

**OCCUPATIONAL SAFETY AND HEALTH LEGISLATION AMENDMENT AND REPEAL BILL 2004**

*Third Reading*

**MR J.C. KOBELKE** (Nollamara - Minister for Consumer and Employment Protection) [10.52 am]: I move -

That the Bill be now read a third time.

**MRS C.L. EDWARDES** (Kingsley) [10.52 am]: I wish to reiterate a few comments from the consideration in detail stage. Health and safety at work is something that I am totally and absolutely passionate about. From a philosophical point of view, there is one key difference between the position of the Opposition and that of the Government: we do not believe that safety should be used as an industrial tool. It is well documented that safety in the workplace has been abused by unions in an endeavour to achieve whatever it is they wish to achieve, whether it is the signing of an enterprise bargaining agreement or another matter, such as that individual workers should be employed. It has been and is still being used today. The Government is wrong to include safety as an industrial matter in the Industrial Relations Act. The Government is wrong to establish the Occupational Safety and Health Tribunal as part of the Industrial Relations Commission; it is not needed. To allow one of the industrial commissioners to change his hat and become the safety and health commissioner is clearly wrong; it blurs the lines. What I see resulting from all of that is that at some point in time, when safety is being abused as an industrial tool, people will start to not take safety issues seriously. As soon as that is the case, all the good work that has been done over the past 15 years will be undone. I said 15 years, but the legislation first came into the Parliament before that. It was first introduced by the then Labor Government because it believed it was necessary to avoid a problem that I foresee today - that is, the use of safety as an industrial tool - and to overcome the abuses that were occurring in the 1980s.

We also oppose this legislation on the basis of the extension of the meaning of gross negligence. Although the minister was able during the consideration in detail stage to provide some very clear research on the likelihood of gross negligence and how courts were likely to interpret gross negligence and the questions of knowledge and intention associated with doing or not doing a particular act that causes serious harm to or the death of a worker, the point still remains that it is an unknown factor. This State is the only State that will have a definition of "gross negligence" in occupational safety and health legislation, so it will be interpreted differently. The way I believe it will be interpreted, but hope it is not, is that employers and/or directors and/or committee members of local volunteer football clubs, seniors clubs or bowling clubs will be caught for imputed knowledge and/or constructive knowledge. The definition needed to be changed to represent a deliberate act of doing or not doing something. The Government did not accept our amendment, although it acknowledged that that was certainly not its intention. However, volunteer groups such as a seniors club that employs a bar manager, a bowling club that employs a chap to do the lawns and a football club that employs a coach will find that there is the potential for them to be grasped by a huge liability case under the occupational safety and health legislation. More than that, they will be caught by huge fines, huge penalties and the potential of imprisonment for up to two years. That is a serious issue and takes far too wide what the Government wanted to do. I acknowledge that during the consideration in detail stage the Government changed the definition of "body corporate" and of who would and would not come within that definition. However, that definition will still capture the people I have just outlined, just to name a few.

The other reason we will not support this legislation relates to the mining industry and the abolition of the Mines Occupational Safety and Health Advisory Board. Amendments to the Mining Act will be brought into this House. It does not make sense to bring amendments to the Mining Act into this House, to not proceed with those amendments, and to abolish MOSHAB under this legislation. If the Government wanted to ensure consistency, it would bring those amendments in together or wait until the two Bills could be dealt with together in this Parliament; it would not deal with them separately. Therefore, we will not be supporting this legislation.

I thank the staff of WorkSafe, particularly for the level of work and research they undertook to answer the questions I raised in the second reading debate and throughout the consideration in detail stage. I also thank them for the amendments. The Government clearly recognised that there were some serious concerns. I do not think it has gone far enough, but I thank the staff for their level of commitment.

**MR J.C. KOBELKE** (Nollamara - Minister for Consumer and Employment Protection) [10.59 am]: In my view this legislation is one of the most important pieces of legislation introduced during the four years the Gallop Government has been in office. The 1987 Occupational Health, Safety and Welfare Amendment Bill, enacted in 1988, brought safety in the workplace into the modern era in Western Australia. All the statistics that have been collected since then show that there have been vast improvements in occupational safety and health, including a marked reduction in the number of fatalities. However, for the past five or 10 years the State has limped along. We have not seen further marked improvement in a range of very important statistics. This

legislation is about taking health and safety to a whole new level to make sure we see continuing and marked improvements in occupational safety and health. Therefore, it is an important piece of legislation.

The legislation takes into account the interests of a range of different parties and it acknowledges that safety must be addressed in the workplace. In my view the dire concerns and warnings of the Opposition are not well founded. In my second reading speech, I included examples of what the Liberal Opposition said about the 1988 legislation. The then Opposition said it would be a disaster and would pit employees against employers. Clearly, those dire warnings prior to the enactment of the 1988 legislation have proved to be totally without foundation. That legislation has greatly advanced health and safety in the workplace. I hope that this legislation will be another major step to improving occupational safety and health. I do not think there is any basis to the concerns expressed by the member for Kingsley.

I take issue with the member for Kingsley's introductory remarks on the third reading. She suggested that there was a marked difference between the Opposition and the Government over the issue of safety being used as an industrial tool, and she said that it should not. The Government totally supports that statement. That is our position. There is no difference between the Opposition and the Government on that undertaking. Safety is paramount and other matters should not become involved to the extent that they undermine or detract from the importance of safety in the workplace. However, the Government differs from the Opposition over whether industrial matters that involve safety matters can be segregated or whether in some cases they must be dealt with together. Although we might have a difference of opinion in that area, the Gallop Government does not countenance using safety as an issue for other purposes, one of those being industrial matters. That has happened from time to time. It happened under the last Government and some people continue to try it on. We give no support to that and will use whatever processes are available to us to take action when people do that. We do not believe that safety in the workplace should be undermined by people using that issue frivolously or for other purposes. If that is the position of the Opposition, it is also our position. I see no difference between those positions. However, we may have differences about some provisions regarding how those two processes interplay from time to time.

As I have said, this is very important legislation. Although the Opposition does not support it, I am confident that in time it will recognise the importance and value of this legislation and the improvements it will bring to occupational safety and health in Western Australia. I commend the Bill to the House.

Question put and a division taken with the following result -

Ayes (23)

Mr P.W. Andrews	Mr S.R. Hill	Mr J.A. McGinty	Mr A.P. O'Gorman
Mr J.J.M. Bowler	Mr J.N. Hyde	Mr M. McGowan	Ms J.A. Radisich
Mr C.M. Brown	Mr J.C. Kobelke	Ms S.M. McHale	Mr P.B. Watson
Mr A.J. Carpenter	Mr R.C. Kucera	Mr A.D. McRae	Mr M.P. Whitely
Mr J.B. D'Orazio	Mr F.M. Logan	Mr N.R. Marlborough	Ms M.M. Quirk ( <i>Teller</i> )
Dr G.I. Gallop	Ms A.J. MacTiernan	Mrs C.A. Martin	

Noes (14)

Mr D.F. Barron-Sullivan	Mr J.H.D. Day	Mr A.D. Marshall	Dr J.M. Woollard
Mr M.J. Birney	Mrs C.L. Edwardes	Mr P.G. Pandal	Mr J.L. Bradshaw ( <i>Teller</i> )
Mr M.F. Board	Ms K. Hodson-Thomas	Mr M.W. Trenorden	
Dr E. Constable	Mr M.G. House	Mr T.K. Waldron	

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Pairs

Mrs M.H. Roberts	Mr J.P.D. Edwards
Mr M.P. Murray	Mr R.F. Johnson
Mr E.S. Ripper	Mr P.D. Omodei
Mr A.J. Dean	Mr R.N. Sweetman
Mr D.A. Templeman	Ms S.E. Walker

Question thus passed.

Bill read a third time and transmitted to the Council.