DANGEROUS GOODS SAFETY BILL 2002

Second Reading

Resumed from 4 December 2002.

MR R.N. SWEETMAN (Ningaloo) [4.54 pm]: The Opposition supports this legislation. Drafting of the Bill probably began three or four years ago. I can recall a briefing being given some time ago by the then Department of Minerals and Energy on some aspects of it. It is good that the legislation has finally made its way into the Parliament. It is interesting to note in some of the explanatory detail provided by the Department of Industry Resources that it expected the legislation to be passed by now. I think it was introduced into the Parliament in December last year. I think it was initially intended that the Bill be passed by April 2003 and that by June 2003 draft regulations would be released for public consultation. It would have been very good if that timetable had been adhered to. It would be an advantage if we could consider the legislation when the regulations are before us. It has often been said that the devil is in the detail. Although, on the face of it, this is good legislation, based on its objectives, it would be advantageous to have access to the regulations now. However, I know that is not the way the legislative process works. The Opposition will take a very close interest when the regulations have been drafted and released for broader consultation.

The legislation does not apply to only one portfolio, although obviously only one minister has responsibility for its passage. When it is enacted, it will be quarantined within the minister's agency, the Department of Industry Resources. However, some of the other areas on which it will impact are mines, transport, environment, police, road safety and agriculture, to name a few. I am sure that does not cover all the areas of responsibility. The Bill will significantly upgrade the Explosive and Dangerous Goods Act 1961.

We must understand the imperative for change in the community concerning this issue. Community expectations are manifested within this legislation. Although instances over a long period have created the momentum to introduce legislation like this, more recently the Bellevue waste fire and Carmel fireworks incident have reignited the urgency for the Bill. It certainly meets many of the community's expectations and, as a secondary issue, acknowledges the litigious nature of society today.

As the minister highlighted in his second reading speech, the Bill deals with the four main areas of manufacture, storage, processing and use. Transport is also regularly referred to in the legislation, although the legislation will impact on transport mainly through regulations. The Bill does not seek to ban or curtail anything. From my initial observations, it maintains a balance between industry and community expectations. It seeks to facilitate the twin touchstones that life is not risk free but at the same time life goes on. The key to the success of the legislation is the non-mandatory code of practice, which will assist industry in its duty of care to not just its work force but also the broader community. That also provides a balance.

I commend the Department of Industry Resources on the substantial detail it has provided with this legislation. Obviously it anticipated issues of some controversy and fears at community and industry level that this Bill would threaten the existence of some operators. The Department of Industry Resources has gone to considerable trouble to prepare very clear and exhaustive explanations of clauses. Clearly, everyone has been given an opportunity during the consultation stage of this Bill. It has been explained how the legislation will work, who will be caught up in it, and whom it is likely to affect. I refer to some of the issues raised by stakeholders during that consultation process. It is interesting to note, putting the stakeholder concerns into context, the amendments standing in the name of the minister to clauses 3, 5 25 and 40. Some of those changes will bring some comfort to some of the stakeholders. The document from the Department of Industry Resources headed "Issues raised regarding draft 4 of the Bill" indicates that the process has been long and drawn out and that there has been considerable consultation. The first concern raised by stakeholders was that the level of penalties was too severe. The more severe penalty in clause 40 is six months imprisonment. I assume the House will agree with the amendment proposed by the minister to that clause, which will change the penalty to a fine of $10 000 in both instances when a jail term is prescribed. The other concerns stated in the document are -

2. The personal liability of directors and senior officers is too onerous.
3. Reporting requirements/definition of incident too broad.
4. Exemption process too cumbersome.
5. Auditing requirements are unclear.
6. DGO remediation powers are oppressive.
7. Infringement notices hinder cooperation.

I take it that, now that this legislation has finally made its way into the Parliament, many of those issues have been addressed, although the amendments on the Notice Paper indicate that some further concessions have been made primarily to industry. Hopefully, these will ensure that stakeholders are more willing to agree to some of the issues covered in this legislation.

There is nothing more that needs to be said about this legislation. It primarily brings Western Australian legislation into line with national standards and provides an alternative to prescription while meeting community expectations and stakeholder interests.

MR M.F. BOARD (Murdoch) [5.03 pm]: I support this legislation, but I will place some concerns on the record on behalf of my electorate and the community south of the river that will be affected by the ongoing issues of increased freight movement between the port of Fremantle and locations around the metropolitan area. I refer particularly to freight movements along South St, and Leach and Canning Highways. The deletion of the Fremantle eastern bypass being dealt with by the State Planning Commission will mean the non-completion of the planned Roe Highway extension to the port, and a massive increase in freight movements along what is presently defined as an unprescribed route between the Kewdale rail terminal and the port of Fremantle. It is projected in the minister's own statements, and those of her agencies, that there will be an increase of some 300 per cent in the movement of freight containers through the port of Fremantle over the next 10 years. As a result of that, we can expect an increase in the amount of dangerous goods that will be transported to and from the port, particularly from the port as goods are imported for mining companies and for use in primary and secondary manufacturing industries. The transportation of dangerous goods is expected to increase at the same rate as freight transport increases. We can expect an increase of some 300 per cent in the transportation of dangerous goods through our suburbs.

The transportation of dangerous goods has been the subject of a number of studies in the southern corridor, particularly by the Cities of Canning, Melville and Fremantle, which have issued a number of statements. We have seen - the media and members of Parliament have raised this in recent times - the number of truck accidents that are occurring in the southern suburbs, particularly on Leach Highway and South Street. I was present when an accident occurred outside my office a few days ago in which a truck rammed a station wagon containing a woman and young child into the back of a bus that was laden with school children. Although the station wagon was compacted to about half its size, fortunately the two-and-a-half-year-old child, who happened to be in the front seat and probably travelling illegally, survived the accident. Had the child being in the back seat where the baby seat was, the child would more than likely have been killed, from what I saw of the accident. However, God works in mysterious ways, and both survived the accident. The mother and the child suffered some injuries and are in hospital. That was one of three accidents involving trucks on the same road on the same morning. Only recently, a container transport vehicle overturned, squashing a car. Miraculously, the young girl driver was lucky enough to survive that accident.

The reason I raise this matter is that of the 10 000 submissions received by the State Planning Commission, I understand about 75 per cent are against the deletion of the bypass. One of the main issues that the community is raising is the transportation of dangerous goods. Wherever the Government's current plan may be centred - whether it be Roe Highway stage 7 meeting the freeway and transport vehicles travelling up South Street or Stock Road, or staying on Leach Highway, which is the expected outcome - we will see a massive increase in the movement of dangerous goods. If the accident rate for trucks continues to climb we do not have to be mathematicians to realise that more accidents involving dangerous goods will occur on our major roads. One of these days an accident will cause great concern to our community, if not a worse scenario than one causing great concern.

The Opposition supports the Bill. However, when addressing the regulations, particularly those relating to the transportation of dangerous goods, if the minister is determined to put more trucks onto our suburban streets, notwithstanding her plan to put more onto rail, she must accept the reality that far more difficulties will arise. Trucks are on roads that go through residential suburbs and that were never designed for large traffic movements. They are on roads that pass shopping centres, hospitals, universities, primary schools and age care facilities and that were never designed for large traffic movements, let alone the transportation of large amounts of dangerous goods.

When the minister is dealing with her desire to delete the bypass for whatever reason and not complete the road that would have taken away large numbers of trucks - particularly the movement of dangerous goods - from residential suburbs, she will need to consider a much firmer designated truck route controlled by regulation. It will be necessary to prevent the trucks from using the current routes, otherwise very difficult circumstances will arise south of the river. I raise these issues because they are timely. The Western Australian Planning Commission is considering the deletion. It must take into account all the ramifications of the deletion of the

Fremantle eastern bypass. I know many people who will make written and oral submissions to the planning commission. Many points they will raise will concern the transportation of dangerous goods. Several experts on the transportation of dangerous goods are included in the working group to raise the awareness of this issue. The group also includes people who have worked on similar environmental issues in other States. The Parliament must sit down with the minister's agencies to look at this very real issue. If she is determined to delete the bypass and not complete Roe Highway, she must come up with alternative plans, particularly for the transportation of dangerous goods. It would be acceptable to restrict dangerous goods to rail. I disagree with the minister's choice of route through the heritage and tourism precincts of Fremantle. The minister's proposed plan will see the route go through the middle of the tourism fishing village in Fremantle. I am not sure whether members are aware of that. It will allow for double-stack container trains up to 800 metres in length, and it is proposed that 10 such trains will travel the route each day.

Dr J.M. Woollard: How many days a week?

Mr M.F. BOARD: I understand it will be seven days a week. If dangerous goods are to be carried by rail, people should think very carefully about where they will eat their fish and chips! One spillage will create massive problems for Fremantle. I cannot imagine the local authorities in Fremantle wanting that to happen. The only option to rail is transporting goods by trucks. If trucks use South Street or Leach Highway we will end up with the problem I outlined earlier. I am not sure whether the minister has thought this through clearly. I implore her to think about her long-term plans for the deletion. If she is not prepared to reconsider, she should be prepared to look at the transportation of dangerous goods and regulate them away from residential suburbs.

MS K. HODSON-THOMAS (Carine) [5.13 pm]: I support the comments of the members for Ningaloo and Murdoch. I thank agencies for providing members with comprehensive briefings on this Bill. The Bill crosses over a number of portfolio responsibilities, as has been highlighted by the member for Ningaloo. I was especially interested in the briefings because of my shadow responsibilities for the transport portfolio. The briefing on the transportation of dangerous goods was particularly interesting.

The member for Murdoch has already highlighted a number of aspects I wish to raise on transporting dangerous goods on the State's road network. In light of the comments of the member for Murdoch, I believe the Minister for Planning and Infrastructure should seriously reconsider any move to delete the Fremantle eastern bypass or Roe Highway stage 8 from the metropolitan region scheme until such time as the Government can convince the community that it will be able to move the transportation of those types of goods onto rail. As the member for Murdoch has said, even if those types of goods are transferred to rail, that rail will be in a unique tourist precinct. Therefore, the minister who is responsible for this legislation should also have some concern about the impact that may have on the tourism sector.

The member for Ningaloo talked about the way in which this legislation has been embarked upon and the initial stakeholder consultation that took place, and the fact that this legislation has been recognised as being necessary since as far back as 1995. I acknowledge that the minister's agencies have worked cooperatively with people in the private sector to ensure that their concerns are addressed. I will limit my remarks to those few comments.

DR J.M. WOOLLARD (Alfred Cove) [5.16 pm]: I too am very concerned about the outcome of the Dangerous Goods Safety Bill. Clause 3 in part 1 of the Bill states that "dangerous goods" means a substance or article that is determined by the chief officer under the regulations to be dangerous goods. I believe that in addition to a determination by the chief officer we should also have some link to both the international standards and the Australian Dangerous Goods Code. If someone is constantly checking the international standards and the Australian Dangerous Goods Code, there will be a greater likelihood that a substance that previously was not classed as a dangerous good but now is classed as a dangerous good will go onto the list and people will take care with the transportation of that substance.

I am also very concerned about clause 8(1), which states that a person who is involved directly or indirectly in storing, handling or transporting dangerous goods must take all reasonably practicable measures. There is no definition of the word "reasonably". I have been told that "reasonably" means predictable and lawful. I would like a definition in the Bill of the words "reasonably practicable measures". We do not want to wait until there is an accident and the courts determine what is a reasonably practicable measure. We should put those safeguards in place immediately.

I also wish to follow on from the member for Murdoch's comments about the new electoral boundaries. My electorate borders Leach Highway. Therefore, what is happening or not happening with Roe Highway and the Fremantle eastern bypass is of great concern. I have looked carefully at the figures for freight movements for 2001, 2011 and 2031, and I will be putting some of those figures to the minister. The figures do not seem to add up. They show the differences between the amount of traffic that would travel on the road if the Roe Highway were extended and if it were not extended. One document states that on the Leach and Canning Highways the

traffic volumes would differ by only a couple of thousand vehicles. However, other graphs, which show Roe Highway, indicate that thousands of cars and trucks would have used Roe Highway had the Roe Highway continued.

Currently, the Government is examining the brakes used by large trucks. Air brakes are very noisy. I have been told that if the trucks convert from air brakes to mechanical brakes, the brakes will heat up, which could cause more accidents on the road. This Bill deals specifically with the transportation of dangerous goods. It is likely that many more dangerous goods will be transported on Leach Highway, for example. The Government has accepted that under some scenarios the roads will become busier over the next 10, 20 or 30 years. If they do become busier, trucks transporting dangerous goods will travel on those roads. I am concerned that if the truck drivers know it will take them longer to travel along South Street or Leach Highway, they might be more likely to drive along Marmion Street, Canning Highway and other highly populated areas. That is why I would like the Dangerous Goods Safety Bill to be tied to international standards. Currently, I am conducting an investigation into the transportation of dangerous goods in other States and countries. I am examining whether they are allowed to be transported through highly populated areas.

Two scenarios have been touted. Under the first scenario, this Bill provides limited protection to the community. Under the second scenario, the number of cars, trucks and dangerous goods on our roads is likely to increase. An accident is waiting to happen. I will follow the consideration in detail stage very carefully to see just how the minister believes this Bill can address some of those problems. The minister might tell us what consideration he has given to making regulations to help protect highly populated communities where trucks that carry dangerous goods are likely to pass through.

MR M.P. WHITELY (Roleystone) [5.23 pm]: The minister's second reading speech referred to the Bellevue hazardous waste fire and the Carmel fireworks explosion, as incidents that have highlighted the urgent need for this Bill. Although I would not usually comment on this Bill, last year on 6 March there was a massive fireworks explosion at Carmel in my electorate. It was very lucky that no-one lost a life or was even injured. That is where my interest in the handling of dangerous goods comes from.

To refresh the memories of members, on Wednesday, 6 March 2002, a fire in one of the sheds on a fireworks storage facility in Carmel led to a chain reaction that culminated in three separate explosions within a space of 14 minutes. Three explosive magazines and four freight containers were destroyed. A fourth magazine that was protected by an earth mound was not significantly damaged by the incident. Several fires on adjoining bushland started as a result of the fireworks firing out from the storage facility. Metal debris from the fireworks explosion was scattered over a wide area. I picked up some debris about 250 metres from the explosion site, but debris was spread as far as 500 metres from the site of the initial explosion.

This incident attracted a good deal of media attention at the time. As a result, the Premier asked me to conduct a review into the lessons that could be learnt from the Carmel fireworks explosion. As I said, it was fortunate that no-one was injured or killed as a result of the explosion. The focus of my review was to identify strategies that would ensure the safe storage of fireworks. In fact, the first emergency service to attend the incident was the Kalamunda Volunteer Bush Fire Brigade, which was unaware that fireworks were stored on the site. It is fortunate that it did not arrive a couple of minutes earlier, given that it was unaware of the nature of the site. It had heard that there had been an initial explosion - a minor explosion as compared with the final explosion, which was the greater of the three. Had it arrived a couple of minutes earlier, it is likely that it would have driven onto the site and that serious injury would have occurred or even lives been lost as a result.

The extent of the explosions was unexpected and inconsistent with international practice for the storage of fireworks at the time. The extent of the explosion was far more consistent with that which would be expected of high explosives rather than fireworks. The lesson that we learnt from this was that, when stored in bulk, fireworks behave in a similar manner to high explosives. As I said, shrapnel was spread some 500 metres from the site of the initial explosion. Given that houses were within 150 metres of the storage site, one can understand that it was potentially a life-threatening situation.

The review that I conducted was completed last year with the assistance of Phil Knight, who was seconded from the former Department of Mineral and Petroleum Resources. He did a tremendous job. One recommendation that we made was that the bulk storage of fireworks be in facilities capable of storing high explosives. Most notably, it was recommended that any bulk storage of fireworks in the Perth metropolitan area be at the Baldivis explosives reserve, which is ideal for the bulk storage of fireworks as it is designed for the storage of high explosives. It has high-quality magazines, appropriate buffer distances and a degree of security. In fact, things do go wrong, as was the case when one of our more famous criminals from the 1980s - I am not sure whether it was Brendan Abbott - broke into and stole some material from a magazine at the Baldivis explosives reserve. He then set a charge to explode the magazine, and the magazine exploded exactly as it was supposed to do. The

roof was lifted off the magazine and debris was scattered within a radius of about 50 metres. It behaved as was appropriate and represented no threat to surrounding residents. However, that was not the case in Carmel.

One of the key recommendations was that the bulk storage of fireworks be in facilities capable of housing high explosives, and that the Baldivis explosives reserve presented that opportunity in the Perth metropolitan area. It was also recommended that only licensed operators be allowed the minor storage of fireworks and that as a condition of their licence, their storage facility must be approved by the Department of Mineral and Petroleum Resources in conjunction with the relevant local government authority. Given that we did not have the expertise to differentiate between the bulk and minor storage of fireworks, it was suggested that the threshold range between 25 kilograms and 250 kilograms. I have since been informed that the demarcation has been made at 50 kilograms, which is the lower end of the range we identified. I have also been informed that other adjustments were made as a result of the report I prepared. In November 2002, the regulations affecting fireworks were amended so that the bulk storage of fireworks is allowed only in facilities such as the Baldivis explosives reserve. Hence, we will not be faced with the same threat to lives that was posed by the facility at Carmel, which was licensed to take, from memory, up to 12 tonnes of fireworks.

As I stated, the review of the regulations was conducted in November 2002, which was before the introduction of this legislation to the Parliament. Adjustments have been made to ensure the safe storage of fireworks to avoid the same threat that was posed by the explosions at Carmel. In addition to the recommendations for the bulk storage of fireworks, and even though it was outside its terms of reference, the review made recommendations for the transportation of fireworks. It recognised that, as far as posing a threat to human life, the storage of fireworks was probably at the lower end of the scale. In fact, fireworks displays and the transportation of fireworks represents a greater threat to life and limb. We recommended a review of the transportation and safe handling of fireworks in Western Australia. I understand that the situation was changed under the review of regulations in November 2002. When fireworks are transported, they are now treated in the same way as high explosives. Prior to the incident at Carmel, the international classification of fireworks was hazard division 1.3 and 1.4, which represented a lower threat than hazard division 1.1, which relates to high explosives. The drafting of our current fireworks regulations reflects the fact that when stored and transported in bulk, fireworks represent the same hazard as high explosives. Hence, the transportation of fireworks is now treated in the same way as high explosives.

In response to the Carmel fireworks explosion, the Premier and the Government - I was pleased to play my part - recognised that something had gone seriously wrong. The Government did not hide the facts; rather, it acknowledged that but for luck there may have been far more serious consequences. We were very fortunate that no-one was injured or killed. The Government's response was to determine what went wrong and to ensure that it would not happen again. That is the basic premise of the review and it is also the basic premise of the legislation. I am also pleased to note that we did not wait for the Bill to be passed by Parliament before implementing the regulations. The recommendations of my review were implemented in November 2002 and the bulk storage of fireworks is now in Baldivis. There is no possibility of fireworks storage posing the same threat as the situation in Carmel. We have also tightened the regulations that guide the transportation of fireworks. We have reacted quickly and even gone ahead of the game and the legislation. Given that that review and the consequent changes were conducted in the same spirit as that in which this legislation is presented, I am happy to support the legislation.

MR C.M. BROWN (Bassendean - Minister for State Development) [5.34 pm]: I thank members of the Opposition and other members who have supported the Bill. I will make a few observations about some of the comments that have been made. In supporting the Bill, the member for Ningaloo spoke, not in a negative sense, about the amount of time that had been spent in drafting the legislation. It is true that the legislation took some considerable time to draft, but that is because, as the member for Ningaloo indicated, a very detailed consultative process was undertaken during the drafting stage. That consultative process involved groups such as the Chamber of Minerals and Energy of Western Australia, the Western Australian Chamber of Commerce and Industry, UnionsWA, the Western Australian Farmers Federation and a range of other industry groups, which were all intimately involved in the drafting of the legislation. Yes, it did take some time to draft the legislation; it always does when a variety of industry groups are involved, all of which have particular interests to consider for their industry to ensure that the legislation is fair and workable for them. The consultative process was a success. However, whenever people are involved in a consultative process - rather than legislation being drafted behind closed doors - legislation takes time to draft. I believe that a consultative approach, whenever that is possible, is the ultimate way to go.

The member for Ningaloo went on to say that obviously the devil will be in the detail and that he and the Opposition will be looking closely at the regulations and the codes of practice when they are issued. We welcome that scrutiny. It is appropriate that they be scrutinised. This is overarching legislation. It is designed

to create a duty of care on those who manufacture, transport and use dangerous goods. Having created that primary duty of care, the Government leaves the detail to regulations or codes of practice. It is most appropriate that they be scrutinised. It is also true, as the member for Ningaloo said, that this legislation will have a broad impact. It will impact on transport, police, and the agriculture and minerals sectors. It is equally true that there is a heightened community interest in legislation of this nature, particularly given the unfortunate incidents which have occurred in the past couple of years but which fortunately have not resulted in the loss of life, but easily could have. We have been very fortunate in that regard.

The legislation seeks to adopt modern practice in dealing with health and safety issues. In fact, it incorporates what is broadly known as the Robens principles. Those principles were determined by Lord Robens in a major inquiry that he conducted in the House of Lords in, if my memory serves me correctly, the 1970s, although it might have been earlier. Essentially, Lord Robens looked at legislation dealing with health and safety issues and decided, quite correctly, that Parliaments always followed technology and that there was no point in reflecting in legislation the technology of the day, because Parliaments sometimes took many years or decades to review legislation. He determined that what was required was legislation which imposed a general duty of care on users, manufacturers and the like but which enabled by way of subsidiary legislation - either regulations or codes of practice - an opportunity to ensure that those functions were always kept up to date and that incidents around the world, of which the international community was gaining knowledge, could be quickly adapted into the code so that best practice could be maintained at all times. This was preferable to simply trying to maintain best practice in a piece of legislation that must, cumbersomely, find its way through the parliamentary process. This legislation seeks to reflect best practice by adopting the Robens principles. Of course, the Robens principles have been reflected for some time in this State in the Occupational Safety and Health Act, the Mines Safety and Inspection Act and a number of other pieces of legislation.

The member for Ningaloo was kind enough to compliment the officers of the department for their involvement in the consultation process and the documentation they have provided. The State is fortunate in having many professional officers who take great pride in their work in serving the public interest, the community broadly, and the Government of the day. The officers who look after this area are particularly vigilant about their duties and responsibilities. I agree with the member that they are to be congratulated on both the detail of the work and the consultation that has been undertaken with all the interest groups.

The member for Murdoch made a few observations in his contribution to the debate on this Bill, which he supports. He talked about a number of traffic and freight movement matters, many of which fall within the purview of the Minister for Planning and Infrastructure, who has much better knowledge of those matters than I do. He talked about the unfortunate day on which a number of accidents occurred in his electorate. Obviously, we all do our best to prevent accidents, particularly those that could result in serious injury or death. Unfortunately, lives continue to be lost through accidents in the city and the country, no matter what the circumstances. A tragedy recently occurred in my electorate. I am not sure that one can automatically assume that road conditions are the only contributor to accidents. Road safety people, the Royal Automobile Club of Western Australia and others constantly tell drivers that they should drive according to the conditions. That is very true. Whether driving on one of the four or six-lane major freeways around the city or on a road that is in very poor condition in the far north of the State, drivers must adjust their driving speed and techniques according to their capacity and the conditions.

Question were asked by the members for Murdoch and Alfred Cove about vehicles that carry dangerous goods. As the responsible minister, I have the privilege of recognising drivers of dangerous goods vehicles who have absolutely outstanding records. From memory, last year I recognised the outstanding record of a driver who has been driving for some 25 years and has never received an infringement notice. He is a superb driver. Most importantly, he rigidly sticks to the practices required of dangerous goods drivers. These people understand that their livelihoods, the livelihood of their employer and, more importantly, the health and wellbeing of the community depend on their skills and capacities. I doubt that any of those drivers would take shortcuts. The drivers know the codes of practice and safe driving techniques. They know the policies about driving on highways and main roads. Some drivers of dangerous goods vehicles must venture into the suburbs to refuel suburban petrol stations and to supply swimming pools run by local authorities with chlorine and other chemicals. It is impossible for those drivers to avoid going to those places, because the service stations and swimming pools need to be attended to. However, in other areas I would be exceptionally surprised if the drivers of those vehicles took short cuts, particularly through built-up suburbs.

The member for Murdoch raised the issue of designated truck routes. I recall that this matter was raised four to five years ago. The Minister for Planning and Infrastructure might also recall the matter; however, it was not pursued at that time. Significant changes have been made in the past six years to dramatically increase the size of vehicles that are permitted in the Perth metropolitan area.

The member for Roleystone made some comments about the review that he undertook. I commend him for that review and for the recommendations that arose from it. As he said, many of those recommendations have been implemented. The member for Carine made some brief observations and I agree with her observation that the agencies have worked cooperatively with stakeholders.

The member for Alfred Cove made a number of comments, one of which related to the role of the chief officer and another to the need for a link with international standards and the Australian Dangerous Goods Code. In fact, the purpose of this Bill is exactly that: to legislate for the responsibility for a general duty of care to be placed on manufacturers, users and transporters of dangerous goods. The legislative responsibility for that duty of care will rest on those people. Under that legislative responsibility, the Bill will create a layer of regulations or a code of practice. Why is that appropriate? It is appropriate because the Robens principles have made it clear that a code of practice must be able to change quickly. We have learnt from incidents that have arisen in the international community that we can change those codes and implement very best practice. For example, the incident at Carmel changed international standards. If those standards had been inscribed in legislation, amendments to the legislation would have had to line up at the gate of the parliamentary process behind all the other legislation waiting to be dealt with by the Parliament. If circumstances such as those that occurred at Carmel arise anywhere in the world, Australian and international organisations will review the limitations or faults in their codes of practice and implement best practice without delay. The Bill is structured in this way because it follows absolutely the Robens principles. Those principles have been adopted and followed in not only Australia, but also a number of other Organisation for Economic Cooperation and Development countries. We have all learnt that to describe in legislation details of exactly what will occur at a given time, at a given place and with a given set of procedures has not worked and will not work, particularly in the light of rapidly changing technology. Therefore, in answer to the question raised by the member for Alfred Cove, the whole purpose of the legislation is to be able to adapt very quickly to those changed circumstances and to quickly change codes of practice when the need arises.

Another matter raised by the member for Alfred Cove was the definition of the words reasonably practicable. Those words are used in occupational health and safety legislation, in the Mines Safety and Inspection Act and elsewhere in Australia and other parts of the world. Parliaments around the world have decided that this is an appropriate way in which to legislate; that is, by allowing the court - on the basis of the evidence put before it, but also having regard to the code of practice - to determine what is reasonably practicable. They are very important words. We must look at those words in the context of the regulations and the code of practice. A code of practice will look at what is reasonably practicable to apply to that code. Those words are endorsed by the stakeholders, and by disparate groups such as the Chamber of Minerals and Energy of Western Australia, the Chamber of Commerce and Industry of Western Australia representing major business groups, the Western Australian Farmers Federation and a whole range of others representing business groups; they are also supported by groups such as UnionsWA representing employee interests. Therefore, there is a good understanding of those words. They are not new words or words that have been drafted only for this piece of legislation. They are words that are commonly used for health and safety standards.

This is a good Bill. It will certainly improve the legislative arrangements for dangerous goods in Western Australia. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clauses 1 and 2 put and passed.

Clause 3: Interpretation and abbreviations -

Dr J.M. WOOLLARD: The minister said he did not want something tying this legislation to the international standards or the Australian Dangerous Goods Code because that may slow up the process if a new item is listed as a dangerous goods. The definition of "dangerous goods" is -

> . . . a substance or article that is -
>
> (a) prescribed by the regulations to be dangerous goods; or . . .

They can also be prescribed by international standards or the Australian Dangerous Goods Code. That way we would have both and we would know that the people within the department are keeping a close eye on the international standards and on the Australian Dangerous Goods Code.

Mr C.M. BROWN: The difficulty with putting into the definition of dangerous goods or dangerous goods incident what the member has referred to is that it is our intention to follow international best practice and standards, but these international standards may not keep up with major incidents that occur around the world,

and we may then need to make changes. We will make changes to the codes of practice and to the regulations according to the perceived best practices when circumstances around the world show that either existing regulation or codes of practice are deficient.

Dr J.M. WOOLLARD: The response by the minister is not adequate. At the moment paragraph (a) of the definition of "dangerous goods" states -

> prescribed by the regulations to be dangerous goods; . . .

I accept what the minister said about best practice. However, I do not see any difficulty in adding "or adopted by the international dangerous goods standards or the Australian Dangerous Goods Code." That would also ensure that the legislation followed best practice. Those who monitor the legislation in this State may not be on the ball and may miss a change that has been made to the standards of another country. However, if they must regularly check the international standards and the Australian Dangerous Goods Code for changes, it will force them to consider those changes and whether this legislation is best practice and Western Australia should follow those guidelines.

Mr C.M. BROWN: This is an issue of coherence with regulations. I am instructed that some dangerous goods are explosive and need to be dealt with by regulations in a particular way. Some dangerous goods are not explosive but are nevertheless dangerous and can be dealt with by regulations in a different way. There are two sets of standards; the Australian standards and the international standards, which are updated only every three or four years. The requirement would add a level of unnecessary complexity to the legislation. My professional advisers on these matters say that from their perspective this will add a level of complexity to the legislation that is not warranted and not necessary.

Dr J.M. WOOLLARD: If the minister's advisers say that the international standards and the Australian Dangerous Goods Code are changed only every three to four years, what difficulty would they have in modifying this clause to read, "prescribed by the regulations to be dangerous goods; or as adopted by the international standards or the Australian Dangerous Goods Code" when the standards have to be checked only every three to four years? All this does is ensure that the Bill is, as the minister said, up to best practice.

Mr C.M. BROWN: To burrow down into the detail of each of these areas would require an exhaustive examination of each matter. I am not prepared to do that but, given that the member has raised this matter, I am prepared to consider it between the Bill passing in this place and going to the other place and to see whether any type of amendment like that can be accommodated. However, I am not prepared to accommodate it on the run because it will add a level of complexity that will be unnecessary and unhelpful.

Dr J.M. WOOLLARD: I thank the minister and I appreciate that he will have this area assessed after the Bill is passed in this House and before it goes to the upper House.

My next query is that nowhere within these definitions is reference made to the prohibition of transport. Under the current Dangerous Goods (Transport) (Explosives by Road and Rail) Regulations 1999, section 6.2 states -

> Prohibition on transport of certain explosives in the tunnel on the Graham Farmer Freeway

Sitting suspended from 6.00 to 7.00 pm

Dr J.M. WOOLLARD: I thank the minister for allowing me to speak with his advisers during the dinner break. I want to clarify that this Bill specifies the chief officer. This Bill will supersede the Dangerous Goods (Transport) Act. My concern relates to the prohibition of transport. The minister's advisers have led me to believe that the regulations that will be made under this legislation will state that the minister has, if he so wishes, the power to determine which routes will be acceptable for the transportation of dangerous goods. If a member of the community is concerned that trucks carrying dangerous goods are travelling along roads in community areas, this person can draw those concerns to the attention of the minister or the chief officer. The minister will be able to instruct the chief officer to advise drivers that those dangerous goods must not be taken through community areas. The minister can specify the roads along which dangerous goods can and cannot travel.

Mr C.M. BROWN: I thank the member for Alfred Cove for taking the opportunity to speak with my advisers on this matter. I clarify the matter as follows. This Bill replaces the Dangerous Goods (Transport) Act 1998. Under that Act, the Dangerous Goods (Transport) (Road and Rail) Regulations 1999 were issued on 8 June 1999. Regulation 13.7, which is in division 3, states -

> **13.7. Determinations about routes etc.**
>
> (1) The Competent Authority may determine -

(a) that particular dangerous goods may only be transported by road on a particular route, or in or through a particular area;

(b) that only a particular vehicle, or kind of vehicle, may transport particular dangerous goods by road;

(c) that particular dangerous goods may only be transported by road at a particular time; and

(d) that unodourized LP Gas may only be transported by road on a particular route, or in or through a particular area.

It is proposed that the Dangerous Goods (Transport) (Road and Rail) Regulations 1999 will become new regulations under this Bill. Where a competent authority is referred to in the existing regulations, that competent authority will be the chief officer as described in the Bill. It can be seen that if chief officer is substituted for competent authority, the chief officer under the Bill will be able to determine that particular dangerous goods may be transported only on a particular route or through a particular area. I assure the member for Alfred Cove that it is the intention to have these regulations, slightly amended to pick up the new definition, reflected entirely by the Bill once it becomes an Act, and that the regulations to be issued will give the chief officer the power to direct which routes dangerous goods vehicles can travel upon.

Dr J.M. WOOLLARD: I thank the minister for that answer. At this stage, does the minister plan to ask the chief officer to review the routes in the Perth metropolitan area? Considering the statistics put together by the freight network review and the anticipated increases for the next 20 to 30 years, and recognising that some of the roads such as Leach Highway and South Street will become very congested, it might be advisable to have that review sooner rather than later. Because those major roads will become very busy, perhaps there should also be a review of the times, so that these dangerous goods are not travelling on roads such as South Street and Leach Highway in peak-hour traffic. Is there any prospect of a review by the chief executive officer of both the routes and the times of travel for dangerous goods?

Mr C.M. BROWN: The competent authority can now review these matters under the existing regulations. The chief officer under the Bill will be able to review these provisions. At any time, even today, if members of the community or members of Parliament believe that dangerous goods should not be allowed on a particular highway or road at a given time, or at any time, they can make the appropriate representations to the competent authority, as it is currently defined under the regulations, and say that these types of goods and the types of vehicles carrying those goods should not be allowed in a particular area. If the member for Alfred Cove or any other member has a view about that aspect, I encourage those members to make their views known to the competent authority, or to the chief officer under the new legislation. The chief officer or the competent authority must obviously look at this matter objectively and work out appropriate ways for goods to be transported and appropriate routes. The chief officer or the competent authority must weigh up those various considerations when authorising a particular route and requiring dangerous goods to be transported on a particular route. The competent authority or the chief officer must examine that matter. If the member for Alfred Cove believes that certain roads that are currently used should not be used, or if the member is concerned about any roads that might be used but which are currently not authorised to be used, the member is free to make those submissions today to the competent authority. Such submissions will be made to the chief officer under the new legislation.

Dr J.M. WOOLLARD: On behalf of my constituents, I will make inquiries as to the current movement of dangerous goods on roads and the timing of it. Because of the concerns that have been raised with me, I will bring those matters to the attention of the minister so that, I hope, he will ensure that the State has best practice, and that we look at community safety and ensure that trucks carrying dangerous goods are not travelling in peak-hour traffic or in built-up areas.

Mr C.M. BROWN: I move -

> Page 2, line 11 - To delete "appointed" and substitute "designated as the Chief Dangerous Goods Officer".

Under the Public Sector Management Act, a minister of the Crown does not select and appoint officers but the minister can designate a title and responsibility to an officer in the public sector. This change is necessary for that reason.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 4 put and passed.

Clause 5: Unreasonable harm, assessment of -

Mr C.M. BROWN: I move -

Page 5, lines 18 to 27 - To delete the lines and substitute the following -

(2) For the purposes of references in this Act to **"unreasonable"** harm, harm from dangerous goods is capable of being reasonable if, and only if -

(a) it was foreseen, and caused intentionally, by the person who had the control or management of the goods at the time the harm occurred;

(b) it was caused by a lawful act; and

(c) in the case of harm to an individual or to property, it was caused with the consent of the individual or of the owner of the property, as the case may be.

The purpose of this amendment is to clarify "harm" and, more particularly, to clarify what is reasonable harm. One can see from the wording that harm is reasonable if it was foreseen, if it was caused intentionally, if it was caused by a lawful act and so on. Obviously, it is to apply in areas such as a mine site at which people are authorised to use explosives. It might be argued that a person is causing harm, but he would be authorised to use explosives in the exploration process. Explosives are used to get at an ore body. It might be argued to be harm, but it is reasonable harm because a person is authorised to do the things he is doing. The intention is to define what is reasonable harm. If a person acts outside that definition, there are penalties for unreasonable harm in the legislation.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Duty to minimise risk from dangerous goods -

Mr R.N. SWEETMAN: I have concerns about the penalties for offences in this clause. They are enough to make a person's eyes water. They are very significant. One penalty is $100 000 or four years imprisonment, or both. People most likely to be caught up in this initially will be farmers or small private miners. How extensively will advice be communicated to people in those sectors and how much of an onus will be placed on the retailers of dangerous goods, as defined by regulations supporting this legislation? Considering the size of the penalties, I wonder how extensive the message to the broader community will be so it understands the implications of this legislation.

Mr C.M. BROWN: There is a clear intention to ensure that people are well aware of the legislation. I read a departmental file that indicated that a number of solicitors' offices that provide advice to business groups have put out memorandums about the Bill. The Bill has been prepared in conjunction with groups such as the Western Australian Chamber of Commerce and Industry, the Chamber of Minerals and Energy of Western Australia, the Western Australian Farmers Federation and UnionsWA. The clear intention has been to try to involve all the perceived business groups that will have an interest in this measure. However, the Bill cannot take effect until the regulations are drafted. The regulations will be subject to the normal parliamentary process of disallowance if they are considered to be too onerous. The same situation will apply to the codes of practice, which are treated like regulations under the Bill. The intention is to be careful to ensure that the broader message is delivered to the community about the way in which the legislation will be applied.

The penalties have not been invented; they have come from the Dangerous Goods (Transport) Act 1998. In Queensland, the maximum penalty is imprisonment for three years, but in South Australia and Victoria the maximum penalty is imprisonment for five years. We have gone for a maximum penalty of imprisonment for four years. The negligent manufacture, storage or use of dangerous goods can have significant implications for not only the owners of manufacturing and storage plants and their employees but also the wider community and the environment. The penalty in clause 17 for an aggravated offence is the same as the penalty in clause 8 for failing to minimise the risk from dangerous goods. If the court were to impose the more extreme end of the penalty, it would be a very severe offence; it would not be a minor offence. Generally the courts have adopted the 10 per cent rule; that is, for a first offence the courts will impose 10 per cent of the maximum penalty. The maximum fine for an individual is $100 000. Therefore, for a first offence the court may impose a penalty of $10 000. However, it will depend on the severity of the offence. If a person has been known to have acted very negligently and as a result a number of people have lost their lives, no doubt the court will take a much harder position, and I think the community would expect that.

Mr R.N. SWEETMAN: Let us consider the lower end of the scale and assume that an individual gets a penalty that is 10 per cent of the maximum penalty for a breach. I will give an example to illustrate my concern. A councillor was in breach of some of the provisions of the Electoral Act in that during a local government election he provided information to electors that did not carry an authorisation. The maximum penalty for that offence was $2 000, and he was ultimately fined $1 350. However, he was concerned that he might be found to have committed what is referred to in the Act as a substantial breach and have to resign from the council. As it turned out, I got advice from Tim Fowler from the Department of Local Government and Regional Development that because the maximum fine was $2 000 it was not a substantial breach. He said that the penalty for a substantial breach under the Local Government Act was a fine of $10 000 or imprisonment for one year. In the case of this Bill, at the bottom end of the scale there may be what are deemed under clause 17 to be aggravated circumstances. What I ask for almost borders on a legal opinion, and I understand the minister does not have to respond to that. However, I am curious as to whether the maximum penalty will constitute a substantial breach even though the person may have been fined at the lower end of the scale, because that may have knock-on effects. The person may be a member of Parliament, a justice of the peace or the president or councillor of a shire, and that may mean that the person will have to resign. If the penalties are $250 000, $100 000 or imprisonment for four years, I assume they will have to be classified as substantial breaches.

Mr C.M. BROWN: In many instances, the regulations will provide for breaches of far less significance and will not incur penalties of the amounts shown in the Bill. Serious breaches of particular regulations will impose lesser penalties. The Bill provides offences for major breaches of safety that could have very detrimental effects on the State. For example, the Longford incident in Victoria was devastating. A royal commission was held that found Esso was negligent. Two people lost their lives at Longford. That was a major issue. An enormous amount of damage was done. There was no power in Victoria. Damage was done to a range of businesses and the community, and two people lost their lives. That situation was not unforeseen. People were not operating as they should. The royal commission found that Esso was negligent. In circumstances that result in millions and millions of dollars of damage and cause massive loss of life, severe penalties must be imposed. If someone fails to do something of a much more minor nature, the regulations will cover that, and the maximum penalties under those regulations will not be anything like the amounts shown.

Clause put and passed.

Clauses 9 to 24 put and passed.

Clause 25: Chief Dangerous Goods Officer, appointment and functions -

Mr C.M. BROWN: I move -

Page 20, lines 4 to 10 - To delete the lines and substitute the following -

(1) In this section –

"departmental officer" means a public service officer (as defined in section 3 of the *Public Sector Management Act 1994*) in the department that principally assists the Minister with the administration of this Act.

(2) The Minister, by a notice in the *Gazette*, is to designate a departmental officer as the Chief Dangerous Goods Officer for the purposes of this Act.

This clause will overcome the problem that I alluded to earlier about a minister not being able to appoint someone under the Public Sector Management Act but being able to designate someone to carry out that role.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 26 to 39 put and passed.

Clause 40: Restricting access to sites of dangerous goods incidents and dangerous situations -

Mr C.M. BROWN: I move -

Page 29, line 29 - To delete the line and substitute the following -

Penalty: $10 000.

Page 30, line 4 - To delete the line and substitute the following -

Penalty: $10 000.

The reason for these amendments is that essentially the Government has determined that it is not, as a matter of principle, in favour of short sentences of imprisonment. Therefore, a monetary penalty has been substituted for an imprisonment penalty.

The ACTING SPEAKER (Mr A.D. McRae): Members, I need to seek the agreement of the House to take both those amendments concurrently.

Leave granted.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 41 to 61 put and passed.

Clause 62: Defence of complying with code of practice -

Mr R.N. SWEETMAN: Clause 62 provides an obscure link to the question I will ask, which is about codes of practice and regulations. I assume that they are inextricably linked, and that notice will be given and that the normal disallowance process will ensue should the Parliament elect to attempt to do that.

Mr C.M. BROWN: Yes. Clause 20(7) provides -

> A code of practice approved under this section is a regulation for the purpose of section 42 of the *Interpretation Act 1984*.

Clause put and passed.

Clauses 63 to 70 put and passed.

Schedules 1 and 2 put and passed.

Title put and passed.