OCCUPATIONAL SAFETY AND HEALTH AMENDMENT BILL 2017
MINES SAFETY AND INSPECTION AMENDMENT BILL 2017

Second Reading — Cognate Debate

Resumed from 23 August.

HON TJORN SIBMA (North Metropolitan) [2.06 pm]: I will offer a precis of the introductory remarks I made on the Occupational Safety and Health Amendment Bill 2017 and the Mines Safety and Inspection Amendment Bill 2017 before I was cut off last time. The Liberal Party supports the revised penalty regimen that is expressed in the schedule attached to this legislation. That support was indicated toward the end of last year in the other place. I think the government has had available to it at least three occasions to bring this bill on for debate and passage. I am a little curious about what the delay has been. I mentioned last time that there was an opportunity to deal with this bill before the house rose in December last year. We could have dealt with it if we had come back earlier than March or before we rose to take our winter recess.

That notwithstanding, I outline to the house that this bill continues the work that was initiated by the Barnett government in 2014, which sought to adapt the model act to circumstances befitting Western Australia's mining environment. Before I commence my main contribution, I note that in the second reading speech for the Mines Safety and Inspection Amendment Bill 2017 the minister claimed —

> Increasing penalty levels in the MSI act will ensure that Western Australia's penalties for the mining industry are consistent with most other Australian jurisdictions.

"Most other Australian jurisdictions" is an interesting turn of phrase. It neither relates to all Australian jurisdictions nor refers to those that have significant mineral extraction industries of their own. I thought that would be the valid point of comparison. It is a slightly pedantic point, but I think that a more appropriate comparison would not be with the penalty regimen that applies across Australia, but that applies like for like in larger mining jurisdictions such as Queensland, New South Wales—to some degree—and South Australia. I mention this because I am trying to get a sense of consistency with the national effort. I understand that Queensland operates a penalty regimen that is largely unchanged since 1999 and that New South Wales, although it acts under a national harmonisation framework, operates a specific act and regulatory regime for coalmining. I find that comparison interesting because I think those kinds of distinctions are not trivial. Quite obviously, an open-pit goldmine differs significantly from an underground goldmine, which itself differs from the environment and processes that apply at an alumina refinery. We are dealing with a diversity of mining activity, yet we have effectively a blanket penalty regime. There are probably good reasons for that, but it is worth exploring the differences at the level of mine activity. There is a great diversity in that activity and that is reflected in the diversity of injuries and fatalities that occur across the length and breadth of different kinds of mining activity. It is worth dwelling on it. I refer to an excellent 2016 report produced by the Department of Mines, Industry Regulation and Safety. With some indulgence, I will address some of the issues raised in that report, titled "Safety Performance in the Western Australian Mineral Industry: Accident and Industry Statistics 2016–17", and in particular what appendices B to P of this report reveal. By far and away, the mining activity that contributes to the largest percentage or proportion of injuries is the bauxite and alumina industry, together contributing up to 25 per cent of all injuries registered in that year, 2016–17. That was followed by the gold industry, then iron ore and nickel. That said, although iron ore contributed to something like 21 per cent or 22 per cent of injuries overall, it contributed to the greatest proportion of days lost—there are some interesting comparisons between different sectors and the implications drawn from that—and injuries sustained in an iron ore operation, at least in 2016–17, were more likely to lead to longer time-off-work recuperation, which I find an interesting observation.

Again, there are differences in which parts of the body are injured—that is not trivial—and differences across operations. I draw members' attention, if they are interested, to rates of injuries in underground goldmining. Different parts of the body are affected and there are differences in the location of accidents. For example, in underground goldmining, the part of the body most likely to be injured is the hand, followed by the knee and then the ankle. The location of that accident is more likely to occur in the production or development side rather than in the access and haulage arrangements that take part after extraction. There are differences and a diversity of injury and, unfortunately, fatality. By virtue of this very simple update to a penalty regimen, we are effectively dealing with a blanket being put across the whole industry, and that is slightly simplistic. This report also points to differences in the incidence of accidents or injury as a function of how long a person has been in the industry, what their level of training is and at what part or on what day of the shift cycle they are on—apparently the fifth day of the shift cycle is peak time for accidents. That is nontrivial to the people involved, but these kinds of complexities are obviously beyond the remit of this kind of bill, but if we are going to be serious about ensuring world's best practice in our safety regime and having a penalty regimen that reflects community expectations, at some stage we need to countenance these variables. This is something that this bill does not do. Is it germane to this bill? Probably not, but I want to make that kind of

observation. It gets to a more important point and it is a point beyond merely sending signals. How serious do we get? Is an update to a penalty schedule likely to have a real world impact and improve the safety of men and women in the field? That should compel our attention—I think it actually compels the attention of everyone here—but I do not think that the Occupational Safety and Health Amendment Bill 2017 necessarily contributes in a substantial way towards that end. That is the point that I would make.

I reiterate that the opposition supports the proposed increase to penalties, which will increase to the applicable levels contained within the commonwealth Work Health and Safety Accreditation Scheme as they were determined in 2010. We are eight years down the process, which is why I did not make gratuitous observations about where this bill has appeared on the notice paper. This bill is about updating the penalty schedule from 2010 and adding indexation in the process. We have probably added another eight months to that process compared with when the bill was read into the other house and when it came to this chamber. I am not here to make a gratuitous observation. If the whole purpose of this bill is to update the penalty schedule, we are eight months behind updating what the government was attempting to update.

Hon Kyle McGinn interjected.

Hon TJORN SIBMA: Nevertheless, the work has been started. Hon Kyle McGinn will have his opportunity and I am sure that he will take it up.

Although we support this bill and the very obvious setting that the penalty regime should reflect social and economic expectations, and although an appropriate penalty regime is essential in any mature workplace, I do not necessarily agree with the proposition—it has not been put, but is implied—that this is all we need to do. Updating a penalty schedule is a necessary but not sufficient component in improving safety performance across the board. That said, I diverge into my questions and curiosities, of which I had to remind myself by looking back at my notes because the briefing I had was some months back. The questions I will pose—I look forward to the Minister for Regional Development's contribution—are not that dissimilar to those posed by my colleague Hon Michael Mischin about the other bill that we are discussing. There are four or five questions that I would like the minister to answer if it is possible. I am interested in seeing the trends in injury and fatality rates in Western Australian mining operations over the last 30 years as a function of the level of overall mining activity and as a function of the relevant legislative and regulatory framework that applied over that time.

Hon Alannah MacTiernan: What time period would you like? This is obviously quite a complex piece of work that you're asking us to deliver.

Hon TJORN SIBMA: I will accept best endeavours, minister, but I am sure that if sufficient thought and care has been placed into the bill, these kinds of fundamental considerations would be somewhere in the department and may be retrievable. I will accept best endeavours. I just want to make the point that if we are serious about these issues, that kind of statistical information should be available to us. What I am more interested in is how the safety performance in the Western Australian jurisdiction compares with other Australian jurisdictions that have a high level of mining activity. I refer to Queensland as an example. Are there any differences in performance and can those differences, if they are not trivial, be linked back to the kind of safety regimen and penalty schedule that applies in each of those jurisdictions? If, in the explanatory memorandum, the government is claiming, "We're updating this to reflect the majority of Australian jurisdictions", that is well and good, but should we be aspiring to a level of safety that is evident in another Australian jurisdiction, one that will be arrived at as a virtue of the revisions to these penalties? I am just interested. That leads to this point: up to this point, I have been unclear about the differences in penalties in Western Australia compared with those in other mining jurisdictions. I have sought that information. It has come to me in a variety of different formats. Are we that far behind Queensland, for example? We could also make a broad comparison between underground coalmining operations in New South Wales and underground goldmining operations in Western Australia. This next question is not dissimilar to the questions posed by Hon Michael Mischin on the Occupational Safety and Health Amendment Bill: with respect to the revision of penalties, can the government provide us with evidence or a case history of penalties being delivered to a company that have been manifestly inadequate or out of step with community expectations? That is a legitimate question. Is there evidence to identify that we have a serious problem here? If, indeed, there is a serious problem, has that deficiency in sentencing been a consequence of limitations of the act or a matter of judicial discretion? This is what we are trying to contemplate. If we are effectively grossing up the penalty regime, are we to be in any way satisfied that the maxima that will apply under this schedule will be enacted by way of a court decision? This might seem a somewhat curious question to put, because implicit through this is that the legislation seems to target the employer—the employing authority—which I think is a fair assumption to make, but at how many levels does this apply? Does it apply to individual responsibility—that is, of a worker, work gang or shift supervisor? I am making the assumption that this is completely targeted at the employer. That is a fair assumption to make, but I think that overly simplifies what can be a complex set of interactions. These are basic questions; I am just interested in feedback.

The reason I mentioned case law earlier is that on 2 March this year, Central Norseman Gold Corporation was fined $140 000 in the Perth Magistrate's Court following the death of a worker at the company's Harlequin goldmine near Norseman in 2014. Machine operator Mr Malcolm Wayne Fowlie was working underground in the mine on 15 February 2014 when he was caught underneath an 18-tonne rockfall. Mr Fowlie was found deceased by his co-workers. I am led to believe that the underground tunnel where Mr Fowlie was working was meant to have ground control in place to prevent a rockfall; however, the ground control that was installed was insufficient to prevent that rockfall. In pleading guilty, the company admitted that it had failed to install adequate ground control in the tunnel where the unfortunate Mr Fowlie had been working. I sought some advice through the minister's office about this case and how the increase in the penalty schedule might apply in a case such as this. This is where the rubber hits the road. I am advised that as a section 9 breach of the act, and as this was a subsequent offence, pursuant to section 4A(3)(b)(ii) the court could have applied a fine of up to $500 000. Instead, a $140 000 fine was applied. The maximum penalty was three times the penalty applied. Very clearly, the actual financial penalty borne by that company—maybe there was some mitigation—which pled guilty to effectively contributing to Mr Fowlie's death, was not the maximum amount. This schedule will increase all the maxima; it takes 10 years of static penalties, grosses them and then adds some indexation. That is what it does. Are we, therefore, to believe that these schedules will apply in future cases that are similar to the unfortunate case of Mr Fowlie? That is the question before us. The $140 000 penalty that was applied, the $500 000 penalty that may have been applied or even the $2.5 million penalty that I am advised could apply under the revised penalty schedule before us, would never bring Mr Fowlie back. None of those penalties would provide comfort to his loved ones, his friends, his family and his workmates. However, these are the kinds of incidents that we in this chamber are all committed to avoiding. What has been put in front of us is that effectively a revision to the penalties schedule will arrive at that outcome. Maybe I have been poorly advised, but I doubt it. I would be particularly keen to know what could have happened in the case of Mr Fowlie under these revised fines.

Of course, this is neither an abstract nor an esoteric consideration. We had at least two other—I hesitate to use this phraseology—higher profile deaths this year. I acknowledge the passing of Mr Neville Bentley at Griffin Coal's Ewington mine on 26 April this year and the very recent passing of Mr Daniel Patterson at Paraburdoo on 15 August, just a couple of weeks ago. Again, I take this opportunity to convey our condolences to their families, friends and workmates. I acknowledge that both these fatalities are under investigation, but I would be very interested to know—I think the chamber would also be interested to know—how what is proposed in this bill might apply to cases such as these.

Hon Kyle McGinn: It is a bit hard to do when those cases are under investigation.

Hon TJORN SIBMA: The point is that this legislation is drafted completely to deal with cases such as these. I mention those incidents observationally, because they are current. I do not ask for reflections on those cases. That would be inappropriate. However, it is put before this house that the government is sending a strong signal to the community about its commitment to workplace safety and it is doing so by virtue of revising the schedule of fines. I think that that was effectively the tagline at the end of the second reading speech. We are asked to examine whether that claim is held up by what is posed here, because we are dealing with issues of great consequence and great trauma that involve serious injury and fatality in a very dangerous and complex working environment. I think that as legislators we sometimes have to concede that although we may do our level best to send appropriate signals and to design a system that ensures that breaches of the legislation are dealt with properly, there are limits to its effectiveness—irrespective of whether it is fine motivation—and to what we can achieve in real time.

I put it to this chamber that if I can make one observation about the improvements—there is always scope for additional improvement—in the lost time injury frequency rate and fatality rate in Western Australia's mining operations over the last 30 years, irrespective of some volatility year on year, it is that it is trending down; it is going in the right direction.

Hon Adele Farina: You need to look behind it.

Hon TJORN SIBMA: That is an appropriate interjection, because my whole premise is that we need to be reassured about what is going on behind the scene. I expect that my observations about that may differ from other members, but I say this: I think that it is largely driven by technology advancement. It is also driven at the level of culture within the companies concerned. There will be disputation about that, but that is my observation and my experience. The evolution of the mining ecosystem by virtue of technological advancement is driving a new complex set of human machine and organisational interactions. There is no doubt about that. That kind of interaction comes with not only its challenges, but also some benefits, and I think that that is leading to improved safety outcomes and can lead to improved environmental outcomes as well. I think that safety is so embedded now in organisational culture—I can tell people will disagree with me —

Hon Kyle McGinn interjected.

Hon TJORN SIBMA: I respectfully disagree with that. I think that safety culture in the larger miners now looms large in all their considerations and it is not an adjunct to their other motivations.

Hon Alison Xamon: Look at construction.

Hon TJORN SIBMA: I know different observations can be made about the construction industry; I am just tailoring my remarks to the Mines Safety and Inspection Amendment Bill.

Hon Kyle McGinn: This is a mining industry bill.

Hon TJORN SIBMA: We might say this, but I think we need to deal with this seriously. As Hon Adele Farina interjected constructively, we want to look behind these numbers. The trendline is going down and that is reflected in reports put out by what used to be the resources safety division of the then Department of Mines and Petroleum, now the Department of Mines, Industry Regulation and Safety—I find it hard to keep up to date with the changes in nomenclature that have arisen from the machinery-of-government changes. But the trend is down and we might ask why that is. I put it to members that it is possibly not because of the changes proposed in this bill. I do not mean to sound flippant or facetious when I say that. Obviously, a legislative regime has an impact, but this trendline, which has come down while the number of people employed in the mining industry effectively trebled in 10 years and mining activity increased exponentially, merits some serious consideration. Why would we have a trendline of injury rates and fatality rates falling and mining activity exponentially increasing while this outdated penalty regime has been applying? Sometimes it can be sobering to say that we are not masters of the universe in this place, that there are factors outside our control that drive performance, and that is why I say that culture and technological improvement have contributed probably more to mining safety outcomes over the last 20 or 30 years.

Hon Alannah MacTiernan: Member, will you take an interjection?

Hon TJORN SIBMA: Absolutely.

Hon Alannah MacTiernan: I agree with your proposition about culture and that culture has changed, but that change in culture did not occur in a vacuum.

Hon TJORN SIBMA: Nothing does.

Hon Alannah MacTiernan: So what do you think happened?

Hon TJORN SIBMA: We can all share a claim, minister. But I will say this: over the last 10 to 20 years, and evidenced particularly over the last 10 years, during peak activity, performance in safety has been driven by technology and by company culture, not by legislation. That is notwithstanding the proud and storied history of the Labor Party and its industrial wing. I do not come in here as a union antagonist. I used to be a member of a union—the shoppies union—a long time ago. There you go, Hon Martin Pritchard! I give a nod to Madam President as well.

The PRESIDENT: We must have let that one slip through!

Hon TJORN SIBMA: There you go! I got through preselection all right—right-wing union.

The point is that there are limits to what can be achieved by virtue of legislation like this. We support it, but I think we need to take a breath. If the government is going to make some very brave claims as taglines at the end of explanatory memoranda or second reading speeches to say that it is sending a signal to the Western Australian community that it takes worker safety really seriously and makes the assertion that every worker deserves to return home safe to their family at night, that is obvious. That is a sentiment shared by everyone. I put it to members that this kind of legislation does not necessarily contribute in a significant way toward that outcome. I get a little concerned when—I do not think it was intended—there is this imputation or reflection that one side of politics values human life more than any other side of politics. I will not accept that; I will never accept that. These little adjuncts to paragraphs at the end of second reading speeches and explanatory memoranda do not befit this legislation. With all that said, I will sit down.

HON ALISON XAMON (North Metropolitan) [2.36 pm]: I rise as the lead speaker for the Greens on the Occupational Safety and Health Amendment Bill 2017 and the Mines Safety and Inspection Amendment Bill 2017, which are being dealt with cognately. These fairly straightforward bills that we are debating today will increase the penalties for offences under both the Occupational Safety and Health Act 1984 and the Mines Safety and Inspection Act 1994 to better align with the penalties in the model Work Health and Safety Act, including a further increase for inflation since 2010. We have waited a very long time—far too long, I would suggest—to have these particular amendments presented to us. On that comment, I think it has taken too long for this government to bring on these bills, but I am not going to excuse the fact that the previous government did not bring them on at all. I am glad that we are finally dealing with them now, and not before time.

The Greens have long fought for better protections for workers and we support measures such as these, which we maintain will clearly progress this aim. I note that the increase in penalties is an interim measure until the

Ministerial Advisory Panel on Work Health and Safety Reform completes the work it is doing on the new WA work health and safety bill. I note from public briefings on that process that we are looking at a far more comprehensive set of reforms that this chamber will potentially have the opportunity to debate at about this time next year. I am pleased that the process being undertaken seems to be quite comprehensive. I note that the scope of the new legislation is considerable. I say at the outset that I hope that the regulations proposed to sit under the new legislation can be completed and produced for scrutiny, hopefully, simultaneously with when that bill is proposed. I think a lot of the detail will be within that regulatory framework, and that will help to give us some clear idea of what is being proposed. In any event, the delay to date in adopting the model legislation was completely unacceptable. Western Australian workers are currently at a disadvantage compared with the rest of the country, bar Victoria. We are pleased that this government is at least expediting the process.

The Occupational Safety and Health Amendment Bill 2017 and the Mines Safety and Inspection Amendment Bill 2017 will increase all penalties for offences under their respective acts, but will retain the current maximum penalties that can be imposed for offences under the regulations. The bills make no other changes to the current acts; they relate only to the issue of penalties. The current acts contain four levels of penalty, based on the type and severity of the offence, from lowest to highest. Level 1 is a breach of the acts, excluding general duty provisions or regulations. Level 2 is a breach of the general duty provisions of the acts that do not result in serious harm or death. Level 3 is a breach of the general duty provisions of the acts that result in serious harm or death. Level 4 is a breach of the general duty provisions of the acts in circumstances of gross negligence that result in serious harm or death.

General duties are the broad duties of care. For example, they are about providing and maintaining workplaces, plant and work systems that, insofar as practical, prevent employees from being exposed to hazards, and providing information, instructions, training and supervision of employees so that they are not exposed to hazards, and consult and cooperate with any safety and health representatives and other employees on occupational safety and health. If it is determined that hazards cannot practicably be avoided, employees must have free personal protective clothing and equipment. Employers must ensure, insofar as practical, that methods for the use, cleaning, maintenance, transportation and disposal of plant, and the use, handling, processing, storage, transportation and disposal of substances do not expose employees to hazards.

Under the Occupational Safety and Health Amendment Bill 2017, level 1 penalties will be aligned to category 3. They will increase by 14 per cent to reflect consumer price index increases since the model act. I take the previous member's point that since this bill was first read in in this place, it could well be that we are already behind in the CPI increase. It will also be rounded up. Level 2 will align to category 2, and will also be increased by 14 per cent and rounded up. Level 4 aligns to category 1, and will also be increased by 14 per cent and then rounded up. The period of imprisonment will also increase. Level 3 will align to a point midway between categories 1 and 2, and will be increased by 14 per cent and rounded up.

The current model Work Health and Safety Act does not have different penalties for first and subsequent offences. The Occupational Safety and Health Amendment Bill 2017 deals with that by aligning the model work health and safety penalty to the act's subsequent offences penalty. The first offence penalty is set at 80 per cent of that figure. The current act also contains some other penalties not set by the level, such as breaches of duty by employees and the duty to report certain things, the duty to provide certain information to safety and health representatives, and continuing offences. These penalties have been quadrupled to the same as a level 1 first individual offence under the act.

All the penalties in the Occupational Safety and Health Amendment Bill 2017 are maximum, not mandatory, penalties. As usual, the sentencing court will be able to exercise its discretion on the penalty in each case before it. The sentence imposed may well be lower than the penalty in the bill if the magistrate is of the opinion that that is how justice will best be served; the bill just increases the maximum. But over time increasing penalties will probably push up the sentence imposed.

I will provide a bit of background on how we came to where we are today. In 2011, Safe Work Australia developed a model Work Health and Safety Act under the Inter-governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety. The idea at the time was to harmonise work health and safety in all jurisdictions. Other Australian jurisdictions—apart from Queensland and Victoria, which have implemented it only to general industry—have already implemented their versions of the model Work Health and Safety Act for their mining industries in particular. There are some differences in penalties between the jurisdictions.

I note that the former government was developing a work health safety (resources and major hazards) bill. The provisions were the subject of a decision regulatory impact statement and were discussed extensively at the time with stakeholders. However, that bill did not reach Parliament before the end of the thirty-ninth term. As I have said, the current government, through its Ministerial Advisory Panel on Work Health and Safety Reform, is

developing a work health and safety bill. It is a single bill for Western Australia that is going to amalgamate the general industries as well as the resources sector with regulations for specific industries. In the meantime, while that important work is being undertaken, current penalties in the Mines Safety and Inspection Act still have not increased since 2004 and are considered to need updating. That is because we need to increase the incentive to comply with workplace safety laws to ensure that penalties meet community expectations. I do not think we should underestimate how critical that component is. I speak frequently with families of workers who have been seriously injured or killed and they express to me their extreme distress at how poor the penalties are and how they feel it is a slap in the face for their families and the memories of their loved ones. It is essential to highlight the importance of maintaining a safe workplace and I think it is really critical that we ensure that we are consistent with other Australian jurisdictions.

Aside from the penalties in the act, there is a process called an enforceable undertaking. Instead of an offender paying a fine for minor offences in circumstances in which no-one was harmed, a court can, at its discretion, allow the offender to undertake specific actions aimed at improving occupational health and safety. The cost generally corresponds to the fine that would otherwise apply. A breach of the undertaking attracts both the original penalty plus an extra penalty for noncompliance with the undertaking. I note that there is currently a proposed amendment to the bill in front of us and I say very clearly that the Greens are big fans of enforceable undertakings. In fact, when I introduced my piece of legislation back in the thirty-eighth Parliament to amend the Occupational Safety and Health Act, I included enforceable undertakings because they are a very, very useful tool to assist in creating safer workplaces. They are particularly effective for smaller workplaces where it does not augur well to impose a penalty that will effectively mean that workers could potentially lose their jobs; it may not serve any purpose to shut down an entire workplace. Although I am very supportive of enforceable undertakings, and the government is currently contemplating them in the proposed new laws, I am not sure whether its amendment sits within the scope of this bill. I am aware that advice will need to be provided about whether the amendment can be contemplated within the scope of this bill, even though the Greens are very supportive of the principle of enforceable undertakings.

It is really important that we introduce increased penalties for breaches of occupational safety and health matters. They are still an incredibly important issue in Western Australia. On average, one person is fatally injured in a Western Australian workplace every 19 days. People are still dying at work. We in this place need to remember that, tragically, this number has remained relatively stable over the last 16 years. In 2016, which are the most recent figures that we have, 20 people lost their lives at work. That number is worse than the long-term average. Given the lack of progress we have made on reducing the number of workplace fatalities, it is clear to me that reform in this space is critically needed.

Penalties are certainly one part of an effective safety and health system, although, of course, more can always be done. Whenever the issue of penalties comes up, I hear from certain sectors of the community—most notably the Chamber of Commerce and Industry of Western Australia—concerns about what they refer to as the stick approach to occupational health and safety. They say overtly that we need to focus on the carrot by providing incentives to create safe workplaces. I would respond by saying that although occupational health and safety certainly benefits from the carrot approach, we need the stick as well. We need the classic carrot and stick approach.

The member who has just spoken referred to the importance of culture in creating safe workplaces. I could not agree more. One way in which the culture around workplace safety can be improved is by increasing the penalties that will apply if a safe workplace is not provided. I note that in the mining industry, for example, the cultural regime around workplace safety has improved markedly, although we are still not there yet. However, that is not the case in other industries. I single out in particular the construction industry, in which there are far too many incidents that could, and should, be easily avoided. People should not be killed at their workplace. The reality is that for many industries, workplace safety is a very serious and real matter, and much work still remains to be done.

A number of voices in both this place and the other place often carry on about the more militant unions, in particular the Maritime Union of Australia and the Construction, Forestry, Mining and Energy Union, and suggest that those unions do not play any sort of productive role within our workplace culture. I would argue that the exact opposite is the case. The hard work of those unions and of their members in standing up for their rights has ensured that some progress has been made on workplace safety. Our wharves have historically been dangerous places in which to work. I am glad that the MUA has done so much work to ensure that the wharves are now much safer. However, there is still a long way to go. It is a constant battle, particularly because of the competition among employers in pursuit of profit. Therefore, it is critical that unions are able to continue to do that work.

I have said previously in this place that the sorts of penalties we are contemplating today are only one part of the approach that we need to take on this issue. I remind members again that industrial manslaughter legislation is another key strategy for increasing safety, and I am hoping that we will eventually bring it into law in this state. Members will recall that, in June last year, I introduced a bill to include the offence of industrial manslaughter in the Criminal Code, and to ensure that the penalties for this offence mirrored the existing manslaughter provisions.

Passage of the Criminal Code Amendment (Industrial Manslaughter) Bill 2017 would mean that senior managers could be liable if they knowingly make decisions that allow unsafe workplaces to exist, and those decisions ultimately result in fatalities. That would mean that those senior officers could be prosecuted. I note that the need for the introduction of criminal offences to improve workplace health and safety, and their role as deterrents, was identified in the "National Review into Model Occupational Health and Safety Laws: First Report" as far back as 2008. That review found that making noncompliance with duty of care a criminal offence not only reflects the seriousness with which such conduct is regarded, but also reinforces the provision's deterrent effect. Importantly, industrial manslaughter in the Criminal Code is just one component, and other elements could be considered. The bill I have in front of the Parliament at the moment includes such elements as adverse publicity orders, orders for restoration, work health and safety project orders, occupational health and safety undertakings, injunctions and training orders. This suite of penalties could be applied in addition to the increased penalties we are talking about today. This would not only mean that employers are accountable by way of penalties, but also require them to make changes to their workplaces to ensure that they are safer.

I will also make a point about the importance of adequately resourcing our inspectors to ensure compliance, noting that Parliament is currently conducting an inquiry into the resourcing of WorkSafe. Stronger penalties will be truly effective only if WorkSafe is adequately resourced to investigate work accidents and breaches of the law, as part of the new department. We know that the previous government slashed the number of workplace inspectors by almost 10 per cent, along with other support positions, which further diminished the capacity of inspectors to do their jobs effectively. We will need to see some significant turnaround in the resourcing of these areas.

On that note, I again confirm that the Greens absolutely support these two bills. Western Australia has a lot of catching up to do in occupational health and safety. I look forward to seeing the government's new bill, hopefully next year, and I hope we can simultaneously look at the proposed regulations, so that we can see the entire package that is being proposed. I also look forward to seeing the government back up its legislative changes with increased funding to ensure that the legislation is able to be implemented well, and I hope that this government decides to be serious about other pieces of legislation, such as my bill, and gives them due consideration, so that we can ensure that we have some of the safest workplaces, if not the safest workplaces, in the country.

HON KYLE McGINN (Mining and Pastoral) [2.59 pm]: I rise very happily today to speak on the Occupational Safety and Health Amendment Bill 2017 and the Mines Safety and Inspection Amendment Bill 2017, and show my support for them. It has been interesting listening to some of the debate, in particular the references to safety culture and the changes. When I hear these types of conversations, I reflect on my experience in the industry, and what I have seen. As Hon Alison Xamon pointed out, the Maritime Union of Australia has worked very hard in that space, and I am proud to say that I was an organiser for the MUA before entering Parliament.

When I first went offshore to work on rigs in the oil and gas industry, before a person joined a ship or went on a vessel, they would go through rigorous inductions. The entire crew could spend an entire day inside a hotel, basically getting the full rundown of policies and procedures, the company's safety record and how safety is number one—how safety is the most important thing. One of the things I found quite interesting was, in my experience, that they would always say that safety comes before productivity, but whenever I got onto a job, I found out very quickly that that is the complete opposite to what takes place on the ground. I heard it loud and clear in many circumstances.

There was a severe disaster in the offshore oil and gas industry in 1988 on the *Piper Alpha*. There was a massive explosion and so many things went wrong. That incident could have been prevented, but it was not. It resulted in 167 deaths. A major overhaul of safety procedures took place in the offshore oil and gas industry. Job hazard analyses, toolbox talks and all that stuff were injected into the industry. However, when people get out onto a job, they are battling to see safety equipment put on board a ship. We would have arguments about getting new overalls or more safety glasses, because not everyone had them, or about not having adequate hearing protection because it was too loud and above the level of Australian standards. But the job went on; it did not stop. We were told the reason these things were not being addressed was that they were too expensive. We were told that the cost did not justify the expenditure. To me, it is an absolute disgrace that companies would preach one thing, but when people got out to the job another thing happened.

In my maiden speech, I spoke about the two fatalities on the *Stena Clyde*. For that case, I can say hand on heart that safety issues were raised around what was happening in the procedure to try to unstick the drill from the hole. The issues were raised by a crew but they were not brought to the attention of the crew that then performed the task. That was because it was important for them to get back to production as quickly as they could.

When I went up to the north west and started being an organiser for the Maritime Union of Australia from Port Hedland down to Exmouth, the next thing that really got me around safety was how there seemed to be a different standard for directly employed employees compared with labour hire employees. When labour hire and

third party contractors go in to perform a role, I believe they have a lot more fear and are subject to a lot more scrutiny from employers. They are also not in the great position of being able to go home each night knowing that they will return to the job the next day. In my opinion, employers will always react when something hits their back pocket. During 2014 and 2015 when a lot of work was still happening in the Pilbara, I saw a lot of fear about raising safety issues from people in labour hire companies. I would have union meetings where members would say, "This is happening and it's unsafe." I would tell them they were protected under the Occupational Safety and Health Act and that they should raise it with their health and safety representative, and go through the process. They would tell me, "If I do that, I won't come back, because Bill, Ben and Harry did it and they're not working here anymore." That was not a one-off thing; it happened at almost every single site I looked after in the Pilbara. There were also employees who took their safety seriously and thought, "Bugger it; I'm going to put up my hand and have a go." I saw circumstances in which health and safety representatives were let go after raising safety issues or putting up provisional improvement notices. They were supposed to be protected by the act. We went into enterprise bargaining agreement negotiations and issues with the rostering system meant people were working too many hours and they had fatigue management issues, but when we raised it with employers, we would be told, "It's too expensive; it's never going to happen." They said the cost to change it would be too expensive. We did not have a conversation around the fact that employees had worked 21 days straight on 12 to 14-hour shifts, and wondered whether there was a fatigue issue having them on a crane, swinging loads across a bunch of other employees. That is not to mention spotters being taken away, which meant that with reduced manning, there was less likelihood of picking up hazards. It was cheaper because the company did not have to pay five people; it had to pay only four people. Every time I raised an issue with an employer about safety and improvements, there was always the reaction that it would cost too much. That is an insult to the Occupational Safety and Health Act and to the employees who work in those work places.

I believe the McGowan government and the second reading speech comments referred to by Hon Tjorn Sibma, which are as follows —

> … increased penalties will provide a real incentive to comply with workplace safety laws. They send a clear message about the importance of maintaining a safe workplace.

Yes, they do, because I can tell members that over the last eight years there has been no message to workers saying, "We're backing you in, and we're going to fix these issues and make sure that injuries and more fatalities do not happen in these workplaces." People can tell me that statistics show that the number of reported injuries has reduced and that there have not been as many lost time injuries as we have seen in the past. On the *Stena Clyde*, we had seven years without a lost time injury. Each time we hit 12 months, guess what? We all got a prize. But I can tell members now that they were the walking wounded on that rig. I was one of them when I nearly chopped off my finger and was told by the offshore installation manager that I could tough it out for a week, otherwise it would wreck their seven-year LTI-free standard. What a shame that that sort of stuff happens. They then used the LTI-free mantra to tender for jobs. In most of the workplaces I encountered, I would see a stevedore whose job was to hook up and lash loads, with an injured wrist and their wrist strapped up, pushing paper in the administration building. It was not counted as a lost time injury because they were in the office; it was nonetheless an injury. Where was that reported? Where is it recorded that an injury occurred when they were lifting cargo? Hang on! It was not a lost time injury, so it did not count. Statistics will show a reduction, meanwhile the walking wounded labourers are pushing paper. It is amazing to hear that workplace culture has changed. Do I agree that safety is better than it was 100 years ago? Yes, of course, but so it should be, and it needs to be better.

Another sad incident took place while I was an organiser for the Maritime Union of Australia. An incident occurred on a Scandinavian ship in which a seafarer, Andrew Kelly, rest in peace, lost his life. He was on a ship in rough seas and the ship was directed to do cargo work. The ship went in to do the cargo work, but it was called off. As it was heading out, people say that a freak wave came through, but with a big swell, big waves happen. To call it a freak wave is an insult. I think it was a wave that came with the swell of the day. The back of the ship came up, a container flew down the ship and ended up crushing Andy in against a skip bin. When the ship came in and I went there with a counsellor for the members on that job, there was chaos. We saw regulators on board the ship working as fast as they could and the chief executive officer of the company walked on. My members downstairs, who were distraught, were getting assistance, and the CEO said, "We need to sail the ship; we need to take the ship away from the wharf." All the support and things needed for the investigation right alongside the wharf are critical, particularly until the investigation is finished. The guys were distraught and clearly in no state of mind to be working, but the CEO said that they had to sail the ship and that was the direction. To the workers' credit, we had a chat and they said, "There's not a chance that we'll sail this ship away from the port; it is not happening." I swear to members right now that the blood from Andrew Kelly was still on the back deck. The CEO was down there with a broom and a bucket. The investigation had not even been completed, yet he wanted to move out of the port. It was costing him money to have the ship alongside the port and he knew that the union had access to the ship while it was there. That is the gall that companies have. That is the culture that we see employers have

today: get in, get out, get on with the job, get back out there into the ocean and get productivity moving. It is an absolute insult.

When looking at the crux of these two bills, I genuinely believe that it is a real attempt to say to employers that we are coming. We should have considered this legislation in 2010, 2011, 2012 and all the way through to now. We saw nothing in eight years. Now we are trying to get the bills through and members opposite say that eight months is a little long. We waited for eight years and the former government did not put any legislation on the table! Workers waited to hear something out of the Liberal–National government and they got nothing.

I commend these bills to the house. I genuinely believe that we will see some improvements. If not, employers will start to understand that there is a cost to not taking safety seriously.

The DEPUTY PRESIDENT: The question is that the bills be read a second time. I give the call to the honourable um—Hon Matthew Swinbourn! Welcome back.

HON MATTHEW SWINBOURN (East Metropolitan) [3.10 pm]: Thank you, Mr Deputy President. I have not been here for a week because I have been attending to urgent parliamentary business, so I am not surprised that we are not as familiar with each other as we were before!

I stand to support the Occupational Safety and Health Amendment Bill 2017 and the Mines Safety and Inspection Amendment Bill 2017. I endorse the comments of my colleague Hon Kyle McGinn and also reinforce his on-the-job experience in workplace safety. He has been there at the coalface, he has been there where this sort of disregard for safety occurs and he has been there when the system has been gamed. In my experience, lost time injuries are a farce in how they operate and the way they are used to justify improvements in safety because of the manner in which workers are required to perform tasks that they are not normally contracted to do.

The bills are not very long. They both include a table that will update the penalties. Perusing them once again, they are an indication of the seriousness with which the McGowan government takes workplace safety and breaches of workplace safety. It is important that in almost every element of legislation in which we seek to improve behaviour, we increase fines, penalties and those sorts of things to some degree. Hon Aaron Stonehouse does not agree with these sorts of things in general, or specifically in some circumstances, but in this instance it is very appropriate.

I reflect on the death of two workers on the Jaxon Construction site in East Perth. Those construction workers were taking a break, sitting on the footpath, when a truck with concrete panels on its side pulled up. As the concrete panels were being unloaded, it caused the truck to unbalance and one of the panels fell off and crushed those two workers to death. There was an investigation and a fine was handed out. I ask for the indulgence of the house to read from my computer an article that appeared in *The West Australian* quite recently—on Saturday, 14 July. The title of the article is "Perth worksite death fine 'an insult' to Gerard Bradley's family", and states —

> The family of an Irish worker killed on a Perth construction site say they feel insulted by the penalty handed to the company responsible for his death.
>
> Gerard Bradley, 29, was one of two workers crushed by heavy tilt-up panels that fell as they were being unloaded from a trailer at an East Perth construction site in November 2015.
>
> His devastated family in Northern Ireland this week described the $160,000 fine handed to transport company Axedale Holdings in May as a "slap in the face" and slammed laws protecting WA workers as weak.
>
> "We are reluctant to call it an accident because we feel an accident is only when you do everything in your power to make sure someone is safe," his brother Jon-Paul Bradley said.
>
> "We just don't understand why the law is so weak around worker safety …

The article goes on.

There are some arguments that increased fines do not bring back workers and do not deal with the heartache, but there is a call in the community for the government and the Parliament to take workers' safety more seriously and to send a message to the community and to those who are responsible for safety that we are all responsible for safety when we are working—from the worker through to the managers and the occupiers. It does not stop with the boss; everybody is responsible for safety. When workers die or are seriously injured, or when employers or occupiers fail in their duties, the fines that they will face will be serious and grave. When we talk about penalties, we talk about what they are intended to achieve. The purpose of a penalty—perhaps reflecting on my legal background—is both general and specific deterrence. It is general deterrence for the community and specific for the particular offender. A penalty is also punishment. Punishment is society's indication that when someone has done the wrong thing, it will be taken seriously. For a long time in this state, society has not sent a message to those who do not comply with the law on safety that we take it quite as seriously as we want to.

Let us compare that article from *The West Australian* on Saturday, 14 July with an article from *The Australian Financial Review* weekend edition on Saturday, 14 July that refers to the Fair Work Ombudsman's pursuit of a $3.5 million fine against the Maritime Union of Australia. Let us have a bit of balance here; the MUA has never been responsible for the death of a worker—it fights for workplace safety—yet it faces being pursued by the regulator and a fine of $3.5 million, but I do not think that a single employer, occupier or person responsible for safety who has been responsible for the death of a worker on a site in Western Australia has faced a fine of $3.5 million. We talk about proportion and messaging. I think that is a very clear message about how some aspects of our society think that fines should be high, but in other aspects that they should be considerably lower. I do not have a lot more to add, other than to say that I commend the bills to the house.

The DEPUTY PRESIDENT: Before I proceed with the question, members might like to examine again, to make it fresh in their minds, standing order 59, which relates to documents quoted in debate. The honourable member just now quoted from an article and referred to it from an online source. That seemed to be about an uncontroversial matter, so it is probably a good time, when there is no real point in dispute, to remind members of standing order 59. There is always the option under standing order 59 for another member to require that a document from which the honourable member has quoted be tabled, so it is always a good idea to have a hard copy available in case that arises. It has not arisen in this case, but it would be advisable; I think we had an occasion some weeks ago when this occurred. Another issue, of course, is for a quote to be recorded as a quote from a source in *Hansard*. Hansard will also ask to see a hard copy of the source to take away, so it can be recorded as a genuine quote, rather than something that a member has referred to as such. I am sure Hon Matthew Swinbourn already has copies printed off for those purposes; I am not singling him out in any way, shape or form. It is just a good example of an issue that can arise and one of the hazards in this day and age with these newfangled computers and things!

Hon Peter Collier: The website might not exist in five years.

The DEPUTY PRESIDENT: Actually, that is a good point. One of the real reasons for that, of course, is that websites change and dissolve from time to time. Be that as it may, the question is still that the bills be read a second time.

HON ROBIN SCOTT (Mining and Pastoral) [3.19 pm]: With my 30-plus years in the mining industry, I feel I have something to contribute to the cognate debate on the Occupational Safety and Health Amendment Bill 2017 and the Mines Safety and Inspection Amendment Bill 2017. Over the years, I have seen huge changes in safety culture and not all of them have been for the better. Raising penalties will not improve safety. In the mid-1980s every job had to be done with a job safety analysis or a job hazard analysis. Everybody had to sign these after they had read them, which had to be witnessed by the supervisor. Then a new breed of safety advisers arrived. They were all uni students who had just finished their training in occupational safety and health and most of them had never had a job prior to getting to a mine site. They all wanted to make their mark in their chosen profession, which is great because we all want to make sure that we are doing the best in any job we do, but they have created a monster in this field. One big change in the mid-80s was the change to wearing long pants and long sleeves due to the hole in the ozone layer. Prior to that, it was sunblock. You covered yourself with sunblock and you were fine. The ozone layer died a slow death. Then came global warming, which also died, and we now have climate change. One of the good things to come from these young occupational safety and health people was hi-vis work wear. I am quite confident that it has saved a lot of lives on mining sites.

How will penalties help? They will not. In the 80s you could walk out of a workshop and forget to put on your hard hat and somebody would yell out, "Johnny, you forgot your hard hat!" Red-faced, you would shuffle back to the workshop, put on your hard hat and carry on with the task. Today you would be sacked for that offence, as you would be if you walked out of the workshop without safety glasses or, if it was required, hearing protection. Even rolling up your sleeves could terminate your employment. I will give members a ridiculous example. Six tradespeople were travelling in a small mini-van on a mine site. One of them did not have a seatbelt on. At the inquiry, the safety officer decided that they had all contributed to violating the rules and all six of them lost their jobs. This puts more pressure on workers.

The sad part is that not one dollar from these increases in penalties will go to safety training. When I sent an employee to a site, I always reminded him that nobody was going to look after his safety except him. He was responsible for his safety and his safety alone. Modern-day site inductions give new starters a completely false sense of security. During the induction, they are told that they will work in a safe environment, but they will not. They should be told the dangers of the mine site and that they will be injured if they allow their safety consciousness to lapse, because nobody is looking after your safety on a mine site. Everyone will look out for your safety as soon as you make a mistake, but you have to make the mistake first because everyone else is too busy looking after their own job and trying to make sure that everything they do is safe. No matter how much paperwork is completed, it will not save your life.

Some people are just unwise. I will give members an example from my own small business. We employed an electrician from the construction industry to go to a mine site on a short two-week contract. After we flew him to the site, he had a three-hour induction. The supervisor showed him the task and he was told not to lean anything against a particular part of the structure because it was rusted. He was taken back to the workshop, where he completed his JSA, on which he wrote down as one of the steps not to lean anything against that part of the structure. One hour later he was on a Royal Flying Doctor Service flight to Perth with a busted wrist. The flight cost me $6 000. In case anyone thinks that the RFDS is a free taxi, it is not; it is a user-pays system. I had been invited to a mine site in Ontario, so I was in Canada at the time, but when I came back, I went to the hospital to visit this guy. His wrist had a full meccano set around it, which he had on for 15 months. He was on workers' compensation for 15 months and then he sued me for lack of supervision. I said to my insurance company, "We're going to fight this." It said, "No, it's out of your hands. Better to pay him out and get him off the books." That is exactly what happened.

The only job that I am aware of in which a person starts at the top is when they are digging a hole, yet these guys from occupational safety and health come straight from university to a mine site to lay down the rules for a safe workplace. The government is encouraging huge hikes in penalties. All this will do is put more stress on the employee. The employer will have to enforce the safety rules without the factor of commonsense. The employee should be able to go about his task without worrying about losing his job just because he forgot his hard hat, gloves or glasses, or forgot to roll down his sleeves after he had just washed his hands. If a person is doing something wrong or dangerous on a mine site, their co-workers will tell them immediately. They will say, "Stop doing that!"

Hon Kyle McGinn: What if the employer is doing something unsafe, member, at some place and it's just the employee who gets himself hurt?

Hon ROBIN SCOTT: Most of the time it is the employee who gets injured, not the employer.

Hon Kyle McGinn: What if the employer is condoning unsafe acts and they get penalised for that under this new bill? Would that not improve safety on site?

Hon ROBIN SCOTT: No, it would not.

Hon Kyle McGinn: It would not?

Hon ROBIN SCOTT: I am not against penalties. In fact, these penalties that the government is proposing should be minimum penalties, not maximum penalties. At the moment, the employer knows exactly what he is up for. The government should have minimum penalties. Fine them $100 million, I do not give a damn about that. I am more interested in providing a safe workplace, and a safe workplace starts with training.

Having safety police in the industry, whether in mining or industry, is not good for anyone. Lost time injuries and medical treatment injuries have decreased over the last 10 years, according to the site information. That is a load of rubbish. If a person cuts themselves and they have to go to the first-aid post, they can lose their job because the first thing the employer will say is, "How did you do this? If you've got a cut on your hand, why weren't you wearing gloves?" And as simple as that, they are gone and on the next flight back to Perth. It is easier to wrap some insulation tape around the hand or leg, if that is where the wound is, than to get professional treatment.

Training is the answer to safety. People are picked from various industries to pass down work experience to newcomers. People waiting to catch workers doing something wrong—on paperwork that has been signed without being read—will not save anyone. Nowadays, generic job safety analyses and job hazard analyses can go into a job file or be downloaded straight off a computer. It could be 10 pages long with step-by-step instructions of the job, but because they are now printed off the computer, nobody reads them; all they do is sign off on them. This is where most of the jobs are happening. We have to address that very quickly, otherwise a lot more people will get injured. If the government is hell-bent on increasing penalties, then please divert most or at least some of the money to experienced and commonsense safety personnel who know the job and tasks and have been working in the industry—people who will pull someone up and explain why they are doing it wrong and how they should do it right without the worry of that person being sacked. It would be much more conducive for companies to employ somebody and pay them, for example, $150 000 a year to walk around a site, check on different tasks and assist employees with their tasks. The government is closing the gate after the horse has bolted. Why not be more active in encouraging safety with more and better training? No, it is more important to threaten people's jobs and in the process grow the state's coffers! Remember, every single dollar that is generated from a fine or a penalty goes straight into consolidated revenue; nothing goes into safety.

If members have ever been pulled over by the police for speeding seven or eight kilometres above the limit and the police officer hands over a $100 fine—no points lost, just a $100 fine—they would know it ruins our whole day, whereas if that officer were to say to me, "You were speeding. This is why you shouldn't speed. I'm going to give you a caution. Don't do it again", I guarantee members that my driving will be consciously better from then

on. I will pay attention because I appreciate that somebody has taken the time to explain why I was doing it wrong and why I should not do it wrong. These penalties do nothing to encourage safety; they only generate dollars for the government. I often wonder whether a business case has been completed that shows the number of accidents prevented and lives saved. My One Nation colleagues and I will not be supporting these cognate bills.

HON SIMON O'BRIEN (South Metropolitan) [3.30 pm]: I know we are all looking forward to hearing the government response, so I shall be brief. As a former Minister for Commerce, among other things, my attention is always drawn to proposed changes to our occupational safety and health regime and so it was with the Occupational Safety and Health Amendment Bill 2017 and the Mines Safety and Inspection Amendment Bill 2017, which we are now considering. Members will be relieved to know that I do not propose to give the house a lecture about how general workplace occupational safety and health arrangements exist separately from our mining equivalents or anything like that. I am looking at a schedule which, for the reasons cited in the second reading speech, propose to adjust the penalties for sundry offences. We do not disagree with any of that and these bills will, in due course, be dealt with forthwith. I draw to members' attention a couple of contributions that have been made in the course of this second reading debate, which I have listened to quite intently. The reason that I opened my remarks by saying that I had a particular responsibility in this area is that mine might be a little different from some. In particular, I single out the contributions of Hon Robin Scott and Hon Kyle McGinn. Both members spoke from a point of view of practical experience, and I have always found that practical experience is a very good indicator of a mature understanding. I was not expecting in the course of the second reading debate on this bill that there would be so much from their particular viewpoint that I could marry together. Perhaps other members thought they were in disagreement, and perhaps one or both of them thought they were in disagreement with each other—perhaps in some ways they might have been—but I commend a lot in the comments of both. I hope that government observers, including officers, have regard for what they had to say because they both talked about the real world that exists outside of this place and outside of the endless reams of papers, reports, statistics and other things that sometimes do more to hinder than they do to help.

In particular, I would commend Hon Robin Scott's point of view to the government, as he sought to give a critique of the regime and its strengths and failings. If I were involved with the WorkSafe Western Australia Commissioner these days, I would be suggesting very strongly—I would not be directing, of course, because one must not direct the commissioner—that he sit down with Hon Robin Scott and others of similar experience, and perhaps some senior staff from WorkSafe, of which there is not an enormous number, to gain the benefit of his real world experience. I would not necessarily expect the commissioner to do everything Hon Robin Scott might suggest needs to be done but he could take on board the benefit of that advice, because I thought it was very compelling.

One thing I wanted to single out was Hon Robin Scott's reference to the statistics for lost time injury and medical treatment injury. That is when I really thought, "Hello, Hon Kyle McGinn and Hon Robin Scott are both having a look at what they are worth." Occasionally, of course, statistics of that sort are a valid indicator that we can use in the forming and moulding of public policy, but if we find out that they are not working in the way they should and that they are a pile of paperwork for their own sake, then perhaps someone who is living by it every day needs to ask the hard question: are we doing it the right way or should we do it a bit different? Hon Robin Scott talked about people saying, "Hang on, I'm an employee who has cut his hand. Do I risk losing my job because I haven't exercised due care and attention, or do I wrap it up and keep on going, so that there's no talk of MTIs or LTIs or 'you didn't wear your safety equipment; therefore, you have to be punished'?" That is not forgetting that if someone has cut their hand, they need proper attention for it. If the real-life outcome is not the one everyone agrees we are trying to achieve, then we perhaps need to have another look at it. I know these sorts of things will be picked up by the government and its advisers.

I know there is goodwill on the government benches and a strong empathy, as there is on this side of the house, with the subject of occupational safety and health. I recall when Hon Norman Moore was the Minister for Mines and he had control of that other aspect of occupational safety and health. He was concerned, both in private with me as well as in public forums, about there being no fatalities on any mine site on his watch. If there was a serious accident, he was very concerned about it. He had a lot of success in that area, if we rely on the statistics. Then again, there are statistics and there are statistics; it is a question of how we interpret what is really happening. Making sure that we have statistics that help us to interpret situations correctly is what really counts. Some real things have come out of this debate that I think will help advance the cause of occupational safety and health in this state, all of which go well beyond the simple amendments proposed here, which I think we all support.

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development) [3.39 pm] — in reply: I thank members for their contributions and I agree that it has been a very interesting debate on the Occupational Safety and Health Amendment Bill 2017 and the Mines Safety and Inspection Amendment Bill 2017. Like Hon Simon O'Brien, I thought it was particularly interesting to hear the contributions from Hon Kyle McGinn, Hon Robin Scott and Hon Matthew Swinbourn, who have some very detailed practical experience in this area. In a more general sense, it brings home to us how important it is to have a variety of life experiences coming to bear

in this Parliament. I very much appreciate that we have broad support in the house for the legislation. I understand that it will not be from all quarters, but, generally speaking, we have support.

I will try to go through some of the issues raised by various members. Hon Michael Mischin correctly identified that this is an interim step. This modest legislation will seek to modernise the penalties and align them with those in other states and the agreed general harmonisation principles at a commonwealth level. The Minister for Commerce and Industrial Relations is working on a much larger piece of work, which is the entire harmonisation of the work health and safety laws, and he hopes to introduce those into Parliament next year. In the meantime, it is important to start the process to increase the penalty regime, because in our view that is an important marker of taking this matter, the issue of occupational safety and health, more seriously. I will not necessarily go through the issues raised member by member, because we had a lot of overlap with people raising similar issues. If members can bear with me, I will try to talk in a more general sense.

A very interesting debate emerged about the role of these penalties in the creation of a culture. The contributions made today acknowledged that the matter of occupational safety and health has to be a deeply embedded cultural issue and that the penalty regime is a very important part of developing that culture. I know that Hon Michael Mischin was a bit cynical about the notion of sending the message to the community, but I refer the member to his media statement on 19 August 2016 in which he referred to the importance of tough laws to reduce the number of assaults against police. He commented that that legislation that had been introduced by his government had sent a message to the community. Therefore, quite clearly, the member understands that messages can be sent to the community through legislation. I am looking at some of the other legislation that the member introduced in which the increases in penalties were designed to change behaviour. For example, he said —

> Tough measures designed to force hardcore fine and infringement defaulters to pay their debts will be extended … across the State.

I could go through a range of those.

Hon Michael Mischin: I am sure you can, but they actually made changes to the law in a way that is not simply an increase in penalty.

Hon ALANNAH MacTIERNAN: Some of those, and particularly the first one that I referenced, were very much a situation of introducing tougher penalties. I want to reflect on the culture argument and the importance of a serious financial deterrent. Members should reflect on Hon Kyle McGinn's contribution. He was talking about the official policies of various companies that he has seen deliver inductions. They are all about, "Safety is our number one priority; safety is more important than productivity." But when the rubber hits the road on the job and there is a conflict, and, as in the analysis of Hon Kyle McGinn, it is a labour hire company that is facing a fair degree of vulnerability to the renewal of its contract, suddenly productivity very much comes before safety. That has been his experience and the experience of Hon Matthew Swinbourn. We know that it is important to ensure that it is more expensive to ignore the law than to comply with it. Increasing these penalties—they are significant increases in the penalties in this regime—will create a different level of risk assessment for those companies. A penalty of potentially $2.5 million rather than $500 000 adds to the order of risk. It ensures a greater commercial focus on addressing that risk, and it will feed directly into insurance premiums and, therefore, become part of the whole environment that encourages companies to far more closely focus on the bottom line of occupational health and safety.

I say to Hon Michael Mischin and Hon Tjorn Sibma, who asked those questions, that there is no magic formula here that putting 10 per cent more on the penalty will result in 10 per cent more compliance. There is nothing like that, as there was not in any of the many pieces of legislation introduced during the last government. However, in this particular case it is important to understand that a thorough process has been gone through—which Hon Michael Mischin was indeed a part of—and that is a process of trying to establish a roughly equivalent regime across the country. Indeed, that is what the government is seeking to implement—to provide a regime in which the value of the cost of making these errors and the cost of these safety failures is roughly equivalent across the nation and, indeed, are vast increments on the current regime. It is certainly a cause of some concern to working people in this state that at the moment the penalties in this state are much less than those in other states. In advance of this larger body of work that is being done to put in place the entire regime of occupational health and safety laws, we are attempting to address this particular matter.

Hon Tjorn Sibma reflected upon the delays. Yes, there has been some delay. We have had many important pieces of legislation. It could be argued that, ideally, we could have debated this legislation earlier and that maybe next year we will learn and sit 52 weeks of the year.

Hon Tjorn Sibma: I doubt it.

Hon ALANNAH MacTIERNAN: We will have 50 weeks, so members can have Easter and Christmas off!

Hon Michael Mischin: Is that what you need to get your legislation through?

Hon ALANNAH MacTIERNAN: I think we might have to do that in some cases.

Hon Tjorn Sibma is a very capable and reasonable person and I am sure he will be putting up his hand for the federal seat of Curtin and meeting his manifest destiny.

Hon Tjorn Sibma: I am one or two zeros short of that!

Hon ALANNAH MacTIERNAN: I have a couple of reflections. We have long had entrenched here a difference between the rules that apply in the mining industry and those that apply outside the mining industry. Quite frankly, that has been a cause of concern for many people over many years. The member is going out to lobby now, just as I was going to answer his questions! I will cut this a bit shorter. That has been an issue of concern. I am very pleased that we are harmonising those areas here by preserving these two sets of legislation but bringing those penalty regimes into alignment. As we move forward next year and introduce the new regime, it will be comprehensive and will apply across the board. As we think about it now, there is no reason why we would want one set of standards for mining and one set of standards for things other than mining. We really should be very much moving towards a standardised regime.

The member raised some issues about Queensland. I note that at this point Queensland has implemented the higher penalties only for the general sector, not for the resources sector. It had a bill before Parliament to align with the work health and safety model. That lapsed before its last election and is currently being redrafted. Again, I think it is important that we have very clear in our mind that there should not be two different standards; there should be one standard for both the general sector and the resources sector. We hope that, ultimately, Queensland will get in line with the other states in that regard. I do not think we should necessarily benchmark ourselves against Queensland, which, as I said, has in any event indicated that it will change its provisions for the resources sector.

The member asked some questions about injury and fatality trends in the mining industry. The trendline has gone down. I am very mindful of the critique. I think we always have to look behind the statistics. We have to look at the evidence put forward by Hon Kyle McGinn about the way that lost time injury statistics can be rorted and, no doubt, in many instances are being rorted. Putting that to one side, with the increased scale of mining, we have got much better in mining, certainly in terms of reducing fatalities and serious injuries. The lost time injury business might be overstated; it might be disguising. But in terms of fatalities, that has got better and a big part of getting better is this culture. It is the insistence of the unions on a proper focus on work and safety and the insistence that these breaches be properly enforced. All these things have contributed to the emergence within the industry of a better occupational health and safety culture. I can remember going onto a BHP site about 20 years ago where it was explained that having to understand and dissect each particular task with great thoroughness to address the occupational health and safety issues had an unexpected consequence of improving BHP’s efficiency generally. That was because BHP understood more deeply the nature of each task. The operations were dissected and analysed in a far more comprehensive way than previously. What might have ostensibly looked like something that was creating additional cost had in reality brought cost down because it had driven a greater level of productivity. So BHP’s very clear story is that it did not see productivity as being at odds with good occupational health and safety.

Hon Kyle McGinn has just returned from urgent parliamentary business, so he may have missed my earlier acknowledgement of his excellent contribution. I do not in any way seek to undermine the value of that contribution. My point is that there are very important factors around cost. We should ensure that it is not cheaper to ignore occupational health and safety and get the benefit but simply pay a modest fine; indeed, we want operators who are not as aware of or sophisticated as some of those big companies that the important economic equation—the iron law of mathematics—must be that if they breach, the risk of those fines should really drive a cultural change as well.

Hon Michael Mischin and Hon Tjorn Sibma asked about manifestly inadequate penalties set out in the legislation, which were referred to by members here; Hon Matthew Swinbourn talked about the Bradley case in particular. An argument was made about how an increase in penalties would increase the fines if the courts are not already exercising their discretion to apply the maximum fine. I could quote various phrases of Hon Michael Mischin that he used as he sought to explain the process; that a court will make a decision on a particular case with reference and regard to the band of the penalty. If the penalty regime is up to $20 000 or $50 000, an offence considered to be mid-range will come in at somewhere less than the maximum. But if we increase the maximum, we move that whole band up because we are making it very clear to the judiciary that the worst cases will be set at $2.5 million, depending on the case, or $500 000, and therefore they make their determination about the specific tariff in light of the existence of that maximum.

Hon Robin Scott: If you really believe that penalties are the answer, why don’t we make it the one single penalty for everything, whether it is a cut finger or a death? Let’s make it $1 billion. If we did that, do you think that would stop cut fingers and deaths on mine sites?

Hon ALANNAH MacTIERNAN: That was not the issue I was addressing. The issue I was addressing was the concern raised by two members about the interaction between the increase in a penalty band, and the way the judiciary exercises its discretion. There is very clear evidence that increasing the penalty—that is, the regime, or the maximum—moves the whole consideration by the judiciary of that particular assessment up the spectrum.

Hon Michael Mischin: I would like to hear some further evidence of that. It depends on the type of offence that you are talking about.

Hon ALANNAH MacTIERNAN: Yes. Ironically, this area probably lends itself most to those offences, because it feeds directly into insurance premiums.

Hon Michael Mischin: I would like to see some evidence of that too—that it actually does.

Hon ALANNAH MacTIERNAN: It is perhaps opposed to acts of violent crime caused by people out on the town under the influence of methamphetamine. Upping the penalty is probably not going to cause them to sit back and make any sort of calculation of whether, if they hit this person's head open with a rock, they will get that tariff rather than another tariff. Arguably, that is a situation in which it will probably not impact much. But here, when enhanced tariffs are woven into a business structure, and given the sorts of considerations that need to be made about how much effort will be put into this to ensure that risk is minimised, I think they will have a considerable impact. They will feed into the business model.

Hon Michael Mischin: I am keen to hear that developed in Committee of the Whole. I would be very interested in how you put that part of it and support that argument.

Hon ALANNAH MacTIERNAN: I am just putting it—that is it. As the member has said himself, sometimes —

Hon Michael Mischin: We will go through it.

Hon ALANNAH MacTIERNAN: I can see that we are setting ourselves up for a long debate about the impossible.

Hon Michael Mischin: It is not, because you have just told us.

Hon ALANNAH MacTIERNAN: Hon Michael Mischin himself has grappled with these issues.

Hon Michael Mischin: Yes, but I can explain the reasons why.

Hon ALANNAH MacTIERNAN: Let me quote Hon Michael Mischin. I am not going to get into an argument about that. Hon Michael Mischin said —

> I am not going to get into an argument about it. I have already spent some time in the past explaining at length how judicial discretion works, but I know that it is pointless with the Greens because we have a philosophically different view of the responsibilities of Parliament and the responsibilities of the courts.

The member went on to say —

> That decision was made as a matter of policy to reflect what the government perceived to be community expectations in that regard.

I know that we are going to spend hours talking about that, so I will let us get into committee and do that then, rather than spend hours doing it at this time.

Hon Michael Mischin: At least tell the house what that context was. What was I talking about with that?

Hon ALANNAH MacTIERNAN: That was the debate on the Sentencing Legislation Amendment Bill, which was about a tariff—a penalty.

Hon Michael Mischin: Which particular penalties?

Hon ALANNAH MacTIERNAN: I am not going to —

Hon Michael Mischin interjected.

The ACTING PRESIDENT (Hon Martin Aldridge): Order!

Hon ALANNAH MacTIERNAN: No, I will not argue with Hon Michael Mischin. I will not do that, because I know that regardless of what I say, no matter how powerful an argument I put, Hon Michael Mischin is determined. He is going to want to spend two hours on this. We know; it is predetermined. So, we are just going to wait and let Hon Michael Mischin take that two hours, and we will have that discussion when we have had that two hours.

Several members interjected.

The ACTING PRESIDENT: Order, members! This is the minister's reply to the second reading debate. Let us wait until we get into committee before we have a further exchange.

Hon ALANNAH MacTIERNAN: Hon Tjorn Sibma queried whether these tariffs applied to employees as well as employers, and they do. Indeed, a number of the cases set out in the second reading speech involved employees, and only one a supervisor, so this applies to all those cases. The member spoke about the tragic death at the Harlequin mine. Again, as I said, his argument was that the bill will not compensate for that. We all understand that it will not do that. However, we are saying that a significant increase in penalties will help create a cultural and economic health and safety environment in which there is less risk-taking by employers and employees. It will enable employers and employees to understand that they must exercise care in order to avoid finding themselves in a situation in which these increased penalties will have a real and tangible impact on them.

He said also that legislatures need to understand the effectiveness of what they do. I totally understand that. However, I do not think that an increase in penalties of itself will always do that. An increase in penalties for violent crimes does not always act as a deterrent, although it may have some enhanced value for members of the community in providing a sense that justice has been served and the offender has suffered some retribution. However, in the area of workplace safety, it feeds very much into the culture and economics of risk-taking. Therefore, it is very important that we get it right. I will deal more with the detail about why we have done this when we get onto the inevitable Committee of the Whole debate.

Hon Alison Xamon endorsed this legislation on behalf of the Greens. We very much appreciate that. We know that she and her party are strong supporters of improving workplace safety. She understands that increasing the maximum penalty will have the effect of increasing the tariffs that are imposed by the judiciary.

I understand that Hon Aaron Stonehouse has an interest in ensuring that we entrench enforceable undertakings into this legislative regime. We agree with that. As I have said, we want to expand the role of enforceable undertakings. However, we believe we should do that not in this piece of legislation but rather in the larger body of work in this area. It is important to understand that this is an interim measure. When the larger piece of legislation comes into this place, there will be a greater opportunity to entrench enforceable undertakings. We have had clear feedback that enforceable undertakings will not be acceptable in situations in which there is a fatality but would be acceptable for other breaches. I imagine Hon Robin Scott would probably also appreciate that that would be a useful way forward.

I have addressed the comments made by Hon Kyle McGinn and Hon Matthew Swinbourn.

Hon Robin Scott made an interesting comment. He said that he is particularly concerned that occupational health and safety officers often have only academic experience and very little real-life or on-the-job experience in industry. That is obviously an issue that we need to take some account of. He also made the interesting comment that modern induction often gives a false sense of security. It leads people to believe that their safety has all been taken care of, and therefore undermines their vigilance. I am not sure that a good induction process would do that. I would have thought a good induction process would absolutely highlight the responsibility of each and every person to look after both their own safety and that of others. Perhaps in more classical criminal activity, deterrence does not work, but when workers and employers are aware that much more significant financial penalties might attend infringements, the focus on occupational health and safety will be enhanced. We need to overcome the differential that Hon Kyle McGinn pointed out between the official policy and the experience on the ground. We appreciate that Hon Robin Scott will not be supporting these bills. I get the strong impression that he is deeply concerned about occupational health and safety. Although I am not sure how we would address it, I take his point that there is often a culture of fear with occupational health and safety. Often people are not reporting things because the immediate consequence of dismissal causes people to conceal what may be basic breaches. Sometimes the responses are very ritualistic rather than based in real risk. These are all very good points, and they are important issues for us to deal with not only as we develop this new legislation, but also in getting to grips with how we structure workplace training in the occupational health and safety area. I think it was the member's concern that more sophisticated and nuanced training was needed, based much more on practical experience. We will certainly take those points on board.

I have already addressed the comments of Hon Simon O'Brien and shared his thoughts that it is important for us to have in the Parliament people who have had real-life experience in a range of areas to bring a level of complexity to the consideration of these matters. This is very important. With that, I thank those members who can see their way to supporting the government, and thank others who have nevertheless expressed their concerns about occupational health and safety and the need to protect the working people of the state.

Questions put and passed.

Bills read a second time.