannot get hold of an inspector, someone is going to get hurt. That does show us one thing. It shows us that there will always be a role for the unions. I know that many members opposite are anti-unions. But this is a role that the unions will have to take up, because there will be no inspectors on site. I applaud the unions, in the coal industry in particular, for the job they have done over many, many years. They have probably saved many lives. They are now going to have to do that job again. As I have said, there could be a high wall, and it could be bolted, or just battened off, or whatever, but if that starts to run, the 300-tonne trucks underneath it will be completely covered in dust and just disappear. It is not good enough to then say, “Sorry, mate. We will fly someone down. We probably should have come down a bit earlier and had a look at those cracks that were up there, and we probably should have done an inspection a fortnight ago, but we were busy sitting on our backsides in Perth”. I find it absolutely appalling that all the officers and all the infrastructure is in Perth. There should be at least one inspector located in the south west.

I have been talking about high wall mining. There is also sandmining in the south west. That is quite a large operation. I missed out on naming one of the other companies in that area. That is Iluka. That is quite a large company as well. It probably has a couple of hundred employees, although it is winding down the number of workers and putting money into producing the end result.

We also need to have inspectors in the south west who are checking people who are travelling to and from work in the mines. Some of the companies are talking about putting people on 12.5-hour shifts so that they can have a hot-seat changeover on 12-hour shifts. I know that people are travelling from Busselton and Mandurah to work in the south west. There is also a safety aspect to that. If we do not have people in the south west to do the research and to do a check on the ground, we will have problems. Perhaps we should look at that. This is a matter that is really dear to my heart, because I have worked through those issues over the years, and I have had many fights with the bosses about safety issues, some justified and some not so justified.

I will give members a story to illustrate what I am saying. A guy on a mine site had pulled a rag out of a rag bag to do his job of cleaning an engine, and he got a needle stick injury because someone had put a dirty needle into the bag. The employer’s answer to that was, “Keep working. You’ll be right. Just wash it under the tap.” That is just appalling. The union had to take on the company about that. We had to stop work and put up notices and that sort of thing. But we could not get an inspector to come down, because it was night time. Public servants do not work at night time, even if they are a check inspector, do they? That is the way things will be under this legislation. If there is a fault at night-time, we will have to ring Perth and get someone out of bed. Now that we have the new highway to the south west, it will be a bit quicker, but it will still not be quick enough in my view. Dare I say it, but in the old days—not something I really want to hark back to—a check inspector was available to be called out at any time if there was a problem on a site. I am talking about sites right across the south west.

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The biggest producer of revenue for the state is still mining in the south west region. It is also by far the biggest employer. Yet we are not getting what I believe are our just rewards under this new system. I really do praise the system. However, as I have said, I have reservations about the regulations within the system, because what needs to happen is just not happening. My criticism has been that the mines department has been turning up after the event, when, from my work experience, it needs to turn up before the event. Unfortunately, in the past few years it has been after the event and after the Coroner's Court. That is something that no-one wants to ever have to go through, because it means that someone has passed away or has been seriously injured. I have had to visit a family and tell them that their dad has been killed. That is not much fun. Yet we cannot get one inspector in the south west. Something is wrong with the system already. I think we have had something put over us. I am going to talk to other people outside the system, including the mining companies, and say, "You have been diddled, mate. You have been putting in the money, and what have you got in return? Absolutely nothing." Do not tell me that a person who works rock can come to the south west and work sand. It is entirely different. I have seen it hundreds of times. People come to the south west and they want to do things their way. They do not understand water, either. Anyone who has worked in rock mines does not understand water. I have seen that happen over and over again. The safety shortcuts that are taken are just unbelievable. I think I have made my point. I do beg the government to make sure that an inspector is located in the south west. The money that has been put into the system by the mining companies in the south west is well and above what will be taken out for them. I agree that we really do need more inspectors in the north, with the number of people who have been killed in recent times. However, it is incumbent upon every member of this house to make the system fair and not put other people's lives in jeopardy just because people are sitting in their offices in Perth and not doing the job that they are supposed to be doing—that is, on the ground. I cannot believe it. It sounds like a city-centric issue. People do not understand distance. No, we are not at Armadale. We are at Greenbushes, a two-and-a-half-hour drive away. We need these inspectors to be located in the centre. If it is Bunbury, I do not care. If it is Collie, I do not care. It is about having a person in the south west. That is the not the case at the moment. I rest my case at that. I hope the parliamentary secretary will take that back to the government. I hope the people in the mines department who have made these decisions are also listening, because I will come after them if something goes wrong. It is as simple as that.

Question put and passed.

Bill read a third time and transmitted to the Council.