WORK HEALTH AND SAFETY BILL 2019
SAFETY LEVIES AMENDMENT BILL 2019

Second Reading — Cognate Debate

Resumed from an earlier stage of the sitting.

HON NICK GOIRAN (South Metropolitan) [5.06 pm]: I thank members for the opportunity to continue the consideration of this cognate debate on the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019. I have been asked by a few members how much longer I anticipate I will be taking on this matter. It is always difficult to estimate these things, but as best as I can reasonably do it, I think I probably need about another 45 minutes to conclude my consideration of this matter on behalf of the opposition. It is a 16-part bill with 425 clauses and various matters of contention, but I am hopeful that I can conclude before the next interval.

With that, before the interruption for the taking of questions without notice, I was considering part 13 of the Work Health and Safety Bill, which is a 16-part bill. Part 13 deals with the matter of legal proceedings. I had already addressed the concern about who will be able to prosecute particular provisions. The matter that I particularly want to give attention to now, and I ask members to give it serious consideration, is the appropriateness of an investigator, who has the capacity to compel people to provide information in circumstances whereby the Parliament is being asked to agree to the abrogation of the privilege against self-incrimination, also being a prosecutor. It seems to me that this is exactly the type of situation that demands a separation of the investigator and prosecutor, and I note the finding by the Standing Committee on Public Administration on the tension around this issue.

I want to give members a quick summary of the events that led to the finding that the Corruption and Crime Commission does not have the capacity to prosecute. It is most conveniently found in a report that I tabled in November 2016, nearly four years ago. It is the thirty-third report of the Joint Standing Committee on the Corruption and Crime Commission, titled "The Ability of the Corruption and Crime Commission to Charge and Prosecute". The chairman's foreword states —

> The Joint Standing Committee originally commenced an Inquiry into the Corruption and Crime Commission … being able to prosecute its own charges on 26 June 2014 and was due to report to Parliament on the matter by 30 December 2015. In July 2015, however, an appeal was made to the Supreme Court by a former police officer which challenged the power of the CCC to charge and prosecute for an alleged assault while he was on duty. When the Committee became aware of this appeal, it resolved to put its initial Inquiry on hold pending the outcome of the appeal.
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> The Court of Appeal handed down its decision in *A-v-Maughan* 2016 [WASCA] 128 … on 15 July 2016. As part of its judgment, the Court of Appeal held that "the Commission's powers and functions do not extend to the prosecution of persons in respect of matters investigated by the Commission which are otherwise unrelated to the administration and enforcement of the legislation establishing the Commission."
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> Following the judgment, the Joint Standing Committee resolved to continue its Inquiry, but with amended Terms of Reference.
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> This is not the first time the issue of the Commission's prosecution powers has been questioned and this report describes earlier debate and previous recommendations made regarding its power to lay charges and prosecute. The Committee describes the recommendations made in the Archer Review in 2008, as well as approaches taken by past and present CCC Commissioners and Parliamentary Inspectors of the Corruption and Crime Commission … This report also provides a summary of the opinions and advice the Commission has received in regard to its power to charge and prosecute (see Appendix 9).
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> The report also reviews the power to prosecute held by a number of Western Australian government agencies. The Department of Fisheries, the Department of Mines and Petroleum and the Department of Commerce all have Acts they administer that allow them to commence prosecutions. These powers are clear and specific in their respective legislation, but in the main, any charges are laid and prosecuted by the State Solicitor's Office.
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> An examination of integrity agencies in other jurisdictions reveals that most of these agencies have powers to refer matters arising from investigations to a relevant prosecutorial agency. None have the express power to prosecute in their own right, other than the Independent Broad-based Anti-corruption Commission in Victoria.

Later in the chairman's foreword, these comments are made —

> The CCC Commissioner, Hon John McKechnie QC, told the Committee that prior to the decision of *A-v-Maughan*, the Commission had commenced prosecutions against 140 people for offences arising

> from its investigations. These did not include proceedings initiated by the Commission for contempt of the Commission. The Committee was advised that the Commissioner had made arrangements with the Director of Public Prosecutions … and the State Solicitor to deal with prosecutions arising from CCC investigations in anticipation that the judgment in *A-v-Maughan* would find the Commission did not have the power to charge and prosecute.
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> The current process the Commission uses to charge and prosecute people following *A-v-Maughan* is described in the report. That process requires the Commission to refer a prosecution brief to the State Solicitor for his consideration if it forms a view during an investigation that an offence has been committed. If the State Solicitor believes that there is a *prima facie* case against the accused, and that it is in the public interest to prosecute, he will commence proceedings. Where the alleged offence is a 'simple offence', the prosecution will be conducted by the State Solicitor. Where the offence is an 'indictable offence', the proceedings will be taken over by the DPP at the committal stage.

Towards the end of the chairman's foreword, these comments are made —

> The Committee received 24 submissions to its Inquiry, including from the Attorney General, Hon Michael Mischin MLC, the CCC Commissioner, Hon John McKechnie QC, and the Parliamentary Inspector, Hon Michael Murray QC. It undertook closed hearings with the CCC Commissioner and PICCC, as well as with the State Solicitor, Mr Paul Evans, and the Director of Public Prosecutions, Mr Joseph McGrath SC.
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> The evidence obtained by the Committee overwhelmingly supports the maintenance of a separation between the investigation of serious misconduct and the prosecution of criminal offences. It has considered the approach taken by interstate and international anti-corruption agencies. At the present time, the Committee is not persuaded that it is either necessary or desirable for the CCC to be empowered to commence or conduct prosecutions for offences unrelated to the administration and enforcement of the *Corruption, Crime and Misconduct Act 2003*.

My point to members is if it is the case in Western Australia that the Corruption and Crime Commission does not have the power to prosecute matters that it has investigated, in circumstances in which it has extraordinary powers to compel people to provide information, albeit that that information cannot be used against the person in a prosecution—in other words, the privilege against self-incrimination has been abrogated—what should be the case with this bill? Are we saying that the department, the regulator, should have a standing higher than the Corruption and Crime Commission and it should have powers of a greater magnitude than the Corruption and Crime Commission? If that is the view of the government and of members, an appropriate justification needs to be provided. I am calling on the government to provide that explanation. If the government is not inclined to separate the investigator and the prosecutor—which I think should be done—and wants to allow a situation that does not apply to even the Corruption and Crime Commission, the government needs to provide an explanation to the house.

I now move to part 14 of the 16-part Work Health and Safety Bill. This part is entitled "General", and it incorporates clauses 268 to 277. This part contains provisions relating to the giving of false or misleading information, legal professional privilege, immunity from liability, confidentiality of information, contracting out, a prohibition against insurance or indemnification against fines, and a prohibition against levying workers. It also deals with matters pertaining to codes of practice, regulation-making powers, and a statutory review, which will be done on a five-yearly cycle.

The Standing Committee on Uniform Legislation and Statutes Review in its 126th report has identified clause 274 as concerning. I draw members' attention to the comments made by the committee about clause 274(3) —

> 6.39 Part 14 Division 2 of the WHS Bill deals with codes of practice. The Minister may approve a code of practice for the purposes of the Act and vary or revoke it, subject only to a process involving consultation between unions and employer organisations.
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> 6.40 However, clause 274(3)(b) provides that a code of practice may apply, adopt or incorporate anything in a document 'formulated, issued or published' by a person or body, with or without modification or 'as in force at a particular time or from time to time'.
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> 6.41 The codes of practice are admissible in proceedings for an offence against the Act 'as evidence of whether or not a duty or obligation under [the] Act has been complied with'.
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> 6.42 The Committee considered the effect of the words 'from time to time' in its Report 119. The Committee's view was that:
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> > The 'from time to time' approach ensures immediate uniformity across jurisdictions, but unquestionably erodes Western Australian Parliamentary sovereignty, as there is

no Parliamentary oversight of law that will apply in Western Australia before that law comes into operation.

6.43 The Committee considered this matter so significant it recommended that the clause with the words 'from time to time' not be passed.

6.44 The Western Australian Parliament accepted the Committee's recommendation.

6.45 The Committee reiterates its previously stated position that a provision in an Act which purports to apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person or body 'as in force at a particular time or from time to time' erodes Western Australia's Parliamentary sovereignty.

…

6.46 The explanatory materials for a clause of such significance should explain or justify the provision.

6.47 The Explanatory Memorandum for the WHS Bill paraphrases clause 274 rather than explain it or justify why the provision is necessary.

6.48 An explanation addresses the rationale for, and practical effect of, the terms of a bill. Amongst other things, an explanation deals with impacts that are not apparent from the terms of a clause of the Bill itself.

6.49 The Committee has a limited timeframe for its inquiries. Deficient explanatory materials result in the Committee directing time and resources to gathering preliminary information, rather than focussing on any issues arising when that preliminary information is considered.

Under the heading "Minister's advice", the report states —

6.50 The Committee asked the Minister:

6.50.1 What codes of practice and/or matters contained in a document are intended to be approved, applied, adopted or incorporated under proposed section 274(3)(b) of the proposed *Work Health and Safety Act 2019*? Please advise the intended effect of each.

6.50.2 Why an explanation of the effect of clause 274(3)(b) was not included in the Explanatory Memorandum for the Bill?

6.51 The Minister's response to these questions is at 1.6 and 1.7 of Attachment A of his correspondence, reproduced in Appendix 2 of this report.

Under the heading "Committee comment", the report states —

6.52 It is unfortunate that the Explanatory Memorandum for the WHS Bill simply paraphrases clause 274 and does not explain or justify why the incorporation of codes of practice into the law of Western Australia by this means is appropriate and necessary in this instance.

6.53 The Committee considers that the explanatory materials in support of the WHS Bill ought to have drawn the Parliament's attention to this question, given its impact on Western Australia's Parliament sovereignty, and explained why it was being done.

The committee concludes with finding 8, which states —

Clause 274(3)(b) of the Work Health and Safety Bill 2019, by proposing to apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person or body 'as in force at a particular time or from time to time' erodes Western Australia's Parliamentary sovereignty.

Recommendation 6 states —

The second reading speech or Explanatory Memorandum for a bill should identify any clause that proposes to incorporate into Western Australian law material that is in force at a particular time but may vary 'from time to time', provide a rationale for it and explain its practical effect.

Recommendation 7 states —

The Government find an effective alternative to the current incorporation mechanism in clause 274(3)(b) and amend the Work Health and Safety Bill 2019 accordingly.

The government's response to that is found on pages 93 and 94 of the Standing Committee on Legislation's forty-third report —

Response —

> Clause 274 of the WHS Bill is titled 'Approved codes of practice'
>
> A code of practice is not law, legislation or a regulation. An approved code of practice is guidance material and has an interpretive function. It does not impose any requirements other than those authorised by the WHS Act and WHS regulations.
>
> Under the foreword of the model How to manage and control asbestos in the workplace code of practice (as an example), the following text is stated:
>
> i) An approved code of practice provides practical guidance on how to achieve the standards of work health and safety required under the WHS Act and the Work Health and Safety Regulations … and effective ways to identify and manage risks.
>
> ii) "Compliance with the WHS Act and WHS Regulations may be achieved by following another method, if it provides an equivalent or higher standard of work health and safety than the code".
>
> The contents of the codes of practice will be limited by the Work Health and Safety … Act and WHS regulations and can only be approved by the Minister if the development process involved consultation between unions and employer organisations …
>
> WA s existing *Occupational Safety and Health Act 1984* … and *Mines Safety Inspection Act 1996* … include provision for codes of practice. Similar to clause 274(3), the existing laws allow a wide range of material that can be included in a code of practice.
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> Subsection 57(2) of the OSH Act, states:
>
> > *A code of practice may consist of any code, standard, rule, specification or provision relating to occupational safety or health that is prepared by the Commission or any other body and may incorporate by reference any other such document either as it is in force at the time the code of practice is approved or as it may from time to time thereafter be amended.*
>
> The language in subsection 57(2) of the OSH Act provides substantively the same language as that proposed … in clause 274(3) of the WHS Bill 2019.
>
> In view of these circumstances, no amendments are proposed to the WHS Bill.

That is the government's response to the reiterated concerns made by the Standing Committee on Uniform Legislation and Statutes Review on the incorporation of the time-to-time model. In my view, members need to give consideration to whether clause 276 needs to be amended. Amendment 23/276 standing in my name on the supplementary notice paper redrafts the provision, as it is unjustifiably broad to the point of allowing regulations to apply to any matter relating to work health and safety. In other words, the bill will pass and clause 276 will provide that the government of the day can, with its pen, write any other law pertaining to work health and safety—anything else. Basically, it could write, if you like, a supplementary bill. We could have the equivalent of two laws in Western Australia—albeit, not inconsistent—and rather than coming to Parliament, the government could bring in regulations under the broad banner of work health and safety. That is unjustifiably broad, so amendment 23/276 redrafts that provision.

Next on the supplementary notice paper is amendment 24/276, which, in light of findings 9 and 10 in the Standing Committee on Uniform Legislation and Statutes Review's 126th report, removes clause 276(3)(c). I also draw members' attention to recommendation 8. Finding 9 reads —

> Clause 276(3)(c), by leaving any matter or thing to be determined, applied or approved by the regulator, an inspector or any other prescribed person or body of persons constitutes an inappropriate sub-delegation of legislative power.

Finding 10 says —

> Clause 276(3)(c) derogates from Western Australia's Parliamentary sovereignty.

Consequently, the committee, in recommendation 8, once again reiterates that second reading speeches and explanatory memoranda should identify these types of clauses when the time-to-time model is going to be applied. Amendment 25/276 on the supplementary notice paper removes clause 276(3)(d) in light of the committee's finding 11, which reads —

> Clause 276(3)(d)(ii) of the Work Health and Safety Bill 2019, by proposing to apply, adopt or incorporate any matter contained in any document formulated, issued or published by a person or body 'as in force at a particular time or as in force or remade from time to time', derogates from Western Australia's Parliamentary sovereignty.

The committee's recommendation 9 states —

> The Government find an effective alternative to the current incorporation mechanism in clause 276(3)(d) and amend the Work Health and Safety Bill 2019 accordingly.

We have the benefit of the government's response to this recommendation, which, again, is found on page 94 of the Standing Committee on Legislation's report. In response to recommendation 8, the government says —

> The Government has decided to amend the Explanatory Memorandum for the WHS Bill 2019 —

I pause to draw to the attention of the Minister for Regional Development, who has conduct of this bill in this house, that I am not aware that an amended explanatory memorandum has been provided to the house. Nevertheless, the government's response states —

> The Government has decided to amend the Explanatory Memorandum for the WHS Bill 2019 to indicate that an explanation of the rationale and practical effect of regulations made under clauses 276(3)(c) and 276(3)(d)(ii) will be provided as part of the explanatory material for those regulations.
>
> The clauses in the Explanatory Memorandum that have been raised as a concern by the Committee have been adopted from the national model WHS Bill without amendment. To assist in consistency of interpretation in jurisdictions that have adopted provisions of the national model WHS Bill, a model explanatory memorandum was developed by the Parliamentary Counsel s Committee (which included WA representation) and served as the basis for the Explanatory Memorandum for the WHS Bill 2019. To retain consistency, modifications to the Explanatory Memorandum for the WHS Bill 2019 were limited to those elements that have substantively changed from the national model WHS Bill.
>
> The desirability of including additional language providing a rationale and practical effect of these clauses has been considered in light of the Committee's recommendation. This approach raises a significant risk of inadvertently narrowing or changing the range of matters that can be regulated to those that fit within parameters provided in the amended Explanatory Memorandum. Simply if extra words are added they must be understood to have an effect when considering the bill. The possibility of therefore changing meanings or effect are significant.
>
> Amendments to the Explanatory Memorandum committing the Government of the day to explain the rationale and practical effect of regulations during the process of tabling them, reflect current practice and do not pose the same risk of unintended consequences.

That is the quite longwinded response by the government to recommendation 8 of the Standing Committee on Uniform Legislation and Statutes Review. I note at the outset that there was an indication that the government intends to amend the explanatory memorandum.

Hon Alannah MacTiernan: We will respond to that. It is not clear that that actually is now the —

Hon NICK GOIRAN: Position?

Hon Alannah MacTiernan: Yes.

Hon NICK GOIRAN: Okay.

I also draw to the attention of members the very substantial response—I mean, it carries over three pages, from page 94 to 96—by the government to recommendation 9 of the Standing Committee on Uniform Legislation and Statutes Review. I do not propose to take us through that at this time, but I draw it to the attention of members. We will need to consider it when we get to part 14, and in particular clause 276, and determine whether members are inclined to agree with the approach I have taken in amendment 25/276 or the government's approach, which is to leave things as they are. I conclude my comments about part 14 of the bill by noting that there is also an amendment in my name on the supplementary notice paper dealing with clause 277, which is the statutory review clause, and this is really just the usual tidy-up work members have seen before.

I turn now to part 15 of the 16-part bill, "Repeals and consequential amendments", which captures clauses 278 to 372. The purpose of this large part of the bill is to repeal and amend a range of legislation that deals with safety and health in workplaces. It is one of the few parts about which no stakeholders have raised any issue that I am aware of.

I move, then, to part 16 of the bill, "Transitional provisions". This part captures the remaining clauses of the bill, which is clauses 373 to 425. The purpose of the transitional provisions part is to ensure the continuity of a broad range of matters covered by the amending legislation and those pieces of statute that are being repealed under part 15. The purpose is also to provide a transitional period to provide duty holders with time to adapt their processes to any new or modified requirements that may be imposed due to the bill's commencement. Lastly, I understand that the purpose of part 16 includes that officeholders, such as the WorkSafe Western Australia Commissioner, will continue in their appointments. Two issues emerge from part 16, in clauses 376 and 420. I have two amendments on the supplementary notice paper.

The first is amendment 28/376, which seeks to redraft the provision to remove the modification of the act by regulation, which is something members would know has been done on many previous occasions. With respect to clause 420, my amendment on the supplementary notice paper at 29/420 ensures that the documents that the government wants to incorporate into WA law are frozen as at commencement rather than continuing the time-to-time model. This will enable the government, at any time it wants to apply those documents in the future, to come back and table a regulation to that effect—it will not allow for the law of Western Australia to continue to change without oversight from the Parliament. This goes to the heart of the issue that was raised by the Standing Committee on Uniform Legislation and Statutes Review in its 126th report on this bill, but it is also consistent with other reports it has tabled.

Before I conclude, I need to touch on the three schedules at the back of the bill. The purpose of the first schedule is to enable the bill to apply to dangerous goods and high-risk plants. As I mentioned earlier, it is clear from the government's earlier response, which is appended to the forty-third report of the Standing Committee on Legislation, not to be confused with the government's report tabled earlier today, that the government now intends to remove schedule 1 from the bill. As I indicated earlier, the opposition certainly will not stand in the way of the government doing that if that is what it desires to do. I understand there may be a need for some other legislative provisions to be brought into effect, so I imagine that the position of the government is that it intends to deal with this schedule 1 matter at a later date, which, incidentally, might be the approach the government should be taking to some of its other controversial measures—that is, to deal with them at a later date, after it has had the opportunity to consult with various stakeholders.

That said, I move to schedule 2. I understand that the purpose of this schedule is to establish the statutory roles and bodies necessary for achieving the objects of the bill and for its effective administration. I note the concerns raised by the Standing Committee on Public Administration in its thirty-first report. In particular, I draw recommendation 1 to the attention of members, which states —

> The Committee recommends that the Parliament of Western Australia, when considering Schedule 2 to the Work Health and Safety Bill 2019, gives consideration to the legislative issues resulting from the lack of clarity as to the use of the designations 'WorkSafe', 'WorkSafe WA' and 'WorkSafe Western Australia', and whether any government department may use these designations in the absence of a formal designation by the Governor pursuant to section 35 of the *Public Sector Management Act 1994*.

There we have yet another recommendation in this weighty report from the Standing Committee on Public Administration that goes directly to one of the provisions in this bill, in this instance schedule 2. We really need a response from the government about recommendation 1 of the Standing Committee on Public Administration, either in the reply to the second reading debate or when we get to schedule 2 in Committee of the Whole House.

Lastly, I note that the purpose of schedule 3 is to set out a variety of matters that may be subject to regulation.

With all of those things said, I will reiterate the position of the opposition on the two bills currently before the house. Our position on the Work Health and Safety Bill 2019 is that we do not oppose it, but we have several concerns. Members will be aware of the number of amendments on the supplementary notice paper standing in my name on behalf of the opposition, for which we seek support. We support the Safety Levies Amendment Bill 2019. We understand that the government intends to move some amendments to deal with the matters arising from the 126th report of the Standing Committee on Uniform Legislation and Statutes Review. I am familiar with the amendments that the government is proposing, which have been drawn to my attention behind the Chair. We support them and will deal with them when we get to that stage of consideration of the bill in Committee of the Whole House. With that, I conclude my remarks on the matters before us.

HON RICK MAZZA (Agricultural) [5.40 pm]: The Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019 before us are to modernise and harmonise workplace matters. It is interesting that out of the 425 clauses within the Work Health and Safety Bill, the main focus is on clause 30B. I have had many phone calls about clause 30B. We have come a long way with work health and safety over the years. I remember working in the Westrail workshops in Bunbury in the 1970s as a young apprentice mechanic. I think back on some of the things we used to do in the workplace, and there were obviously a lot of times when danger was just around the corner and we happened to avoid it. Back then, there were things that we did not know. Part of our training was to clean off blue asbestos brakes with an air hose or drill into them to rivet them onto the brake shoes. There would be clouds of blue asbestos dust throughout the workshop. That was not uncommon just to that workshop; that was common throughout the industry, and it was many years later that we learnt about the dangers of asbestos.

Hon Alannah MacTiernan: Good luck!

Hon RICK MAZZA: Yes—touch wood.

Even out in the field in those days, I used to work on a lot of heavy machinery and would crawl around under bulldozers and different pieces of machinery, with little bottle jacks to hold up a belly plate that I had to lower down to get at the machinery underneath. Those belly plates were heavy enough to crush a person quite easily, and we would be messing

around with bottle jacks to get them out. I remember one time a train that was carrying jam derailed at Manjimup and jam was everywhere. This bulldozer had broken down and of course the black ants were everywhere. We had to crawl around under this machine, with the black ants there, to try to get this thing back up and running again. I do not think many mechanics these days would do those sorts of things, even in the workplace itself. The Bunbury workshops are now gone. For a while, they were a bit of a museum-type thing in Bunbury, towards Marlston Hill, but I believe they have all been taken down and done away with, maybe because the building contained asbestos. I remember that one day I was refilling a crane there. A set of bowsers were at the entrance to the workshop and powerlines ran quite low across the entrance to provide power for them. That was at the entrance into the main workshops. As I took off, I looked up and the jib was about to take out the powerlines. Fortunately, I stopped just in time.

Hon Alannah MacTiernan: Member, some shearing sheds today aren't much better, unfortunately.

Hon RICK MAZZA: No.

There was a lot of danger in the workplace back then. We have come a long way since the mid-1970s in making sure that we keep workers as safe as we possibly can. Now there are inductions before someone goes onto a workplace, even on farms, and we have high-risk licences, whether they be for confined spaces or working at heights. We are trying to educate people around safety. As far as safety is concerned, I have no problem with that. I think workplaces have come a long way with safety, but of course we need to balance that out. With clause 30B, the bar has been lowered somewhat as far as negligence is concerned. The proposed disciplinary action for a person conducting a business or undertaking who is convicted of industrial manslaughter—a simple offence—will be a maximum penalty of 10 years, and $2.5 million for an individual or $5 million for a body corporate. Those are significant penalties around that lower offence.

In its submission to the Standing Committee on Legislation, the Law Society of Western Australia pointed out a couple of issues that are probably worth reading in. I am sure Hon Nick Goiran has probably touched on much of this stuff, but we can go over it again. In its summary, it said —

1. We note that:
    a. the introduction of a summary offence under section 30B, in addition to the serious offence under section 30A, represents a move away from, rather than toward, national harmonization of OHS legislation; and
    b. the "breach of duty" contemplated by sections 30A and 30B is broadly defined. We recommend consideration be given to identifying specific duties which would give rise to the serious criminal sanctions contemplated by the legislation.
2. We recommend that:
    a. in all the circumstances, the appropriate jurisdiction for a prosecution under 30A would be the District Court rather than the Magistrates Court;
    b. further guidance ought to be given to confirm the applicability of privilege against self-incrimination in a prosecution under the new provisions;
    c. the bill ought to expressly confirm the applicability of defences under the Criminal Code; and
    d. consideration should be given to providing for Legal Aid funding for prosecutions under the new provisions.

The Law Society has raised its concerns about this. Further into its submission, it states —

3. Concern arises about procedural issues in relation to prosecutions under s 30B, particularly the applicable Court and prosecution by the regulator, WorkSafe, rather than the Director of Public Prosecutions … Offences under s 30B may be investigated and prosecuted by the same agency, WorkSafe, raising concerns over independence and the requisite expertise of prosecuting counsel.

In his contribution, Hon Nick Goiran went over in some detail that it is not preferable for procedural fairness that the investigative body is also the prosecuting body. There should be some arm's length in that. The honourable member made reference to the Corruption and Crime Commission and that it can investigate but not prosecute. In this case, we are talking about a 10-year jail term and significant financial penalty. In those circumstances, I think that an investigative body should be separate from the prosecuting body. That has been raised by the Law Society. I support the premise that they should be separated.

I attended a WAFarmers conference in Albany a few months back and the farming community raised a lot of concerns over clause 30B. A lawyer had addressed that meeting and run through quite a few things. There is some uncertainty about how this might affect the farming community. One of those concerns was about farming families that might have a proprietary limited company. Maybe the parents are retired and living in town, but are still directors of that company. The children, a son or daughter, may be operating the farm. We know that farms are very dangerous

places. I think there are something like two and a half times more accidents on farms than in pretty much any other industry. A lot of things can go wrong, and still to this day, unfortunately, risks are taken. The concern was that if there happened to be an accident on the farm, the parents, who are not really involved in the day-to-day operation of the farm, could be caught under clause 30B, and be prosecuted. If the fine is applied, that may in fact make them sell the farm—so the fine, not so much the jail term, could be enough to send them under. On top of that, it would be quite unjust if they went to jail. There is a lot of worry about that. I have had many phone calls from people in small business who have basically said to me, "Look, if this legislation comes in, I just don't want to be in business anymore." Certainly, a lot of people are worried about it. They do not want to be caught up in something that could have a detrimental effect on their life when it is not within their control.

I have had meetings with the advisers. The minister was also kind enough to meet with me last week to go over some of these issues. An employer may have a workplace safety procedure in place, including inductions, but if something unforeseen happens that is beyond their control, under clause 30B they could still be charged. Even though the advisers said, "You can go to court, it is a defence for you to say 'This was unforeseen; we had procedures in place'", anybody who has ever been involved in a court situation knows that there is a huge amount of stress and anxiety surrounding that, plus the cost of defence. I do not think employers go out of their way to create situations in which people get injured or killed. I do not think employers are generally like that. I have no doubt some are reckless and will push the limits, and those people who are caught under clause 30A will deserve everything they get. People should not be put in high-risk situations when they do not need to be. If that is done knowingly, the penalty is deserved. When it is difficult to foresee some of these things, being prosecuted would be a very unnerving situation and emotionally punishing for those people. On top of that, if an employer, particularly in a small business, has a workforce of a dozen people or so, it becomes very family oriented. They work with these people on a day-to-day basis and start to get involved with their personal life—they get invited to christenings and weddings; all sorts of things. If somebody in a small business environment gets hurt, the employer takes that very personally. It can be quite an emotional time for them, without this looming over their head.

The Australian Senate's Education and Employment References Committee report into workplace fatalities dated October 2018 was cited on 24 August 2019 in the WA government's media statement titled "New workplace safety laws and more safety initiatives to better protect workers". The committee report states —

> 1.41 In addition, we are concerned that that industrial manslaughter laws would expose employers and managers to the risk lengthy prison terms even where they are unjustly accused of being responsible for incidents in the workplace.
>
> 1.42 For example, if an employer has the right policies and processes in place, yet these are not followed by a person who fails to wear protective clothing, works under the influence of alcohol or fails to take breaks, the employer should not face criminal conviction and jail time.

That committee did not feel that employers should be subjected to those penalties if something had taken place.

Representatives from the Chamber of Commerce and Industry of Western Australia, who have spoken to many in this place, also saw me in relation to this bill. Again, clause 30B was their main area of concern. The CCI received 325 letters from concerned employers about how this may affect them and their businesses. That is something we need to bear in mind. We still need businesses to be able to employ people, so we certainly need people to have an incentive to be in business.

A *Farm Weekly* article quoted Master Builders Association of Western Australia executive John Gelavis, who said —

> "Without consultation on the impact of the laws, including the practical, legal and justice issues arising from them …

I have received a lot of complaints that sufficient consultation on this bill was not done, particularly on clause 30B. There is some outrage out there about clause 30B and the fact that people were not properly consulted.

The next issue I want to raise was quite well articulated by the previous speaker; it concerns insurance and the prohibition against insurance. I get it: if someone has been recklessly negligent and a penalty is imposed against them, they should feel the pain of that fine. I am concerned about an overall prohibition against insurable interests. My amendments on the supplementary notice paper mean that insurance should not be prohibited, apart from an offence committed under clause 30A. In saying that, I think that very few insurance underwriters would insure a risk that had a criminal element in it—probably none. The likelihood of even being covered for a risk that is found to be the result of reckless negligence is probably zero. But there may be other areas within the bill that insurance could cover. Some insurance companies might respond to it and those fines could be mitigated somewhat. There will always be an excess, of course, but that could be mitigated. At least a business that might employ a number of people will not go under because of the financial penalty that is imposed upon them. As I say, if it is a criminal

situation under clause 30A, I get it: insurance should not cover it. I doubt that any underwriter would cover it anyway. For other aspects within the principal bill, there should be scope for some insurance to cover that off.

They are the issues that I wanted to touch on. I am sure that during Committee of the Whole House there will be a lot of opportunity to start to test some of the clauses. The principal bill will be a monster of a bill to get through in committee. I am sure it will take us some time to do that. With that, I will support the second reading of the bills.

HON COLIN de GRUSSA (Agricultural) [5.57 pm]: Acting President —

The ACTING PRESIDENT (Hon Dr Steve Thomas): Before you commence, can I ask whether you are the lead speaker for the National Party?

Hon COLIN de GRUSSA: I can confirm that I am the lead speaker for the Nationals on the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019. Although I am probably known as a man of few words, I have more than enough words to get through the next few minutes, unfortunately for members! Members will note that we are up to issue 4 of the supplementary notice paper as of today—Tuesday, 15 September 2020. No doubt there will be additions to the supplementary notice paper as we progress through the debate on this bill. That is some cause for concern, especially when some of those amendments may well be government amendments. Members of this place may or may not be aware of the potential of them coming through and the need for us to consider those amendments properly and also to allow for some level of consultation with key stakeholders on those proposals, all of which, as the previous speaker alluded to, means that we will no doubt spend considerable time on them during Committee of the Whole House, when we eventually get there. I also note that the government's response to the forty-third report of the Standing Committee on Legislation, which was into the Work Health and Safety Bill 2019, was tabled today. Members will want to give that some careful consideration before progressing much further with the debate on that bill.

As I said, I am the lead speaker for the Nationals WA on the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019, which, of course, we are debating cognately. I will confine my remarks to the Work Health and Safety Bill 2019, but I indicate that the Nationals are supportive of the Safety Levies Amendment Bill 2019. I will also indicate from the outset that we are broadly supportive of the harmonisation of work health and safety legislation across jurisdictions and are supportive of many provisions within the principal bill. We have concerns, however, about some provisions and I will outline those as I go through my contribution to the second reading debate.

The Work Health and Safety Bill 2019 was introduced into the other place on 27 November 2019 and into this place on 20 February 2020. It is a very significant bill. As other speakers have mentioned, the bill has 425 clauses, a number of schedules, and many parts. The bill seeks to amend a number of acts, namely the Industrial Relations Act 1979, the Mines Safety and Inspection Act 1994, the Petroleum and Geothermal Energy Safety Levies Act 2011, the Petroleum Pipelines Act 1969, the Petroleum (Submerged Lands) Act 1982 and the Petroleum and Geothermal Energy Resources Act 1967. Members would also be aware that upon the principal bill's arrival to this place, it was first discharged and referred to the Standing Committee on Uniform Legislation and Statutes Review.

Sitting suspended from 6.00 to 7.30 pm

Hon COLIN de GRUSSA: Just before the suspension I was discussing the six acts that will be amended by the Work Health and Safety Bill 2019, and I reminded members that upon its arrival in this place, the bill was of course referred to the Standing Committee on Uniform Legislation and Statutes Review, which reported on it in its 126th report. Subsequent to that, the bill was discharged and referred to the Standing Committee on Legislation, which considered part 2 of the bill, and the findings of that inquiry can be found in the committee's forty-third report, which was tabled in August this year. There are 27 findings and seven recommendations in that report, and I will explore a few of them during my contribution.

Before I consider the aspects of this bill that I want to discuss, I would also like to put on record my thanks to a number of people and organisations that have engaged with this rather significant reform to work health and safety. I am sure other members will have received considerable correspondence on the bill since its introduction, outlining a variety of views on many of the bill's different aspects and on this very substantial reform to work health and safety legislation in Western Australia. I would like firstly to acknowledge the families of those who have tragically lost their lives at work, and I thank them for their correspondence. I would also like to thank those families who appeared before the Standing Committee on Legislation, of which I am a member, at the many hearings we held during the course of our inquiry. Their stories are tragic and sad, and they raise many questions about workplace safety and culture. The passion and commitment of all those people and their desire for real change were clearly evident. To all of them I take the opportunity to say: thank you for your advocacy and courage in the face of losses that someone like me cannot begin to imagine.

To members of the business community and various business and worker advocacy groups, I also want to thank you for the issues you raised and the concerns you have around workplace safety and the reforms proposed in this bill. All those representations have been considered and your advocacy and interest is much appreciated. At least 19 industry groups made direct contact to offer their views on the legislation, through either individual or joint communications, or briefings. Most of those groups recognised the merits of harmonising work health and safety legislation and regulation across Australian jurisdictions. The organisations that contacted me include the Master Builders Association; the Housing Industry Association; the Chamber of Commerce and Industry of Western Australia; the Chamber of Minerals and Energy; the Western Australian Farmers Federation; and the Pastoralists and Graziers Association. As Hon Rick Mazza mentioned, he attended a Western Australian Farmers Federation conference in Albany, and I attended one in Esperance, to discuss with its members the changes proposed in this bill and their concerns around some of those proposals.

They were all strong advocates for a constructive and collaborative approach to reform of workplace health and safety, and were not particularly supportive of the punitive approach proposed in the legislation, in some cases. Without exception, all those groups expressed concern about the way in which the industrial manslaughter provision had been framed in clause 30B, "Industrial manslaughter—simple offence". Their issues were around the low standard of proof; the exclusionary nature of the offences related to employees being specifically excluded; procedural fairness, with the regulator also being the prosecutor for clause 30B offences; a lack of consideration of unintended consequences; potential and unquantified impacts on small business; and the undermining of the cooperative safety culture in workplaces through the adoption of a more adversarial and punitive approach.

All the groups also expressed deep concerns about the way in which the government had undertaken consultation. The point they made, which is an important one, is that the industrial manslaughter provisions were not raised during the ministerial advisory panel consultation process, so it took some of those groups somewhat by surprise when they were included in the bill without having had a good opportunity to consult on those provisions.

I would like to take a bit of a step back and go through the evolution of work health and safety legislation in our nation. Back in the mid-1980s, the benefits of a consistent approach to work health and safety were recognised, which led to national standards and national codes of practice being developed. That early work was carried out by the National Occupational Health and Safety Commission, which was a tripartite body comprising representatives from the commonwealth government, state governments, territory governments, industry and unions. However, the national standards did not have legal status and were not enforceable unless a jurisdiction adopted them into its occupational health and safety regulations. Of course, that led to significant differences nationwide. Different protocols were adopted, drafted and applied differently in different jurisdictions. Whether they were adopted as codes of practice or in regulations also varied across the nation.

In 2008, state and commonwealth ministers agreed that model legislation would be the most effective way to achieve harmonisation—that is an important word—of work health and safety laws. That was the first time that all jurisdictions made a formal commitment to harmonising legislation in Australia within a set time frame, so it was an important decision. It included the development and implementation of a complete and fully integrated package that consisted of a model act, supported by model regulations, model codes of practice and a national compliance and enforcement policy. On that basis, the National Review into Model Occupational Health and Safety Laws was conducted in 2008–09 to make recommendations on the optimal structure and content of a model work health and safety act that was capable of being adopted in all jurisdictions.

That national review was carried out by a panel of three independent experts who undertook extensive consultation with regulators, unions, employer organisations, industry representatives, legal professionals, academics and health and safety professionals. The panel made 232 recommendations in two reports and, based on those recommendations, a draft model work health and safety act was released for public comment in September 2009. The revised act was endorsed by ministers in December 2009, with a final version published in April 2010. Model regulations and codes of practice were subsequently developed to complement that act, with the regulations published in November 2011 and 23 model codes of practice published between December 2011 and July 2012. The act, regulations and codes of practice are together referred to as the model work health and safety laws. The commonwealth, the Australian Capital Territory, New South Wales, the Northern Territory and Queensland implemented the model work health and safety laws in their jurisdictions on 1 January 2012. South Australia and Tasmania implemented the model laws the following year.

Jumping ahead to 2017, the current government in Western Australia announced that work would commence to develop modernised work health and safety laws for WA and that the new laws would be substantially based on the Model Work Health and Safety Bill. On this basis, the government established the Ministerial Advisory Panel on Work Health and Safety Reform to provide advice on adopting the model laws in WA, and that panel provided its recommendations to the minister in April 2018.

At this point, it should be noted that within the 44 recommendations made by that panel in April 2018, no recommendation was made for the inclusion of industrial manslaughter provisions in any new legislation. No recommendation was made by that panel for the inclusion of industrial manslaughter provisions in any new work health and safety legislation in this state. By happenstance, two separate reviews of national work health and safety laws were also commenced in late 2017 and early 2018. In November 2017, Safe Work Australia commissioned independent reviewer Marie Boland to review the content and operation of the model work health and safety laws that had been adopted by the commonwealth and various states. The "Review of the Model Work Health and Safety Laws: Final Report", which is often referred to as the Boland report, was provided to state and commonwealth ministers in December 2018 and published on 25 February 2019. The central findings of the Boland report were that the model work health and safety laws were largely operating as intended. The final report included 34 recommendations to improve clarity and consistency, including undertaking further review and analysis in certain areas. Of significant relevance to the Work Health and Safety Bill 2019, the Boland report recommended the inclusion of industrial manslaughter as a new offence. For the sake of accuracy, I will quote the recommendation set out in that report. Recommendation 23b, "Industrial manslaughter", states —

> Amend the model WHS Act to provide for a new offence of industrial manslaughter. The offence should provide for gross negligence causing death and include the following:
>
> - The offence can be committed by a PCBU and an officer as defined under s 4 of the model WHS Act.
> - The conduct engaged in on behalf of a body corporate is taken to be conduct engaged in by the body corporate.
> - A body corporate's conduct includes the conduct of the body corporate when viewed as a whole by aggregating the conduct of its employees, agents or officers.
> - The offence covers the death of an individual to whom a duty is owed.

In making that recommendation, Ms Boland stated the following —

> I consider there is merit to introducing an additional 'gross negligence' offence in the model WHS Act, specifically where the outcome of that gross negligence is the death of a person covered by the WHS laws. I consider that this response is required to address increasing community concerns that there should be a separate industrial manslaughter offence where there is a gross deviation from a reasonable standard of care that leads to a workplace death.

While that was happening, on 26 March 2018, the Senate referred an inquiry into the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia to the Education and Employment References Committee for inquiry and report. The report from that inquiry contained 44 recommendations and was completed in October 2018. As with the Boland report, that inquiry report also contained a recommendation specific to industrial manslaughter. I will quote recommendation 13 from that report —

> **The committee recommends that Safe Work Australia work with Commonwealth, State and Territory governments to:**
>
> - **introduce a nationally consistent industrial manslaughter offence into the model WHS laws, using the Queensland laws as a starting point; and**
> - **pursue adoption of this amendment in other jurisdictions through the formal harmonisation of WHS laws process.**

That recommendation referred to the Queensland legislation, so, for the sake of clarity, section 34C, "Industrial manslaughter—person conducting business or undertaking", of the Queensland Work Health and Safety Act 2011 states —

> (1) A person conducting a business or undertaking commits an offence if—
>
> (a) a worker—
>
> (i) dies in the course of carrying out work for the business or undertaking; or
>
> (ii) is injured in the course of carrying out work for the business or undertaking and later dies; and
>
> (b) the person's conduct causes the death of the worker; and
>
> (c) the person is negligent about causing the death of the worker by the conduct.

It is those industrial manslaughter provisions in the bill before us, particularly clause 30B, "Industrial manslaughter—simple offence", that are the cause of much concern. One of the key components of the recommendations in the various reviews and reports was the adoption of uniform or harmonised legislation across the nation.

As I mentioned earlier, the bill before us was referred to the Standing Committee on Legislation on 21 May 2020. The terms of reference for that inquiry state —

> (1) That the Work Health and Safety Bill 2019 be discharged and referred to the Standing Committee on Legislation for consideration of Part 2 of the Bill and report no later than Tuesday, 11 August 2020;
>
> (2) The Committee has the power to inquire into and report on the policy of the Bill; and
>
> (3) The Committee is to consider any government response to Report 126 of the Uniform Legislation and Statues Review Committee.

In the course of its inquiry, the committee received 64 submissions and held inquiries over two days in July. The bill before us is based significantly on the Model Work Health and Safety Bill, which we talked a little bit about before, developed by Safe Work Australia in 2011 following the COAG agreement to harmonise work health and safety laws in Australia. Paragraph 1.8 of the forty-third report of the Standing Committee on Legislation observes —

> The Model Bill has been implemented in every state and territory in Australia except Western Australia and Victoria, although Victoria's legislation is already similar to the Model Bill. It has also been enacted in New Zealand.

Part 2 of this bill, which the committee's inquiry was limited to under its terms of reference, contains the provisions dealing with duties, offences and penalties. Paragraph 1.15 of the forty-third report states —

> Part 2 is substantially consistent with the Model Bill. The main differences are summarised in Appendix 3. These include the introduction of the following new provisions:
>
> - a duty of care for work health and safety providers (cl 26A)
> - two offences of industrial manslaughter (cl 30A, 30B).

Those key differences in the Model Work Health and Safety Bill and the recommendations of the various inquiries that I discussed before will be the focus of my remarks and the position of the Nationals WA on those elements of the bill.

Let me turn now to clause 30B, and others have already discussed this clause. The key differences between clause 30A, "Industrial manslaughter — crime", and clause 30B, "Industrial manslaughter — simple offence", are described in the explanatory memorandum, and I quote —

> The key difference between industrial manslaughter–crime and industrial manslaughter–simple offence is there is no requirement in relation to a PCBU to establish that the person engaged in conduct knowing it was likely to cause the death of … an individual.

There is no requirement in relation to a person conducting a business or undertaking to establish that the person engaged in conduct knowing it was likely to cause the death of an individual. As I mentioned earlier, significant concerns were raised about this particular provision by a number of stakeholders, and they centred around the lower standard of proof, the exclusionary nature of the offences related to the exclusion of employees, issues of procedural fairness, the regulator also being a prosecutor for clause 30B offences, a lack of consideration of unintended consequences, potential and unquantified impacts on small business, and the undermining of the cooperation and safety culture in workplaces by adopting a more adversarial and punitive approach. Concerns were also expressed about the way in which the government had undertaken consultation, and others have spoken about this tonight. Industrial manslaughter was not raised during the ministerial advisory panel consultation process.

As I discussed earlier in my contribution, the various reviews and reports that recommended the inclusion of an industrial manslaughter offence did not recommend the inclusion of the simple offence that is proposed in this bill. I previously mentioned the report of the Senate's Education and Employment References Committee. Recommendation 13 of that report states —

> … Safe Work Australia with Commonwealth, State and Territory governments to:
>
> - introduce a nationally consistent industrial manslaughter offence into the model WHS laws, using the Queensland laws as a starting point; and
> - pursue adoption of this amendment in other jurisdictions through the formal harmonisation of WHS laws process.

Clause 30B is not nationally consistent and does not harmonise with that legislation. It is a departure from the model laws. It requires a different standard of proof and does not introduce the standards of negligence that Marie Boland recommended in her review of model work health and safety laws.

Table 12, on page 64 of the forty-third report of the Legislative Council's Standing Committee on Legislation, outlines the degree of negligence and provides examples of how that negligence applies under various acts. If members care to look at that table, they will see that clause 30B, "Industrial manslaughter—simple offence", does not apply the level of negligence recommended by the Boland report and is of a lower standard.

Finding 17 of the forty-third report, on page 64, states —

> Clause 30B of the Work Health and Safety Bill 2019 only requires a person conducting a business or undertaking to be negligent, not criminally negligent, in order to be guilty. This aligns with the current level 3 offence in s 19A(2) of the *Occupational Safety and Health Act 1984* and s 9A(2) of the *Mines Safety and Inspection Act 1994*.

Again, I draw members' attention to issue 4 of the supplementary notice paper. I believe there may well be another one by the end of proceedings this evening, and I expect issue 5 will be quite a good deal thicker than issue 4. Members will note the number of amendments proposed on the current supplementary notice paper. Hon Nick Goiran spoke about a number of amendments in his name that seek to remove clause 30B and make other consequential amendments to the bill to facilitate the removal of that clause.

I indicate at this point that the Nationals WA do not support clause 30B, and at this stage we are supportive of the amendments on the supplementary notice paper, notwithstanding the fact that there may well be other amendments that we have not yet seen, which we will consider in due course. Again, many of those amendments may be government amendments, and I look forward to a decent opportunity to scrutinise those amendments should they be proposed.

I will change tack here and turn to clause 26A. The explanatory memorandum states —

> **Clause 26A—Duty of persons conducting businesses or undertakings that provide services related to work health and safety**
>
> 112. This clause sets out the duty of a PCBU that provides WHS services to another PCBU. Examples of activities that might be considered WHS services are provided at the end of subclause 26A(1).
>
> 113. For the avoidance of doubt, paragraph 26(1)(b) specifies certain services that are excluded from the definition of WHS services, such as emergency services provided by emergency services personnel and services subject to legal professional privilege.
>
> 114. The use of a WHS service does not limit the health and safety duties of the PCBU that is the recipient of that duty and section 272 of the Bill will apply to terms of the agreement or contract for the WHS service.

The Standing Committee on Legislation also considered clause 26A during the course of its inquiry. A number of stakeholders, whom I mentioned previously, and others identified concerns with this aspect of the bill, centred around this provision being another departure from the model bill—which it is; it does not exist in the model laws, so this clause is unique to Western Australia. The stakeholders also had concerns about the implications for work health and safety service providers in that those service providers might cease to provide quick, template-style advice on work health and safety matters.

Paragraph 3.39, on page 27 of the forty-third report of the Standing Committee on Legislation, contains an observation from Mr Mark Goodsell, the head of the New South Wales branch of the Australian Industry Group. During the course of the committee's inquiry, Mr Goodsell made the following observation —

> I think there is a real difficulty in one state doing it, because the market for work health and safety services is a national market and you run the very real risk that those services will be just provided beyond the state border because the word gets out that you just do not do it in Western Australia because that is the one place where there is an extra duty. There are some real issues about how, if it is not thought through properly, it might prevent a lot of organisations that are providing a lot of good advice in template form, which is very popular with many industries—it is not perfect, but it is strongly embraced by a lot of industries that need to take safety seriously. In the COVID emergency, in fact, we have done a lot of that advice—both industry, associations and even regulators, have been providing a lot of advice with imperfect information. We have had to because we have been dealing with a very novel situation. If this duty had been in existence in March in other states, there would have been a real fear, certainly in our organisation, in trying to help our members deal with the COVID situation because we would not necessarily have been dealing with, as

> I said, perfect information and we feel that this duty might have put us deeply at-risk, even though that was exactly what was necessary during the COVID crisis—quick decision-making with imperfect information.

Finding 4, on page 29 of the report, relates to this aspect of the bill, and reads —

> The duty in cl 26A of the Work Health and Safety Bill 2019 is not expressly included in the Model Work Health and Safety Bill. The Model Bill contains an implicit duty on those providing work health and safety services under cl 19. The inclusion of cl 26A in the Bill makes explicit the implicit duty of those providing work health and safety services under cl 19 of the Bill.

There is perhaps a little bit of ambiguity, not in the report itself but in some of the references to the hearings, that the committee held a view on how the provision might apply and to whom it might apply. A little bit of that ambiguity may be evident in paragraph 3.43 of the report. I note, again, that there are proposed amendments to clause 26A in issue 4 of the supplementary notice paper. Nationals members will consider their position on these amendments during the Committee of the Whole House, but we are inclined to support the amendment that seeks to remove clause 26A. Having said that, we will be listening very carefully to the debate, the minister's reply and the commentary from other members who may yet wish to speak on the bill.

With those comments, I will wind up my contribution. The biggest areas of concern that I have raised, from the point of view of the National Party, are clauses 30B and 26A. There are other amendments on the supplementary notice paper and there will be more to come. We will consider those as they come through. I look forward to a cooperative approach from the government in particular on any proposed amendments, and I look forward to being able to get good briefings, where possible, so that we can understand exactly what might be going on with any proposed amendments from that point of view. Obviously, the Nationals will work closely with other members of this place to understand the various amendments that they may have on the supplementary notice paper.

Again, I want to reiterate that the Nationals WA support harmonising work health and safety legislation in this country. Obviously, we support making sure that we do all we can to keep people safe in their workplaces. We do not want people to not come home from work. In this day and age, I do not think it is acceptable that people should be subjected to serious harm or death in their workplaces through acts of gross negligence. Many of the provisions in this legislation seek to improve work health and safety in this state, so we support those. As I said, there are many amendments on the supplementary notice paper and we will consider those as they come up. I look forward to what will likely be a very lengthy Committee of the Whole stage for this legislation, given the significant number of amendments and the consultation that will have to happen on those as we progress. I will leave my remarks there.

HON CHARLES SMITH (East Metropolitan) [8.01 pm]: I rise briefly to make a contribution to the second reading debate on the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019. It should come as no surprise to any members that I, in particular, and the Western Australian Party, in general, support the Australian worker. Time and again, I have spoken in this place about wage decline in this state, which, incidentally, is still the lowest in the country. I have spoken about the fake skills shortage that people still go on about. I will advise members what a "skills shortage" really means. When politicians and business lobby groups go on about a skills shortage, it is a special code that means "more immigration, please". They believe that more immigration is always good because it crushes wages and lifts asset prices. That is what people really mean and that is why I oppose it. I have gone on about dwindling union membership numbers and the exploitation of migrant workers, in particular, the international student slave trade, which this government somehow supports.

Over the last five to 10 years, some nasty and horrendous incidents at workplaces have resulted in the deaths of workers. Some of the deaths have been really appalling and, if I were a copper, I would call them bad deaths. People have died really horribly and in nasty circumstances. I understand that some of those deaths have been found to have been preventable. That is the driving force behind this legislation—that is, the need to hold individuals or corporations accountable for not making the effort to make modern workplaces safe.

A major aspect of our common law system are the principles of responsibility and accountability. Our laws reflect this—or they should. The current Occupational Safety and Health Act does that, as do these bills before the house. As it currently exists I think the model is a fine system. It is not perfect by any means, but, for the most part, it achieves its objectives. The starting point for that act is found in sections 19 and 20, which outline the duties of employers and employees respectively, followed by the consequences of breaching those duties. Penalties are set by levels, ranging from a level 1 penalty of $50 000 for an individual for a first offence or $100 000 for a body corporate, up to a level 4 penalty of $550 000 for an individual for a first offence or $2.7 million for a body corporate. The legislation before us will, essentially, import a harmonised model into Western Australia and bring in a number of reforms. The most controversial reform is the provocatively named industrial manslaughter offence. Alternatives to sections 19 and 20 of our current model are to be found, more or less, in part 2 of the Work Health and Safety Bill 2019, which also outlines what is a reasonably practicable duty of care and specific duties for persons conducting certain types of business. The great difference is that the penalties in that bill are much more

significant. They have levels, somewhat like our current model; however, there are three levels instead of four levels and the numbers are, essentially, reversed. In the current model, a level 4 penalty is the equivalent of a category 1 offence in this model. However, as has been noted, the penalties in this legislation are much higher. The penalties in this legislation range from a fine of $55 000 for a category 3, which is the lowest level, up to five years' imprisonment and a fine of $680 000 for individuals. Penalties for corporate offences are also significantly higher, ranging from $570 000 to $3.5 million.

In their second reading contributions, many members have outlined issues with clause 30B. I will briefly discuss clause 30B, which is the simple offence provision. It carries a heavy penalty of 10 years' imprisonment and a $2.5 million fine for an individual and $5 million for a body corporate. The clause states that a person charged under this provision —

> … may be convicted of a Category 1 offence, a Category 2 offence or a Category 3 offence.

I could be wrong, but I presume that this is a judicial discretion provision that will allow for a charge in the alternative due, I assume, to potential issues of double jeopardy, although I think the drafting at the moment is particularly unclear. A breach of clause 30B will be dealt with at the Magistrates Court level, which means that the crime can be dealt with summarily and presumably gives magistrates some discretion, particularly with respect to jail time. However, given the severity of the provision, I am somewhat concerned with this approach, as are other members. We must keep in mind that this is a potentially serious penalty and still must be proven beyond reasonable doubt. I appreciate member's concerns, and I understand the concerns of business lobby groups and others. However, I look forward to looking at government amendments and members' amendments and I will deal with them on their merits.

Clause 30A is what the Work Health and Safety Bill 2019 is really about. It is the star of the show. The crime of industrial manslaughter carries a penalty of a $5 million fine and 20 years' imprisonment for an individual. In the case of a body corporate, it is a $10 million fine. It appears that judicial discretion provisions will also apply. I note that a person charged under this provision may also be convicted of an offence under clause 30B.

Most members know that I am typically a fan of firm or harsh penalties for crimes. For the most part, I agree with what is being proposed here. I understand that amendments to clause 30B are coming through. I look forward to reading and being briefed on those and seeing how we can work through them. I am somewhat concerned about the knock-on effects of this legislation, such as the playing of blame games, attempts to obfuscate liability and the inevitable skyrocketing cost of insurance. The policy intention is good and I support it. I would like to see no more serious or fatal injuries in Western Australian workplaces. I hope that these provisions will never have to be tested.

HON ALISON XAMON (North Metropolitan) [8.09 pm]: I indicate that I am the lead speaker for the Greens on the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019, which we are debating cognately. I am really pleased to indicate that the Greens will be supporting this legislation. I am particularly pleased that the legislation has received priority for passage through the Parliament. It is a package of legislation that I have wanted to see introduced for quite some time. I have a few comments to make about it. I wanted to indicate how pleased I am that we are finally debating this legislation. Judging by the comments made today, it looks like it will receive the support of the house. I believe that this bill has the capacity to be transformational. Our occupational health and safety laws will be repealed in their entirety. Our mines safety and inspection laws will be repealed insofar as they relate to work health and safety. Similarly, our petroleum and geothermal energy laws will be repealed insofar as they pertain to work health and safety matters. In place of all those repealed laws, the bills will apply to all sectors and we will see the creation of regulations that are supporting them for the mining sector and the petroleum and geothermal sector, and a general one for all other sectors. It is really a serious revision of the way we create occupational health and safety laws within this state.

The very short Safety Levies Amendment Bill 2019 confirms the continuation of existing safety levies within the mining, petroleum and geothermal industries. That is pursuant to the constitutional requirement that tax bills be separate bills. This bill has a very long history. I have been speaking about the need for reform in this space since the thirty-eighth Parliament. In 2008, COAG entered into a formal intergovernmental agreement for harmonised national health and safety laws. Following that, in 2009, we saw the national review of the model occupational health and safety laws. A regulation impact statement by Access Economics supported model laws being adopted. It found that although costs and benefits were not readily quantifiable, the model laws were essentially about harmonisation rather than substantive changes. Therefore, although there would be costs for multijurisdictional businesses learning the new rules, they would easily be offset by no longer having to deal with different OSH regimes across the various jurisdictions, and there would be no costs for workers. Although governments would have some small rollout costs, they would benefit from national reviews that were duplicated in each jurisdiction. In addition, if the number of workplace incidents decrease, obviously governments will benefit from increased taxes and reduced welfare

payments. It was calculated at the time that adopting the model laws would end up with Australia receiving a net benefit of $180.7 million. It is important to note that that is an Australia-wide calculation. Regarding WA specifically, page 4 of the explanatory memorandum puts the regulatory benefit to WA at $19.5 million and says that WA Treasury's Better Regulation Unit sees no need for a further regulatory impact assessment.

Following the national review and address in 2011, the Model Work Health and Safety Act was published. It has been amended once since then, back in 2016. Those model laws have been adopted by all other Australian jurisdictions except Western Australia and Victoria, but Victoria was the original model from which the model laws derived. If WA legislates, uniformity across Australia will be achieved. I note that New Zealand has also updated its health and safety laws in light of the model laws' contents. Over the years since the model laws were implemented interstate, they have been reviewed repetitively. I mentioned that this is a matter that I was talking about in this place, albeit sitting where Hon Charles Smith is sitting at the moment, during the thirty-eighth Parliament, so I have been talking about this matter for quite some time. I was one of the people who got very frustrated at the government's apparent reluctance at the time to introduce the uniform legislation—the model laws. I ended up introducing my own bill into this place, which was quite comprehensive. It incorporated a number of the model law provisions that I felt needed to be in place and, in fact, upgraded a number of the provisions to reflect what I thought were, and still believe are, quite important provisions that could be improved further. At that point, within that bill I also introduced industrial manslaughter under the Criminal Code. That was a multipart bill. Such was my frustration at the lack of progress that was being made to introduce the model laws, I ended up introducing my own bill into the thirty-eighth Parliament.

Getting back to the way the model laws have been repetitively reviewed, I refer to the report of an inquiry by the Senate Standing Committee on Education and Employment entitled "They Never Came Home: the Framework Surrounding the Prevention, Investigation and Prosecution of Industrial Deaths in Australia". That ended up being published in October 2018. Two months later, in December, a report containing the outcomes of a formal review of the model laws was published. It was carried out by the independent reviewer, Marie Boland, whom many members have already spoken about. She was appointed by Safe Work Australia. This is the Boland review that we keep referring to. The Boland review found that the model laws were mostly working as they were intended and that national harmonisation of the laws was still strongly supported, but there were problems with consistency, complexity and clarity. That report made a number of recommendations.

Meanwhile, in 2017, this government created a Ministerial Advisory Panel on Work Health and Safety Reform to advise it on creating a single harmonised act relating to work health and safety. That panel was chaired by Stephanie Mayman, a good friend and also well known to many of us from her days at UnionsWA and also as a Western Australian Industrial Relations Commissioner. That report in June 2018 contained a number of recommendations. Since the bill was introduced, it has been considered by not one, but two committees—our own Standing Committee on Uniform Legislation and Statutes Review and the Standing Committee on Legislation. I want to thank the members of both those committees for their reports. I also note that the legislation committee carried out considerable stakeholder consultation during its inquiry. In addition, I note that the Standing Committee on Public Administration completed its three-year inquiry and report into WorkSafe in time for this debate. I thank the members of that committee as well. That is a comprehensive report, components of which are quite timely and relevant to this particular legislation.

The bill that we are debating today is broadly faithful to the model laws, with amendments as recommended by the ministerial advisory panel that largely reflect existing WA law. Some parts of the model laws have been omitted from the bill. These include part 7 and the civil penalty provisions. Those omissions are not controversial. They were omitted only because during consultation, stakeholders expressed a strong preference to continue with the current system under the Industrial Relations Act and the Fair Work Act rather than replacing it with the model laws version. The model law provisions about inquests are also omitted from the bill. Again, the omission was recommended by the ministerial advisory panel in order to ensure that we had consistency with the Coroners Act. Model law clause 233 is omitted because it is already covered by other law. Concepts in the model laws that do not currently exist under Western Australian work health and safety laws were also omitted from the bill. Provisions for injunctions are an example, because the WA tribunal does not currently have that power and I understand that to include it would have necessitated a lot of extra drafting. The concept of recklessness and the provisions for infringement notices are other examples. I am told that consultation did not reveal any appetite to include those provisions, and that to include them would have necessitated administration to support the process. The recent report of the Standing Committee on Public Administration, following its three-year inquiry into WorkSafe, found that infringement notices would provide WorkSafe inspectors with another tool at their disposal for breaches of safety and health laws and it recommended that the minister introduce a bill to grant inspectors that power.

As well as the bill adopting most of the model laws, it will implement two of the most important reforms that were recommended by the Senate Standing Committee on Education and Employment and by the Boland review, "Review of the Model Work Health and Safety Laws: Final Report". I strongly welcome the bill's inclusion of industrial manslaughter. This is consistent with the recommendations of both the majority Senate committee and Boland review. It is the result of long-term campaigning by unions, individuals and other stakeholders. I think it is a really important step towards making sure that workers return home from work, safe and well. I think it sends a very clear message that workplace deaths are utterly unacceptable and that if someone is killed at work, it is just as tragic as it is when people die in other circumstances.

I have already mentioned the bill that I introduced into this place in the thirty-eighth Parliament. Amongst other things, it would have introduced industrial manslaughter as a crime under the Criminal Code. Members are aware that I reintroduced that bill in this fortieth Parliament as the Criminal Code Amendment (Industrial Manslaughter) Bill 2017. Almost a decade before I introduced that bill, the "National Review into Model Occupational Health and Safety Laws" had identified the need to make noncompliance with the duty of care to workers a criminal offence, but it was not legislated in Western Australia. The United Kingdom and the Australian Capital Territory had legislated it and, at the time, Queensland had recently committed to legislation. My bill sought to introduce the offence of industrial manslaughter into the Criminal Code, with penalties that were similar to those for the offence of manslaughter. We were not going to distinguish whether someone was killed by manslaughter or by industrial manslaughter. It also provided a range of other sentencing options, including adverse publicity orders and orders compelling offenders to make their workplaces safer. Under the provisions in the bill, the offence would be made out if the worker died in the course of employment or following injuries suffered in the course of employment if the employer's conduct had caused the death in circumstances in which the employer knew death or serious harm was likely, but acted or failed to act in disregard of that likelihood. The bill also aimed to overcome difficulty in prosecuting companies for manslaughter by making senior officers criminally liable. We began debate on my bill in August last year. At the time, the government indicated it opposed the bill in form but not in substance and expressed support on the record for industrial manslaughter laws. That was a bit of a shift from when I introduced the legislation in the thirty-eighth Parliament. At that point, it did not receive as much support for the policy as it received many years later.

We are now dealing with the Work Health and Safety Bill 2019, which was introduced two months after we debated my bill in this place on industrial manslaughter. I was very clear at the time—I still am—that I welcomed the bill in front of us and indicated my support for the industrial manslaughter provisions. I understand that the way industrial manslaughter is going to be enacted is going to be the subject of more debate when we get into the Committee of the Whole stage, but I remain passionately supportive of the need to be able to find individuals criminally culpable when they have knowingly made decisions that have led to workers' deaths.

It would be remiss of me to not acknowledge the work of the unions that have been pushing to have industrial manslaughter provisions included as an offence for quite some time. I particularly note the good work of the Maritime Union of Australia and the Construction, Forestry, Maritime, Mining and Energy Union, which have been absolutely forthright in wanting reform in this space. As far back as when I was working at the Communications, Electrical and Plumbing Union—now the Electrical Trades Union—there was a very strong desire for industrial manslaughter legislation to come into play. One of the reasons for that is that unions are at the forefront of having to pick up the pieces when their members are killed on worksites. Far too often, this has occurred in circumstances in which we can tell the employers simply have not given a damn about prioritising work safety.

I also have to acknowledge the incredibly brave family members and individuals who have met and spoken with me over the years to share their stories. For me, the impetus to decide I needed to introduce legislation for industrial manslaughter followed a worker safety rally that I attended. An 11-year-old girl stood up next to her mother while she talked about her husband—the daughter's father—who had been killed on a worksite. No justice had ever come to them for what had happened. I can still remember the look on the girl's face—how stricken and lost she looked. I knew at that point that I had to try to do something to continue to push that debate.

When I introduced industrial manslaughter legislation, I copped a lot of flak, particularly from the Chamber of Commerce and Industry of Western Australia and the Chamber of Minerals and Energy. Quite frankly, they made ridiculous responses including stupid comments about how occupational health and safety matters needed to be all carrot and no stick, which is just stupid. I am quite happy to see plenty of carrot in occupational health and safety laws, but for people who are cutting corners knowing that it could kill their workers and then their workers die, I have no problem with the stick being applied. As far as I am concerned, those found guilty of industrial manslaughter are really the worst of the worst. They have no place being around human beings, let alone being in charge of workers. I am really pleased that we seem to have been able to shift the debate around the importance of workers' lives from when I first started trying to advocate for this.

I also note in particular, as I know many members did in the other place, the work of Regan Ballantine, whose son, Wesley, was killed on a worksite in circumstances that should never have occurred. Those who have seen the photos of that site, as I have, will share my shock and horror that it was even able to stay open. Those prosecutions have run their course and the penalties that have been handed down for Wesley's death are appalling and inadequate. I have spoken about it many times in this place. Frankly, there has been no justice for Regan and Wesley, who had his whole life ahead of him. All I can say to Regan is that I hope this bill gives her some comfort. I hope this bill at least helps in some way, but I know she would do anything to have her son back instead. Regan has shown a level of courage and stoicism in advocating reform of these laws, giving the human face for why we need these laws in a way that has been absolutely critical in this state. I thank her and I thank all the families who have shown such courage in speaking at inquiry after inquiry, have bared their souls and revealed the trauma and relived it over and again. I really hope that we can start seeing a shift in the number of people who die.

I also strongly welcome the inclusion in the Work Health and Safety Bill of a ban on insurance or other indemnities against liability to pay a fine, which is also a key part of what it means to have strong penalties for industrial manslaughter. This was recommended unanimously by the Senate Standing Committee on Education and Employment. It was also recommended by the Boland review. The Standing Committee on Public Administration also supports it. There have been reports that in other jurisdictions some persons conducting a business or undertaking have had penalties imposed against them paid by their insurance company. Clearly, this would hugely undermine the sentencing aims of deterrence and punishment. We are the first Australian jurisdiction to legislate a ban. New Zealand has one but no other Australian jurisdiction does yet. I think it is a really important provision because it is a bit pointless trying to include these incredibly strong penalties and making individuals personally liable if, ultimately, it can be written off as yet another expense. It defeats the purpose entirely of making people personally culpable for the consequences of their behaviour.

I note the government has taken the opportunity in the bill to also address gaps in the law that have been revealed through practice or case law. For example, there is provision for cross-border information sharing. There is provision for automating certain parts of the authorisation process such as confirming that an applicant is over 18 years of age. There is provision for a single application to cover a number of matters when appropriate instead of requiring one application per matter. The regulator will be empowered to conduct broad investigations that review systems or themes—for example, the culture within a particular industry. I think that is a really important provision. There is provision for copying and retaining documents. There is provision for seized things to be analysed using, if appropriate, a form of testing that results in the thing's destruction.

The Greens are pleased that the bill also contains a review clause. The review clause provides for five-yearly reviews and, very sensibly, this must include consideration of the most recent review of the model laws. The report of the review of the bill must be tabled in Parliament within 12 months of the expiry of the five-year period. That is important, because it means that, hopefully, we will ensure that we are keeping up-to-date with the necessary reforms in this space.

All in all, this bill delivers a bunch of much-needed reforms and the Greens welcome it and support it accordingly. However, there are a couple of areas in the bill in which we could have gone even further. I hope they can be an area of reform at some point in the future unless, of course, the chamber decides it would like to support my amendments; in which case, members will have the additional reform now. I think there is a lack of express duty of care in relation to workers' psychosocial health. Some stakeholders have expressed disappointment to me that the bill lacks an express duty of care for workers' psychosocial health. The bill defines health as physical and psychological health; therefore, the primary duty of care under clause 19 to ensure as far as is reasonably practicable workers' health and safety clearly includes workers' psychological health, and that is good. It is also good that the explanatory memorandum confirms at page 8 that the term "health" is used in the bill in its broadest sense and includes psychosocial risks to health such as stress, fatigue and bullying. I welcome that clarification on the record. My concern, however, is that this still might not be clear enough. I am thinking of two situations in particular. The first situation is when a worker suffers psychological harm as a result of physical injury—for example, through violence in the workplace—and those resulting mental health issues can last a lot longer than the physical injuries. The other situation is that of fly in, fly out workers. We know that FIFO workers are at increased risk of experiencing psychosocial issues at work, including isolation, fatigue, extreme environmental conditions that interfere with bodily comfort and the ability to sleep, and very heavy work demands, as well as being away from family and regular support networks.

Members will be aware of the 2015 report of the Education and Health Standing Committee of the other place, titled "The Impact of FIFO Work Practices on Mental Health". At the time, I was president of the Western Australian Association for Mental Health and took great interest in that report when it was released; indeed, I was on the committee that helped develop the former government's response to some of those recommendations. I came off

that committee when I was preselected to come back into this place because it was not appropriate for someone who would be clearly running as a candidate. I was on that committee for a period.

Members will be aware also that former member of Parliament John Bowler, who is now the Mayor of Kalgoorlie–Boulder, was quoted in November last year talking about workers at a drilling company. He said —

> "They're expected not to leave that camp when they're working 13 days in the super pit, they have one day off then they work another thirteen days straight and they're expected to stay in that camp in Boulder for the next thirteen days," …
>
> "Then they take them on a bus to the airport and fly them back to Perth.
>
> "Now those workers have less freedom than people at the Goldfields Regional Prison."

They are pretty strong words. A 2016 report by the Australian National University, which was commissioned by Safe Work Australia, called "Effectiveness of the Model WHS Act, Regulations, Codes of Practice and Guidance Material in Addressing Psychosocial Risks", said that the evidence showed that having a specific legal obligation motivates organisations to address psychosocial hazards. However, unfortunately, it is especially necessary to provide that extra clarity for PCBUs, I believe, that have FIFO workers to counteract the completely erroneous idea, and I think a deeply damaging myth being peddled by some who should know better, that FIFO workers simply come from a demographic with a naturally higher risk for taking their own lives. That is a really dangerous narrative, by the way, and one that has been heavily debunked. If it were true, the appropriate response would be to ensure additional targeted assistance, not to absolve PCBUs of responsibility for their workers' health and safety. Any way we look at it, it is an issue and all the more reason to pay extra close attention.

A report was commissioned by the Mental Health Commission and undertaken by the Centre for Transformative Work Design, entitled "Impact of FIFO work arrangements on the mental health and wellbeing of FIFO workers". It proved that there were specific risks around the nature of FIFO work and not simply because it was a demographic of people who are attracted to that particular form of work. The reality is that the peculiarities of FIFO work lend themselves to a higher incidence of mental health issues and suicidality if inappropriate mechanisms are not put in place to address those issues and ensure that people are able to access the right services. That is just a fact.

I was delighted last year when the government introduced the new "Code of Practice: Mentally healthy workplaces for fly-in fly-out (FIFO) workers in the resources and construction sectors". However, as I said in a member's statement at the time, I would have been even more delighted if the recommendations in the code had been legislated. I think its content is important and should be enshrined in law and enforced properly because the subject matter of that code is workplace conditions that can so damage workers' mental health that they can cause them to suicide.

I say again that I am delighted that health is defined in this bill to include psychological health, but I am disappointed because I think the government has missed the opportunity to provide some clarity about what that means with respect to the duty of PCBUs to reasonably address psychological and psychosocial risks. If members look at the supplementary notice paper, they will see that I have moved an amendment aimed at providing more clarity on this, so I look forward to members supporting that amendment so that we can have that clarified.

Another area in which the Work Health and Safety Bill 2019 has not gone far enough and could have done better is its failure to give unions the right to prosecute breaches. I want to be very clear that I am not just saying that as someone who is pro-union, which I most certainly am. It is a practical response to a very longstanding problem. WorkSafe Western Australia has been horribly underfunded for a long time, and that is borne out in the thirty-first report of the Standing Committee on Public Administration that was tabled in this place. Indeed, that is the subject matter of quite a number of the findings and recommendations of that report. In particular, WorkSafe has not been resourced sufficiently to prosecute near misses or minor offences, yet those are exactly the cases in which there is a chance to prevent workers from being harmed rather than just prosecuting after someone has been hurt or killed. These are the cases in which I think a real difference to worker safety can be made, to help make sure that every worker gets home safely to their family. It is really important to carry out proactive prosecutions—the difficult cases, such as prosecutions for noncompliance with improvement notices. That is not happening, and I think it is appalling. If WorkSafe cannot carry out proactive prosecutions that can prevent injury from occurring, there needs to be a mechanism to allow someone else to do so.

During the thirty-eighth Parliament, I introduced a private members' bill that sought to achieve that. Clauses 12 and 13 of my Occupational Safety and Health Amendment Bill 2010 gave standing to interested persons to bring prosecutions under the OSH act if the interested person believed an offence had been committed but, following investigation, the commissioner had refused to prosecute. The definition of "interested persons" included the union of persons who had been affected physically by the alleged offence. I am talking here about having an alternative option. Obviously, the best option is for the regulator to be properly funded; that is clearly the best outcome. This is something that the Senate committee unanimously stressed in its report at recommendations 6 and 12, and is stated

over and again in the Standing Committee on Public Administration's report. I acknowledge that the minister said in the second reading speech that the government has brought in 21 new inspectors on top of the six inspectors already added in this term of government. The minister also said in that speech that there were increased resources for educational work and communicating with the broader community about the importance of work health and safety. In his reply to the second reading debate in the other place in February, the minister said that the amount of increased resources for WorkSafe was 25 per cent. Also in the other place, in November last year, the minister said that the number of new inspectors appointed had brought the Western Australian inspectorate up from the smallest proportion in Australia to at least the middle of the pack.

These are really welcome changes; of course they are. They are desperately needed and not before time. However, the Standing Committee on Public Administration's report makes it clear that even with these increases, it is still not enough. In particular, there are two gaps. The first is that WorkSafe needs more than new inspectors; it also needs more lawyers if it is going to do the appropriate number of proactive prosecutions. Secondly—this is the key point that I really want to stress—there is no guarantee that the same or greater proportion of resourcing is going to continue into the future. There is just no guarantee that that is going to be the case, and it is entirely possible that here in Western Australia we could once again drop to having the lowest number of inspectors in Australia. There needs to be a fallback mechanism to enable meritorious prosecutions to take place when WorkSafe cannot, or will not, mount such prosecutions.

That is the substance of my second proposed amendment on the supplementary notice paper. I note that recommendation 80 of the Standing Committee on Public Administration's report is that the minister report to the Legislative Council during consideration of the Work Health and Safety Bill 2019, providing the reasons for his decision not to include a provision empowering unions to initiate and conduct prosecutions. It may be the case that just having such a provision available within the legislation will serve the purpose of effectively putting the regulator, WorkSafe, on notice that if it does not deliver, someone else potentially will. It may also be enough to ensure that prosecutions occur at the rate at which they really should.

My third proposed amendment on the supplementary notice paper is small but significant, yet uncontroversial, and I hope all members will support it. All it will do is render reviewable any decision by a regulator to not approve the witness's choice of legal practitioner. As a matter of principle, I consider it essential that the discretion of the regulator to deprive a person of their lawyer should be subject to review.

My last proposed amendment —

Hon Sue Ellery: Honourable member, was the third one to render the regulator's decision to —

Hon ALISON XAMON: My amendment is on the supplementary notice paper. It renders reviewable any decision by a regulator to not approve the witness's choice of legal practitioner.

My last proposed amendment excludes strata bodies from the definition of "person conducting a business or undertaking" in certain circumstances. On page 9 of the explanatory memorandum, it states that householders who engage persons other than employees for home maintenance and repairs in that capacity—for example, tradespersons undertaking repairs—are not intended to be PCBUs. However, it would seem that a strata company doing exactly the same thing can be a PCBU unless it has been specifically exempted by the regulations. I remind members that a strata company is just all the individual unit holders together, and many, but not all, are householders. Their council of owners consists of volunteers, and it is not fair to discriminate against those householders just because their home is not detached. The model regulations exempt them. Regulation 7 states —

> (1) For the purposes of section 5(6) of the Act, a strata title body corporate that is responsible for any common areas used only for residential purposes may be taken not to be a person conducting a business or undertaking in relation to those premises.
>
> (2) Subregulation (1) does not apply if the strata title body corporate engages any worker as an employee.

The bill in front of us today does not contain an exemption and the government has made no commitment to prescribe an exemption. Therefore, I will be moving an amendment to put WA strata bodies in exactly the same position as they are under the model. Again, I hope members will be willing to support that.

I move on to talk about dangerous goods and high-risk plant. The bill is drafted so as to be capable of encompassing dangerous goods and high-risk plant in the future, if wished. Schedule 1 contains the relevant provisions, and its content accords with the model laws. Schedule 1 can only apply when and if regulations are made that define dangerous goods and high-risk plant. As recommended by the ministerial advisory panel, government is taking a two-stage approach to decide whether such regulations should be made. First, the six existing sets of regulations will be amalgamated and reduced to two, and a single licensing system will be created. During this stage, the Dangerous Goods Safety Act 2004 will be retained. The department will continue to regulate work safety and health aspects such as lead, asbestos, carcinogens and airborne contaminants in the workplace. The Dangerous Goods

and Critical Risks Directorate will continue to regulate containment, storage, transfer and emergency management. At this stage it is expected to take 18 months to two years. The second stage will be a review to consider whether to bring dangerous goods laws under the bill by making regulations that would enliven schedule 1, or leave it as separate legislation. The review is intended to be within two years of the bill being proclaimed.

The Standing Committee on Uniform Legislation and Statutes Review found that clause 12A is a Henry VIII clause, and in its response conveniently included at appendix 2 of its report that the government has indicated it would move an amendment to delete clause 12A in schedule 1 prior to that happening. The supplementary notice paper containing alternative amendments has, of course, been issued. All the substantive parts of the bill will commence simultaneously upon proclamation. Part 16 sets out how the transition is going to happen. The explanatory memorandum says that this is based on principles prepared by Safe Work Australia for the model laws upon which this bill is based, with adaptions for the WA jurisdiction that have been approved by the ministerial advisory panel.

Significant features of the transition include the WorkSafe WA Commissioner becoming the WorkSafe Commissioner; the State Mining Engineer becoming the Chief Inspector of Mines; the members of the Commission for Occupational Safety and Health becoming members of the Work Health and Safety Commission; the Mining Industry Advisory Committee continuing until the new Mining and Petroleum Advisory Committee is established; and pre-existing advisory committees and pre-existing inspectors continuing. The establishment and terms of the various offices and bodies under schedule 2 of the bill will be much the same as they are currently under the Occupational Safety and Health Act. However, there are some changes to implement the recommendations of the ministerial advisory panel. For example, there will be two independent members of the Mining and Petroleum Advisory Committee who neither conduct businesses or undertakings in the industry nor work in the industry. Members of the Work Health and Safety Commission will be able to waive their remuneration or elect for it to be paid to the organisation that nominated them, which will help address the tax issues that sometimes arise for members. The tribunal conciliation powers will be extended.

During the transition, safety levies in the mining sector and the petroleum and geothermal energy sector will continue. Unless otherwise specified, the current law will continue to apply to pre-existing offences and contraventions, accidents, incidents, deaths, injuries or illnesses, and notices. The current law will also continue to apply to pre-existing unresolved disputes. During the transition, the regulator and inspectors will have powers and functions under both the existing law and this legislation. Pre-existing legal proceedings in the Occupational Safety and Health Tribunal will continue under the Work Health and Safety Tribunal, and the jurisdiction of magistrates will continue unchanged. Pre-existing legal protections from personal liability for things done or omitted to be done before commencement day will continue. Pre-existing codes of practice will continue and, in future, will be variable or revocable under the legislation. There will be a grace period before the new health and safety duties apply to plant, substance or structure that was started but not finished before commencement day. Pre-existing safety and health representatives, and the pre-existing elections for them, will continue but their terms will expire in a year. Similarly, pre-existing safety and health committees, and the pre-existing processes to establish them, will continue but their terms also will expire in a year.

There is a very broad regulation-making power, including the ability to render parts of this legislation or any other act inapplicable, or applicable with modifications, to a specified matter or thing.

It is a huge bill. There are huge changes that have finally been proposed and are afoot and a massive number of improvements. I am really pleased that we are finally going to see this come to fruition. There are a number of amendments on the supplementary notice paper and we are obviously going to work through them and see where they end up.

I desperately hope that we still end up with a bill that includes the provision for industrial manslaughter. As I have said, I have personally been pushing for this for a decade. I am desperately keen to see industrial manslaughter legislation on the statute book in Western Australia. When I took my seat for the fortieth Parliament, I indicated that there were two reforms that I desperately wanted to ensure saw the light of day before I ended my term. One was the introduction of industrial manslaughter legislation in this state, and I hope that this is the bill that will finally bring it on. The other one, of course, is the reform of the Criminal Law (Mentally Impaired Accused) Act, which I note has not made it to the fortieth Parliament. That is why I have no choice but to run again for the forty-first Parliament. Hopefully, this legislation will see the passage of the first reform that I am desperate to see pass, but clearly the second one is not going to see the light of day, so I will have to try to come back and make that my mission for the forty-first Parliament.

I am very pleased to support this legislation. Like I say, it does not go as far as I would like and I have some amendments on the supplementary notice paper that reflect what I think are improvements that would make it even more workable, but obviously members will make up their own minds about whether they work for them. With those comments, I look forward to further debate during the Committee of the Whole stage.

HON COLIN TINCKNELL (South West) [8.55 pm]: I indicate that I am the lead speaker on behalf of One Nation on the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019. I want to talk about the areas that concern me. There are many good things in the principal bill and we will support those things. However, Western Australia already has laws covering negligence that contributes to injury and death in the workplace. I just wanted to point that out.

This bill proposes two classes of industrial manslaughter offences in clauses 30A and 30B. Obviously, we have an issue with clause 30B, "Industrial manslaughter—simple offence", which provides for a penalty of up to 10 years' imprisonment and fines of up to $2.5 million for an individual and $10 million for a body corporate. Compared with other jurisdictions, WA will be the only jurisdiction other than the Australian Capital Territory that has taken a two-tiered approach. We also note that the standard of proof required for the prosecution of offences proposed in clause 30B is much lower than that in other jurisdictions, as there is no requirement for there to be gross negligence, negligence or recklessness or, as outlined in clause 30B(1), knowledge. That is one area. A whole class of persons is being excluded from responsibility—in other words, the employee. Clause 30B has an extremely broad reach. There are no obvious areas it would not catch, including health and medical services, hospitals, frontline services, policing, farming, transport, logistics, apprenticeships and training. How will the laws address mental health and suicide? It is broad reaching.

There have also been discussions about the independence and expertise of the counsel—for example, a WorkSafe investigator compared with an independent counsel or the Director of Public Prosecutions. There are also relevant courts, such as the Magistrates Court compared with the District Court. Defences under the Criminal Code are not clear. Other issues include procedural fairness, privileges, legal representation and a few others. I have quite a few questions and concerns about the bill.

Let us look at what other jurisdictions currently have. As I have said, WA is the only state in Australia that is taking a two-tiered approach to this issue. The ACT and the United Kingdom have had this approach for a while and there has been about a decade of evidence—I think it is in the region of 10 years in the ACT and a bit longer in the UK—so there is some data that we can look at. There is no clear evidence that this has made people safer in the workplace. Fatality rates have basically stayed the same in the UK and serious injury claim rates are higher than the national average. After a decade, it is not clear whether the evidence is there to support this happening.

I will talk about some of the unintended consequences for industry. I talked about the broad capturing of unintended consequences and the extreme nature of the proposed laws. In 2018, the state government's ministerial advisory panel completed its review and made 44 recommendations, none of which included this two-tiered approach. The Boland review, which looked at the national work health and safety system, which does not apply in WA, did not recommend what has been proposed in the WA bill. That is an issue for us. During this debate, I have listened intently from the first speaker to the last. I listened to the words about a lack of consultation on this bill. That is always an issue for me. This is a missed opportunity for this government, considering what it is proposing in the industrial manslaughter part of the bill. That is something that concerns us.

I will look at the impacts of the bill. Considering the lack of consultation, the proposals have not been fully appreciated. The laws will be extremely far-reaching—the wording of the provisions is so wide that there are no obvious areas that they will not catch. With safety in the workplace, we need a proactive approach. Safety works best when everyone is working towards a goal or a vision, and in this area the bill seems to divide people. People will be on different levels. I think it also sometimes removes the need for employees to take responsibility. To be safe, everyone needs to act safe—not just the directors, the board, the management, the contractors or the employees. The minute one of those is missing in a work health and safety environment, and regarding the safety of a worker, something will usually go wrong. This is an area that could cause problems in the future.

The culture of collaboration has been around for quite a few years and has resulted in a 62 per cent drop in workplace fatalities in Australia. That is a pretty good achievement. Can it be better? Yes. Are there things in this bill that will make it better? Yes. But I worry that this change is too much and will possibly result in turning something that is improving into an area that may have concerns. As I said, safety is a shared responsibility; everyone needs to be involved, including the employee.

I will now address some potential detrimental effects. Industry is concerned that the proposed offences will not only fail to improve safety outcomes, but also stand to have significant detrimental effects on safety in workplaces. Put simply, the proposed laws break the chain of safety. This chain has worked very well recently and we are worried that the chain will break. There is also the issue of excessive legalism and a blame culture. I do not see how that will work well in a workplace. I have been fortunate to work on many mining sites. If these last three or four years have taught me anything from talking to many farmers, it is that there are giant differences in the way in which things are done, and I really worry about the consequences of clause 30B. We do not want workers to have to concentrate on defending themselves. Working cooperatively to achieve a safety outcome is really the way to go. To me, this

clause discourages reporting and proactive analysis of incidents. They are some of the detrimental effects that this clause could have on the workplace.

As I mentioned before, the low standard of proof is a worry, as is the exclusive nature and extremely broad reach of the legislation. We have concerns about the independence and expertise of counsel, the relevant courts and the defences, and there are also other issues of procedural fairness, privilege and legal representation. These are the things that concern us. One Nation will look closely at all the amendments. The supplementary notice paper has a host of amendments right now and I imagine that number will grow. We obviously support the intention of the bill, but we have areas of major concern, and I put that on record. Clause 31 would also need amending if we were to change clause 30B.

This bill will get our support in many areas, but we would find some areas very hard to support. We will support amendments that refer to those areas. We will look at the other amendments and we will look at how we can improve this bill. I think the government missed an opportunity to consult on this bill. I will leave my comments at that for now.

Debate adjourned, on motion by **Hon Sue Ellery (Leader of the House)**.