OCCUPATIONAL SAFETY AND HEALTH LEGISLATION AMENDMENT AND REPEAL BILL 2004

Consideration in Detail

Resumed from 6 May.

Debate was adjourned after clause 15 had been agreed to.

Clause 16: Part III Division 1 inserted -

Mrs C.L. EDWARDES: I alerted the House in earlier debate to the fact that the Opposition will move amendments to proposed section 18A within this clause. The amendments relate to the broad definition of "gross negligence". In particular, the Opposition has highlighted that proposed section 18A will not require direct knowledge; in fact, instructive or imputative knowledge could apply. An action taken or not taken by any employee could lead to consequences for the employer and the body corporate. As such, the contravention outlined in the provision is far too broad as it would lead to uncertainty. As the minister well knows, unless matters are made very clear, the courts will take any opportunity to open up areas of law, particularly when dealing with an individual's rights. This matter involves a worker who may be seriously harmed; indeed, the incident could have led to a fatality. The Opposition does not support any deliberate action by any person to deliberately refrain from correcting a situation that might lead to serious harm or death. In fact, imprisonment would be an appropriate penalty in those circumstances. However, this proposed section is far too broad, and the Opposition believes it would create uncertainty and would have onerous consequences. Somebody with direct knowledge who does not directly act or who, in disregard of that knowledge, fails to act should be subject to prosecution. I move -

> Page 23, line 15 - To delete "knew" and substitute "had actual knowledge".

The provision would then read -

> . . . the offender -
>
> (i) had actual knowledge that the contravention would be likely to cause the death of, or serious harm to, a person to whom a duty is owed under that provision; but

I seek leave of the House to move my two amendments together.

Mr J.C. KOBELKE: The Government will not support the amendments, but will grant leave for the amendments to be moved together.

Leave granted.

Mrs C.L. EDWARDES: I move -

> Page 23, line 19 - To insert after "act in" the word "deliberate".

The provision would then read -

> (ii) acted or failed to act in deliberate disregard of that likelihood;

Therefore, actual knowledge was held, but the person deliberately failed to act or refrained from doing something that would have prevented serious harm or, indeed, death. The Opposition believes that the clause as it stands is too broad and its penalties are too onerous.

Mr J.C. KOBELKE: The amendments are not accepted by the Government. I place on record why the Government does not share the member's misgivings about gross negligence and the understanding of knowledge. The matter has been looked at carefully. What I say is based on good advice. It is not a legal opinion, but it has been ticked off. To the extent that it may govern interpretation, I will make my statements as clearly and precisely as I can.

In the definition of "gross negligence", three elements must be present before gross negligence applies: first, the offender knew that the convention was likely to cause death or serious harm to a person to whom a duty was owed; second, the offender disregarded that likelihood; and, third, a person to whom a duty was owed was killed or seriously harmed. The definition of gross negligence is targeted at the most serious offences. The Government specifically asked that a tight definition be drafted. It has been delivered. Much thought was given to its drafting. The Government did not want to create the impression that people would be caught by gross negligence when it was only an off-chance that something might occur. It has been specifically crafted as a tight definition.

The member for Kingsley's amendments relate to what is meant when an offender "knew" that a contravention was likely to cause death or serious harm to a person to whom a duty was owed. What is meant by "knew"? The member opposite raised the question when the Bill was debated some weeks ago. The concern was that the

provision may be broader than intended. Discussion was held about constructive knowledge or knowledge that could be inferred by the courts. I advised that when speaking about knowing something, we refer to actual knowledge or wilful blindness. In her contribution a moment ago the member for Kingsley referred to the two other levels of knowledge. It is not our intention, and it is not the current reading of the courts, that they would be sufficient for this clause. We have looked further into her concerns, and the case law indicates that actual knowledge is required when knowledge is an element of a criminal offence. I repeat that for *Hansard*: the case law indicates - and we intend that that should be the case - that actual knowledge is required when knowledge is an element of a criminal offence. Although actual knowledge might be proved by establishing that the likelihood of death or serious harm was so obvious that the alleged offender must have been aware of it, it will not be sufficient if such an inference is one of a number of inferences available on the facts. In other words, any inference of knowledge must be so strong as to constitute actual knowledge when no other logical conclusion is possible. I emphasise the phrase "when no other logical conclusion is possible".

We have also clarified the situation in respect of wilful blindness. The question of knowledge and wilful blindness is discussed in an article by Sir Daryl Dawson titled "Recent Common Law Developments in Criminal Law", published in 1991 in volume 15 of the *Criminal Law Journal*. Sir Daryl Dawson is a former member of the High Court of Australia. He concluded from the authorities that whilst knowledge is an ingredient of an offence that may be established by inference, it must be established as a fact. He continued -

> If the term "wilful blindness" is used merely as a shorthand expression to indicate circumstances which warrant the drawing of the necessary inference, then it is acceptable. But it is unacceptable if it is used as a basis for imputing knowledge where actual knowledge is not proved.

He further said -

> At the most, wilful blindness might be evidence of the actual knowledge or foresight of the accused.

I contend that the requirement for knowledge in the definition of "gross negligence" is as tight as necessary. There is no point in a provision that is so tight that the only acceptable evidence is an admission by the accused. The standard of proof in the criminal law is beyond reasonable doubt; the protections are there.

Mrs C.L. EDWARDES: Perhaps the minister could complete his comments.

Mr J.C. KOBELKE: I would like to comment on imprisonment in other jurisdictions before I come back to another aspect about knowledge. The concept of a term of imprisonment for particular occupational safety and health offences is not unique to Western Australia. Most other Australian jurisdictions currently have some offences for which an imprisonment penalty may apply. Although South Australia is the only jurisdiction that has provisions that could be described as similar to those proposed for Western Australia, many other jurisdictions have different types of breaches that could result in imprisonment. In Victoria and New South Wales, for example, there is the potential for imprisonment for subsequent offences. Queensland's legislation provides options for imprisonment for failure to discharge a work obligation, and the Australian Capital Territory's Act provides for potential prison terms for specific non-general duty of care breaches, such as obstructing or hindering the review authority in the performance of its functions. There are examples in other States, but only South Australia has a provision similar to our own.

I come now to the issue of forgotten knowledge. The member for Kingsley raised the, presumably hypothetical, case of a farmer who put some chemicals he knew to be dangerous in his workshop some 25 years ago and then forgot about them until one of his workers was seriously injured. I have sought advice on this question. In the criminal context, in a 1999 New Zealand case referred to as R and Adams, it was held that a person who had forgotten he had explosives in a safe could not be convicted of the offence of possession of those explosives if he did not have the requisite knowledge. There is also authority in the civil context for the proposition that if at the relevant time a person had genuinely forgotten the relevant facts, that person could not be held to have the requisite knowledge. It is not that the courts would not closely scrutinise any such claim; I am sure they would. However, it must be remembered that in the context of the Occupational Safety and Health Act the standard of proof is beyond reasonable doubt, and the onus is on the prosecution to lead evidence that proves all the elements of the offence. In the case cited by the member for Kingsley, WorkSafe considers it unlikely that it could prove the requisite knowledge, unless other facts were present that could show that the farmer had the knowledge at the time of the alleged offence.

I have sought to answer the member for Kingsley's genuine questions, so that she can understand the Government's clear intent that lower levels of knowledge would not be acceptable to prove gross negligence. All three parts must come together to see whether there can be a successful prosecution meeting all the required elements of gross negligence.

Mrs C.L. EDWARDES: I thank the minister for putting his explanation of those issues on the record. Statutory duties under the Occupational Safety and Health Act are different from those under criminal law, common law

or administrative law. An action based on a statutory duty is a very special type, and the possible defences to a statutory duty are much more restricted than would be found in ordinary common law cases. Therefore, some of the examples that the minister referred to may or may not be relevant to any case that would be brought before the courts. Proposed section 19 is particularly broad and empowers inspectors to enforce the provisions of the Act. When the inspectors are so empowered, they may prosecute in accordance with the provisions in clause 16 referring to the contravention of all those sections outlined in proposed section 18A(1). Once that happens it can lead to a conviction, and the penalty that has just been passed under clause 15. When there is a statutory duty there are special requirements. It is a special type of duty and, as such, any words that establish the contravention of that special type of duty need to be carefully crafted because cases that have interpreted and created legal precedent elsewhere may or may not apply, and definitely may not be the case under criminal law. We need to look at not only the proof and the comparisons with other types of law, but also the specific statutory duty that has been created. However, I thank the minister for attempting to answer those serious concerns that were put forward by members in this House, and for indicating that that was not the Government's intention.

Amendments put and a division taken with the following result -

Ayes (19)

Mr R.A. Ainsworth	Mrs C.L. Edwardes	Mr R.F. Johnson	Mr T.K. Waldron
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr W.J. McNee	Ms S.E. Walker
Mr M.F. Board	Mr B.J. Grylls	Mr B.K. Masters	Dr J.M. Woollard
Dr E. Constable	Ms K. Hodson-Thomas	Mr P.G. Pendal	Mr J.L. Bradshaw *(Teller)*
Mr J.H.D. Day	Mr M.G. House	Mr R.N. Sweetman	

Noes (26)

Mr P.W. Andrews	Mr L. Graham	Mr M. McGowan	Mr J.R. Quigley
Mr J.J.M. Bowler	Mr S.R. Hill	Ms S.M. McHale	Mr E.S. Ripper
Mr C.M. Brown	Mr J.N. Hyde	Mr A.D. McRae	Mr D.A. Templeman
Mr A.J. Carpenter	Mr J.C. Kobelke	Mr N.R. Marlborough	Mr M.P. Whitely
Mr J.B. D'Orazio	Mr F.M. Logan	Mrs C.A. Martin	Ms M.M. Quirk *(Teller)*
Dr J.M. Edwards	Ms A.J. MacTiernan	Mr M.P. Murray	
Dr G.I. Gallop	Mr J.A. McGinty	Mr A.P. O'Gorman	

Pairs

Mr M.W. Trenorden	Mrs M.H. Roberts
Mr C.J. Barnett	Mr P.B. Watson
Mr P.D. Omodei	Ms J.A. Radisich
Mr M.J. Birney	Mr A.J. Dean

Amendments thus negatived.

Clause put and a division taken with the following result -

Ayes (27)

Mr P.W. Andrews	Mr L. Graham	Mr J.A. McGinty	Mr A.P. O'Gorman
Mr J.J.M. Bowler	Mr S.R. Hill	Mr M. McGowan	Mr J.R. Quigley
Mr C.M. Brown	Mr J.N. Hyde	Ms S.M. McHale	Mr E.S. Ripper
Mr A.J. Carpenter	Mr J.C. Kobelke	Mr A.D. McRae	Mr D.A. Templeman
Mr J.B. D'Orazio	Mr R.C. Kucera	Mr N.R. Marlborough	Mr M.P. Whitely
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Dr G.I. Gallop	Ms A.J. MacTiernan	Mr M.P. Murray	

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Mr J.H.D. Day	Mr M.G. House	Mr R.N. Sweetman	

Pairs

Mrs M.H. Roberts	Mr M.W. Trenorden
Mr P.B. Watson	Mr C.J. Barnett
Mr A.J. Dean	Mr P.D. Omodei
Ms J.A. Radisich	Mr M.J. Birney

Clause thus passed.

Clause 17 put and passed.

Clause 18: Section 19A inserted -

Mrs C.L. EDWARDES: For the same reasons that I gave for the definition of "gross negligence", we oppose this clause.

Clause put and a division taken with the following result -

Ayes (27)

Mr P.W. Andrews	Mr S.R. Hill	Mr M. McGowan	Mr J.R. Quigley
Mr J.J.M. Bowler	Mr J.N. Hyde	Ms S.M. McHale	Ms J.A. Radisich
Mr C.M. Brown	Mr J.C. Kobelke	Mr A.D. McRae	Mr E.S. Ripper
Mr A.J. Carpenter	Mr R.C. Kucera	Mr N.R. Marlborough	Mr D.A. Templeman
Mr J.B. D'Orazio	Mr F.M. Logan	Mrs C.A. Martin	Mr M.P. Whitely
Dr J.M. Edwards	Ms A.J. MacTiernan	Mr M.P. Murray	Ms M.M. Quirk *(Teller)*
Mr L. Graham	Mr J.A. McGinty	Mr A.P. O'Gorman	

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Mr R.A. Ainsworth	Mrs C.L. Edwardes	Mr R.F. Johnson	Mr T.K. Waldron
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr W.J. McNee	Ms S.E. Walker
Mr M.F. Board	Mr B.J. Grylls	Mr B.K. Masters	Dr J.M. Woollard
Dr E. Constable	Ms K. Hodson-Thomas	Mr P.G. Pendal	Mr J.L. Bradshaw *(Teller)*
Mr J.H.D. Day	Mr M.G. House	Mr R.N. Sweetman	

Pairs

Mrs M.H. Roberts	Mr M.W. Trenorden
Mr P.B. Watson	Mr C.J. Barnett
Mr A.J. Dean	Mr P.D. Omodei
Dr G.I. Gallop	Mr M.J. Birney

Clause thus passed.

Clause 19 put and passed.

Clause 20: Section 20A inserted -

Mrs C.L. EDWARDES: For the same reasons that I gave for the definition of "gross negligence", we oppose this clause.

Clause put and a division taken with the following result -

Ayes (27)

Mr P.W. Andrews	Mr S.R. Hill	Mr M. McGowan	Mr J.R. Quigley
Mr J.J.M. Bowler	Mr J.N. Hyde	Ms S.M. McHale	Ms J.A. Radisich
Mr C.M. Brown	Mr J.C. Kobelke	Mr A.D. McRae	Mr E.S. Ripper
Mr A.J. Carpenter	Mr R.C. Kucera	Mr N.R. Marlborough	Mr D.A. Templeman
Mr J.B. D'Orazio	Mr F.M. Logan	Mrs C.A. Martin	Mr M.P. Whitely
Dr J.M. Edwards	Ms A.J. MacTiernan	Mr M.P. Murray	Ms M.M. Quirk *(Teller)*
Mr L. Graham	Mr J.A. McGinty	Mr A.P. O'Gorman	

Noes (18)

Mr R.A. Ainsworth	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr W.J. McNee	Dr J.M. Woollard
Mr M.F. Board	Mr B.J. Grylls	Mr P.G. Pendal	Mr J.L. Bradshaw *(Teller)*
Dr E. Constable	Ms K. Hodson-Thomas	Mr R.N. Sweetman	
Mr J.H.D. Day	Mr M.G. House	Mr T.K. Waldron	

Pairs

Mrs M.H. Roberts	Mr M.W. Trenorden
Mr P.B. Watson	Mr C.J. Barnett
Mr A.J. Dean	Mr P.D. Omodei
Dr G.I. Gallop	Mr M.J. Birney

Clause thus passed.

Clause 21 put and passed.

Clause 22: Section 21A inserted -

Mrs C.L. EDWARDES: For the same reasons that I gave for the definition of "gross negligence", we oppose this clause.

Clause put and a division taken with the following result -

Ayes (27)

Mr P.W. Andrews	Mr S.R. Hill	Mr M. McGowan	Mr J.R. Quigley
Mr J.J.M. Bowler	Mr J.N. Hyde	Ms S.M. McHale	Ms J.A. Radisich
Mr C.M. Brown	Mr J.C. Kobelke	Mr A.D. McRae	Mr E.S. Ripper
Mr A.J. Carpenter	Mr R.C. Kucera	Mr N.R. Marlborough	Mr D.A. Templeman
Mr J.B. D'Orazio	Mr F.M. Logan	Mrs C.A. Martin	Mr M.P. Whitely
Dr J.M. Edwards	Ms A.J. MacTiernan	Mr M.P. Murray	Ms M.M. Quirk *(Teller)*
Mr L. Graham	Mr J.A. McGinty	Mr A.P. O'Gorman	

Noes (18)

Mr R.A. Ainsworth	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr W.J. McNee	Dr J.M. Woollard
Mr M.F. Board	Mr B.J. Grylls	Mr P.G. Pendal	Mr J.L. Bradshaw *(Teller)*
Dr E. Constable	Ms K. Hodson-Thomas	Mr R.N. Sweetman	
Mr J.H.D. Day	Mr M.G. House	Mr T.K. Waldron	

Pairs

Mrs M.H. Roberts	Mr M.W. Trenorden
Mr P.B. Watson	Mr C.J. Barnett
Mr A.J. Dean	Mr P.D. Omodei
Dr G.I. Gallop	Mr M.J. Birney

Clause thus passed.

Clause 23 put and passed.

Clause 24: Section 22A inserted -

Mrs C.L. EDWARDES: For the same reasons I have given for the definition of "gross negligence", we will be opposing this clause.

Clause put and a division taken with the following result -

Ayes (26)

Mr P.W. Andrews	Mr S.R. Hill	Ms S.M. McHale	Ms J.A. Radisich
Mr J.J.M. Bowler	Mr J.N. Hyde	Mr A.D. McRae	Mr E.S. Ripper
Mr C.M. Brown	Mr J.C. Kobelke	Mr N.R. Marlborough	Mr D.A. Templeman
Mr A.J. Carpenter	Mr R.C. Kucera	Mrs C.A. Martin	Mr M.P. Whitely
Mr A.J. Dean	Mr F.M. Logan	Mr M.P. Murray	Ms M.M. Quirk *(Teller)*
Mr J.B. D'Orazio	Ms A.J. MacTiernan	Mr A.P. O'Gorman	
Dr J.M. Edwards	Mr M. McGowan	Mr J.R. Quigley	

Noes (18)

Mr R.A. Ainsworth	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr W.J. McNee	Dr J.M. Woollard
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Dr E. Constable	Ms K. Hodson-Thomas	Mr R.N. Sweetman	
Mr J.H.D. Day	Mr M.G. House	Mr T.K. Waldron	

Pairs

Mrs M.H. Roberts	Mr M.W. Trenorden
Mr P.B. Watson	Mr C.J. Barnett
Mr J.A. McGinty	Mr P.D. Omodei
Dr G.I. Gallop	Mr M.J. Birney

Clause thus passed.

Clause 25 put and passed.

Clause 26: Section 23AA inserted -

Mrs C.L. EDWARDES: For the same reasons I have given for the definition of "gross negligence", we will be opposing this clause.

Clause put and a division taken with the following result -

Ayes (26)

Mr P.W. Andrews	Mr S.R. Hill	Ms S.M. McHale	Ms J.A. Radisich
Mr J.J.M. Bowler	Mr J.N. Hyde	Mr A.D. McRae	Mr E.S. Ripper
Mr C.M. Brown	Mr J.C. Kobelke	Mr N.R. Marlborough	Mr D.A. Templeman
Mr A.J. Carpenter	Mr R.C. Kucera	Mrs C.A. Martin	Mr M.P. Whitely
Mr A.J. Dean	Mr F.M. Logan	Mr M.P. Murray	Ms M.M. Quirk *(Teller)*
Mr J.B. D'Orazio	Ms A.J. MacTiernan	Mr A.P. O'Gorman	
Dr J.M. Edwards	Mr M. McGowan	Mr J.R. Quigley	

Noes (18)

Mr R.A. Ainsworth	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr W.J. McNee	Dr J.M. Woollard
Mr M.F. Board	Mr B.J. Grylls	Mr P.G. Pendal	Mr J.L. Bradshaw *(Teller)*
Dr E. Constable	Ms K. Hodson-Thomas	Mr R.N. Sweetman	
Mr J.H.D. Day	Mr M.G. House	Mr T.K. Waldron	

Pairs

Mrs M.H. Roberts	Mr M.W. Trenorden
Mr P.B. Watson	Mr C.J. Barnett
Mr J.A. McGinty	Mr P.D. Omodei
Dr G.I. Gallop	Mr M.J. Birney

Clause thus passed.

Clause 27 put and passed.

Clause 28: Section 23B inserted -

Mrs C.L. EDWARDES: For the same reasons I have given for the definition of "gross negligence", we will be opposing this clause.

Clause put and a division taken with the following result -

Ayes (26)

Mr P.W. Andrews	Mr S.R. Hill	Ms S.M. McHale	Ms J.A. Radisich
Mr J.J.M. Bowler	Mr J.N. Hyde	Mr A.D. McRae	Mr E.S. Ripper
Mr C.M. Brown	Mr J.C. Kobelke	Mr N.R. Marlborough	Mr D.A. Templeman
Mr A.J. Carpenter	Mr R.C. Kucera	Mrs C.A. Martin	Mr M.P. Whitely
Mr A.J. Dean	Mr F.M. Logan	Mr M.P. Murray	Ms M.M. Quirk *(Teller)*
Mr J.B. D'Orazio	Ms A.J. MacTiernan	Mr A.P. O'Gorman	
Dr J.M. Edwards	Mr M. McGowan	Mr J.R. Quigley	

Noes (18)

Mr R.A. Ainsworth	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr W.J. McNee	Dr J.M. Woollard
Mr M.F. Board	Mr B.J. Grylls	Mr P.G. Pendal	Mr J.L. Bradshaw *(Teller)*
Dr E. Constable	Ms K. Hodson-Thomas	Mr R.N. Sweetman	
Mr J.H.D. Day	Mr M.G. House	Mr T.K. Waldron	

Pairs

Mrs M.H. Roberts	Mr M.W. Trenorden
Mr P.B. Watson	Mr C.J. Barnett
Mr J.A. McGinty	Mr P.D. Omodei
Dr G.I. Gallop	Mr M.J. Birney

Clause thus passed.

Clauses 29 to 33 put and passed.

Clause 34: Section 55 amended -

Mrs C.L. EDWARDES: This clause will amend section 55 of the Occupational Safety and Health Act and refers to offences by bodies corporate. Will the minister explain to the House the new provisions that are being inserted? Because the wording is similar to the definition of gross negligence in the clauses that we have just dealt with, will the minister tell us exactly to which body corporate or person the clause refers, the link with the definition of gross negligence and the penalties that will apply?

Mr J.C. KOBELKE: Section 55 of the Act currently provides for directors and other officers of a body corporate to be brought to account when the body corporate is guilty of an offence and the offence is committed with the consent or connivance of or is attributable to neglect on the part of the director or other officer of the body corporate. Clause 34 will insert a new subsection (1a) into section 55 to take into account the new offences involving gross negligence. A director or other officer of a body corporate will be guilty of the gross negligence element of the offence when he or she knew that the contravention would be likely to cause death or serious harm to a person to whom a duty was owed and disregarded that likelihood. When those elements are not proved, the court may convict on a lesser charge of a breach of the general duty of care resulting in death or serious harm. These provisions will ensure that a lesser charge may still be proved, notwithstanding that all the elements of the more serious charge are not considered by the court to be proved.

There are a number of slightly different elements. I am not sure whether we have addressed them in this place or in another place. We did address some of the body corporate issues earlier. There is on the notice paper an amendment to clause 7 that will address part of these issues. I am trying in an orderly way to address the various parts of this issue. Perhaps it is appropriate to talk about the definition of contravention and I will touch on that now. The term "contravention" is used throughout the Bill and, indeed, in the Act. A contravention is simply a breach or failure to comply and is consistent with the ordinary meaning of the word. For a penalty to apply to a contravention of a provision in the Act or those in the Bill, the contravention must also be an offence. All offences are clearly specified in the Bill and the Act, so it is quite clear when a contravention attracts a penalty.

Clause 15 specifies the penalty levels applicable to bodies corporate, including higher penalties for bodies corporate and the potential for imprisonment of individual non-employees convicted of offences involving gross negligence. Clause 7 specifies duties on a body corporate that operates for gain and reward. Clause 34, which we are dealing with now, provides for directors and other officers of a body corporate to be held accountable for their own actions in relation to an offence by a body corporate. Together these provisions gave rise to the concern that the onerous provisions of the legislation have the potential to apply to small community-based incorporated associations, such as local football clubs, with the potential to expose the officers of such associations to possible prison terms. Because of this concern, a definition of body corporate was sought. A body corporate is a body that has been incorporated pursuant to the commonwealth Corporations Act 2001 or any other law. The creation of a body corporate creates a separate legal entity. There are many examples of laws under which a body corporate may be created. Of key interest to the consideration of this Bill is the Western Australian Associations Incorporation Act 1987 under which many small community organisations, such as local football clubs, are incorporated. The intent of both the Occupational Safety and Health Act and the Bill is to capture activities associated with work to provide protection to employees and other workers. The Act and the Bill also aim to provide protection to others, such as members of the public, who may be adversely affected by the work through, for example, visiting a workplace or being in close proximity to the work. It is not intended to capture the fundraising activities of local community-based incorporated associations that have no nexus with the sorts of work-related activities covered elsewhere in the Act. The Government is preparing to clarify the intent of the scale by way of an amendment to the Bill. We will talk about that later, but it is already on the notice paper.

Mrs C.L. EDWARDES: I thank the minister for that. I will alert the minister to my other questions. Does that mean that a football club that runs a bar and employs a bar manager will be covered by this provision for after-match drinks and such activities? Football clubs often employ a coach and pay for linesmen and all the rest of it. In those circumstances, where will the distinction be drawn? A member of the public could be caught up in any of those situations. I will ask that question again. I merely alert the minister to those questions.

I return to clause 34, which will amend section 55 of the Act. It obviously deals with bodies corporate that are guilty. Must a director or any other person referred to in the definition in proposed subsection (1a)(a) hold an official position in the body corporate?

Mr J.C. Kobelke: It is believed that the person must be an officer; however, that is not sufficient. It must be a person who has some responsibility for what is happening in the workplace and that level of responsibility would need to be established.

Mrs C.L. EDWARDES: That makes a lot more sense when we get to proposed paragraph (b)(i), which refers to an offence of the body corporate having occurred with the consent or connivance of the person. There must be a close connection with decision-making powers, responsibility and so on to levy that duty of care under the Bill.

Mr J.C. Kobelke: Yes, a duty of care must be established. Just because a person held an executive position in a club or association would not mean the person was responsible. The person may have divided the responsibilities on the executive committee and someone else may have been designated that responsibility. There could be, therefore, a set structure in which the person clearly did not have responsibility, and if the person had intervened, it would have been regarded as improper.

Clause put and passed.

Clause 35: Section 55A inserted -

Mrs C.L. EDWARDES: Will the minister advise why he is incorporating a double jeopardy provision?

Mr J.C. KOBELKE: The clause already exists in the legislation, and the restructuring has been moved.

Clause put and passed.

Clause 36: Part VII Divisions 2 and 3 inserted -

Mrs C.L. EDWARDES: Division 2 deals with criminal proceedings against the Crown. The new provisions, duties and offences have been laid out earlier. I raised the issue about these provisions in my second reading

contribution. I wonder whether the minister has an update on that. For instance, I refer to the incident at the Swan District Hospital mental health unit. The Minister for Health was alerted, as was the whole community, to the serious incident that occurred with the nurse. WorkSafe went into the facility and highlighted a number of improvement notices. Those improvement notices were then extended. There cannot be an extension without consent. However, if there is a further incident that causes serious harm and/or - let us hope not - a fatality, where do these provisions put the Minister for Health in that situation?

Mr J.C. KOBELKE: The requirements clearly rest on the minister having a duty of care, and that relates to a line of responsibility. Clearly, it would depend on the specific circumstances of the case. It is also conditioned by what is practicable. There will always be cases, I suppose, that are tragic, such as that of Gracetown. People will say that it was unforeseen and perhaps it should have been foreseen. The courts will test the limits to which these matters can go. However, the issue is to not expect the Government of the day or whoever is the minister responsible to provide funding so that everyone can be wrapped in cotton wool, to take it to extremes.

When there is an issue, prosecutions are clearly directed to the agencies. The minister is only rarely the body responsible. However, there may be cases in which the minister is the body responsible and has a direct duty of care. It would then be an issue of showing what control the minister of the day had, what was a reasonable expectation of the control that the minister of the day had and what were the practicalities of dealing with the issue, and of showing that there was a failure to meet a duty of care.

Mrs C.L. EDWARDES: That was the point I made in my second reading address; that is, that chief executive officers will be put under enormous pressure to make sure that conversations they have with their ministers are in writing, as are any requests for extra resources that are necessary to fix, say, improvement notices. Although I was talking about a particular example, we can treat it in a hypothetical way as well, in an endeavour to meet those improvement notices. Although I support the proposition that the State Government and government departments and agencies should be leaders in this regard and could play a leading role, I am concerned about the public sector process and how that might end up being manipulated in an endeavour to produce perhaps unrealistic results.

Mr J.C. KOBELKE: The final comment I make is that New South Wales has this liability going back to the Government and the potential for prosecution. I understand that there have been prosecutions against agencies in New South Wales.

The ACTING SPEAKER (Mr A.P. O'Gorman): The minister has a number of amendments.

Leave granted for the following amendments to be moved together.

Mr J.C. KOBELKE: I move -

> Page 38, line 30 - To delete "prosecutor" and substitute "complainant".
>
> Page 39, line 14 - To delete "prosecutor" and substitute "complainant".

The term "prosecutor" is inaccurate, and "complainant" is the better term.

Amendments put and passed.

Mrs C.L. EDWARDES: Division 3 deals with new sections on the level of enforcement or penalty being incorporated in the occupational safety and health legislation; that is, undertakings by offenders in lieu of payment of fines. Rather than going through each of the proposed new sections, I wonder whether the minister could outline how he sees these provisions operating. One of the concerns is that this is so limited in its context that it will have minimal impact. Where will the fines be paid? Will they go into WorkSafe, or will they go into the consolidated fund? What sorts of undertakings are anticipated for the offences that are subject to these undertakings? Will they be broad and wide, as would be found in community service obligations, or will they be limited to basically dealing with the contravention and, obviously, the correction of that contravention?

Mr J.C. KOBELKE: On the first issue, there is no change regarding fines. They will be paid to the courts. In that way, they will go into the consolidated fund. That does not change. The other issue was about undertakings. When we considered the recommendations of former commissioner Bob Laing, we juggled this area a bit to try to get the best outcome. Therefore, we did not pick up every single initiative, because it seemed as though it was trying to do too much at once. However, it was our view, clearly, that these undertakings could prove to be very useful in making sure that the whole effect of prosecution was to improve safety in the workplace. It is not being punitive for the sake of being punitive. It is obviously holding out a deterrent; that is, there are penalties if people do not take their responsibilities for health and safety in the workplace seriously.

There is also the issue that there may have been a serious breach, and there may perhaps have been negligence at the oversight end, rather than very serious negligence. The employer at that lesser end may be willing to put in place a whole plan that goes beyond accepted practice and goes to best practice, to make sure he really improves

safety in the workplace. That undertaking would be worked out. The undertakings to be delivered on would have to be specific, and that could be the form of the penalty.

This was driven home to me by a reasonably sized engineering company that I visited in 1999 as a result of the very high workers compensation premiums at that time. That company said that it was paying incredibly high premiums. I was quite shocked that they were so high. After the company told me what a brilliant job it was doing with health and safety in the workplace, that it was a leader in that field, that it had a great safety plan, and that it had put a huge amount of resources, time and money into improving safety, I asked what its claims record was like. I asked why the company was paying such premiums, and I was told that two people had been killed in two different accidents within six months of each other. That company was driven by serious incidents to rethink its entire production approach to ensure that safety and health was given emphasis. The Government would prefer to pick up companies at a lower level when they come up for prosecutions to ensure that they get on board with a safety conscious approach. This Bill makes provision for an undertaking to be part of the penalty. As members are aware, if companies do not deliver on that undertaking, they will incur not only the initial penalty that might have applied, but also an additional penalty. It is a matter of getting a balance between the carrot and the stick. This attempts to make the stick more into a carrot. Therefore, in cases at the less serious end of the scale, employers may commit money to ensure that health and safety is improved rather than pay a fine.

Mrs C.L. EDWARDES: Is the safety and health magistrate the same as magistrates as constituted, and not the new position in the industrial commission?

Mr J.C. Kobelke: It is as they are currently constituted, not the tribunal.

Mrs C.L. EDWARDES: I refer the minister to proposed section 55N(2), which reads in part -

> An undertaking is to provide for the offender to do one or more of the following -
>
> . . .
>
> (b) to take specified steps to publicise details of -
>
> (i) any specified offence;
>
> (ii) its consequences;

Proposed section 55R reads -

> The Commissioner may cause an undertaking to be published in any manner the Commissioner thinks fit . . .

The advertising can appear in a newspaper. The undertaking can potentially be publicised by the commissioner, and the specified offences could be publicised by the offender. Why has the minister incorporated both options? Publication under proposed section 55N may be only part of the undertaking.

Mr J.C. KOBELKE: The issue is at proposed section 55N(2), which reads -

> An undertaking is to provide for the offender to do one or more of the following -

The action may be only one thing or it may be a group of things. It will be determined by the industrial magistrate in the specific circumstances. The WorkSafe WA Commissioner, as the prosecutor, and the defendant will be engaged in determining what is reasonable in applying the order of the court to such an undertaking.

Mrs C.L. EDWARDES: Proposed section 55N(2)(d) outlines that the undertaking could include -

> . . . a specified project or activity for the improvement of occupational safety and health -
>
> (i) in the community;
>
> (ii) in a particular section of the community; or
>
> (iii) in connection with a particular kind of activity in the State.

What are the likely parameters around that requirement?

Mr J.C. KOBELKE: The example is that a company may have been careless in the use of some equipment that is widespread throughout the community. Therefore, the undertaking may be to advertise what happened. This publicises to the wider community that if the equipment is used in an inappropriate way, it poses real risks.

Mrs C.L. Edwardes: It is broader than that.

Mr J.C. KOBELKE: Yes, but the member asked for an example.

Mrs C.L. Edwardes: Proposed paragraph (d) refers to carrying out a specified project or activity in the community.

Mr J.C. KOBELKE: As I was saying, it may be an advertising program in the community. It could be a research project. It is not specified. I remember being very impressed with a goldmining company just outside Kalgoorlie that had progressive leadership. The manager was well recognised throughout the community. A chap used to dress up as a kangaroo and was well known for doing safety projects at schools; he got kids involved. I am not saying that that would happen under this provision. However, I raise it to indicate that some companies are very good at health and safety; that is, they see their responsibility as being to not only the worker in the workplace, but also carry the message to workers' families and the wider community. The provision leaves open a range of projects that would be based on the enterprise concerned and the event that was the transgression that led to the prosecution. People would consider how to make amends for the transgression, and, at the same time, to have a positive impact with their employees and the wider community.

Clause, as amended, put and passed.

Clause 37 put and passed.

Clause 38: Section 3 amended -

Leave granted for the following amendments to be moved together.

Mr J.C. KOBELKE: I move -

Page 46, lines 12 and 13 - To delete the lines and substitute the following -

(b) in the definition of "safety and health committee" by

Page 46, after line 15 - To insert the following -

(c) in the definition of "safety and health representative" by inserting after "Part IV" -

"Division 1"

Clause 38(b) cites the wrong reference division number in relation to a safety and health representative, although the cited reference is correct in relation to the safety and health committee. The change rectifies the situation. Division 1 is the correct reference for safety and health representative, and division 2 is the correct reference for the safety and health committee.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 39 put and passed.

Clause 40: Section 29 amended -

Mrs C.L. EDWARDES: Due to the way the Bill is drafted, I may raise matters in the wrong provisions. The scheme for election is set up under clause 40. However, clause 42 outlines that the election scheme may be established.

Clause put and passed.

Clause 41: Section 30 amended -

Mrs C.L. EDWARDES: Does proposed section 30(5) allow an employer to conduct an election under an organisation registered under part II, division 4? Who is that?

Mr J.C. KOBELKE: The provision allows for an employer organisation or a union to conduct the election. I move -

Page 47, line 18 - To insert after "32(2)(b)" the following -

, (ba)

In proposed paragraph (ba) of section 30(4), in relation to the reasons for which a vacancy could arise, reference to a proposed paragraph of section 32(2) has been omitted. The amendment will insert the omitted provision.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 42: Sections 30A, 30B and 30C inserted -

Mrs C.L. EDWARDES: Can the minister explain what an election scheme is? Employers have expressed some concern about proposed section 30B. Employers wanted the scheme to cover more than a workplace when it

was operated by one organisation. The concern was that there could be roving safety and health representatives. An umbrella committee would ensure consistency across one workplace even though it would cover different jobs, but the provision appears to allow for roving safety and health representatives, which may not be consistent with the good practice of the company or the employees.

Mr J.C. KOBELKE: The new provisions enable the consulting parties, if they so wish, to agree to the establishment of a scheme that allows for the application of a variety of arrangements that are not currently available under the Act. The agreement is to be in writing, to be preserved for future reference, and the terms of the agreement are to be made between the parties. If the parties disagree on matters relating to election, there is a mechanism for those matters to be referred to the commissioner in the first instance. The role of the commissioner is to attempt to resolve the matters to the satisfaction of the parties. The commissioner has no decision-making powers on such matters. This provision is consistent with current arrangements that provide for unresolved matters to be referred to the commissioner.

Mrs C.L. EDWARDES: I referred to the likelihood under proposed section 30B of roving safety and health representatives. Proposed subsection (2) states that a scheme may include provisions for the election of one or more safety and health representatives for one or more workplaces in addition to the workplace referred to in proposed section 30A(2), or any group of employees of the employer concerned that constitutes a distinct unit of the employer's work force. What do those provisions provide for?

Mr J.C. KOBELKE: They are designed for those enterprises that may not have a fixed workplace, such as the construction industry, where they may work on construction for only a few days at a time at one place. It can be roving in that sense, but if it falls under a scheme, it must be agreed to by the parties.

Mrs C.L. Edwardes: The minister referred to different workplaces of a construction company. With all the changes that have been made, does that ensure that the election scheme still falls under the control of the employer?

Mr J.C. KOBELKE: It does not imply, if the visiting worker or workers are covered by this provision, that it is extended to other workers in that workplace. It may be a fixed work site, such as a large manufacturing plant, but people may come in regularly to do specialised servicing of equipment. They are specialists who go from plant to plant. Specific health and safety issues relate to their trade or business, which can be taken up with a health and safety representative, but which do not apply to other workers in that workplace who are going about their normal business and are not part of that subcontractor's work. We have already addressed the boundary issues. There would be a responsibility for fencing off or tagging the equipment etc for workers who are not part of the operation and may be under different management. That issue has been taken up in other places. This is specific to the scheme and allows it to apply to workers who may move from one workplace to another.

Mrs C.L. EDWARDES: The minister referred to a construction company that has a work scheme for the safety and health representatives set up for the workers who do the plumbing, for example. If the safety and health representative goes onto a construction site where some of the employer's plumbers are working, can he issue a provisional improvement notice for some other parts of the construction site where those plumbers are not working? The safety and health representative is doing the job for the plumbers for which he was appointed, but can he issue a PIN for some other safety issue that he sees that is nowhere near where the plumbers are working and they would not come into contact with that area?

Mr J.C. KOBELKE: I will take the last part of the question first. A health and safety representative who has the power to issue PINs can do that only for the area for which he is engaged or has some responsibility. He cannot use that power in an area outside his area of control. These boundary issues will arise from time to time. We are just opening up the potential for this, so it will depend on how creative people are in trying to get better results. The construction industry is already well known for having different subcontractors coming onto sites; hopefully the mechanisms for controlling them are well developed. I was thinking more of a manufacturing area where people may come in to do maintenance, replace equipment or carry out a specialised task. The risks that those subcontractors may encounter may not be ones that the normal work force has to deal with. Those subcontractors may use radioactive measuring equipment that is not normally used in that workplace, but it is required when they come in to do maintenance, a refit or install new equipment. Their health and safety representatives would want control in that situation, which would not normally be a matter of concern for other workers in the area at that time. This scheme allows for a health and safety representative to specialise in work that takes place at different sites at different times.

Mrs C.L. EDWARDES: Can the minister outline what proposed section 30C provides for? It deals with the appointment of further delegates who may be required.

Mr J.C. KOBELKE: Proposed section 30C takes into account that proposed section 30A provides for the establishment of a scheme that may affect employees who are not represented by the delegate or delegates

appointed under section 30, such as when the consulting parties seek to elect a safety and health representative for more than one workplace and the employees at the additional workplaces have not appointed delegates and are therefore not represented in the discussions. Such employees are called additional employees under proposed section 30C.

Mrs C.L. Edwardes: Who are they? Are they people living in, say, remote areas?

Mr J.C. KOBELKE: Health and safety representatives may be appointed for more than one workplace. When representatives go to the new workplace, the employees at that workplace will not have been appointed delegates but may seek to be represented as delegates. Under this provision those people are considered additional employees.

Mrs C.L. Edwardes: Are they employees of the employer?

Mr J.C. KOBELKE: Yes. They can participate in the discussion and say that they are now engaged and involved, but they were not previously. They are picked up in this provision as additional employees.

Clause put and passed.

Clause 43: Section 31 amended -

Mrs C.L. EDWARDES: Subclause (3) seeks to insert proposed section 31(8) and (8a). The two proposed subsections state that every relevant employee is entitled to vote at an election and only a relevant employee is eligible to be elected as a safety and health representative at an election. The definition of "relevant employee" is an employee who works at the workplace or, if a scheme has been established, an employee who works at a workplace or is a member of a group of employees. One concern with the new process whereby a safety and health representative is able to issue provisional improvement notices is the representative's level of knowledge, experience and training. Perhaps a further restriction that should be included is that a safety and health representative must be an employee who has had at least two years experience in, not necessarily that particular workplace, but the industry, so that at least the employee would have some knowledge of the industry. There is a concern in the construction industry, in which there is a high level of unionism, about the present provision. It is well known that in negotiating enterprise bargaining agreements in the 1980s and subsequently, unions insisted upon the placement of certain individuals as safety and health representatives as part of industrial deals. Will the minister tell us that that will not happen in the way the new scheme has been established? Will the minister also tell us his thoughts on the level of experience that safety and health representatives should have?

Mr M.P. Murray: At that particular time there was the lowest number of deaths in any of those industries as well.

Mrs C.L. Edwardes: I think you are wrong.

Mr J.C. KOBELKE: I was happy to take the member's interjection. The member for Kingsley is suggesting that we should retain the requirement of two years experience for a health and safety representative. I am informed that the Commission for Occupational Safety and Health, which is a tripartite body, discussed this issue and believed that there was no longer a need to maintain that requirement. When the appointment of health and safety representatives was a new idea, people were a bit concerned. I understand that there has been agreement on this issue. People have reached a level of maturity at which the role of health and safety representatives is respected. Why should we have an artificial limit of two years experience if someone who has been doing the job for only nine or 15 months is respected, is doing the job and has support from fellow workers, and management considers that person to be working well? I understand that that view was agreed by the commission after discussion.

The other issue the member raised was that this provision could lead to abuse and people could seek to raise industrial matters. There certainly has been much talk about that, but there is little evidence that it occurs. The fact is that people in the workplace generally take safety seriously. Our hope is that everyone, rather than most people, will take safety seriously. In unionised workplaces it is very widely accepted that safety is a positive issue. Unions promote safety. If a union promotes safety, it does not make it an industrial matter. It simply means that the union is seeking to advance the interests of its members and workers in the workplace, which is to ensure that workers go home safe and well after a day's work. That is what we want. Unions can play a very positive and supportive role in that way. I am not saying that on the odd occasion people do not seek to abuse safety issues for other reasons, and we need to be very conscious of that and seek to deal with it. However, it flows against the generally accepted view in the workplace that people want to work in a safe environment. That is a very clear counterpoint to those people who would seek to abuse a supposed interest in safety. People do not want their safety jeopardised by people playing with the notion of what should be a safe workplace. Workers want to ensure that their workplace is safe. That must be viewed as part of the dynamics of a workplace. We

should not baulk at shadows and fear that, on the very odd occasion, someone might seek to abuse a safety issue for other reasons.

Clause put and passed.

Clauses 44 to 47 put and passed.

Clause 48: Section 35 amended -

Mr J.C. KOBELKE: I move -

Page 55, line 11 - To delete "(1)(e)" and substitute "(3)".

Subsection (1)(e) will be repealed by the Bill. The amendment refers to the correct subsection.

Amendment put and passed.

Mrs C.L. EDWARDES: Proposed new subsection (1)(b) refers to safety and health representatives attending training courses. Issues with the reimbursement of costs for travel, whether it be in metropolitan or country areas, and for accommodation etc often lead to disputes. It would be far preferable to insert before the word "costs" the word "reasonable" for the benefit of regulators who will look at the intent of the legislation. As the minister has said, on the odd occasion there might be some form of abuse of safety issues. I suggest that the minister does not want to see some of the issues that are arising on construction sites at the moment. He would be well aware of some of the abuses that have occurred. That is one of the reasons we continue to argue that safety is not an industrial relations issue and should be kept absolutely separate. There have been disputes about the mode of travel and the type of accommodation. Therefore, it would be preferable to insert the word "reasonable" before the word "costs" in proposed paragraph (d).

Mr J.C. KOBELKE: The key point is that the employer is liable to pay, to the extent that is prescribed, the tuition fees for the course and other costs. What is enforceable will be prescribed by regulation, which will be a disallowance instrument of Parliament. We would clearly want to be reasonable because we would not want to set up a situation in which employers would not be committed to safety or willing to pay.

Mrs C.L. Edwardes: The other issue is that you do not want to set up a system that will create disputes. You want employers and employees to participate. The mode of travel and/or accommodation should not be in dispute. All concerned would appreciate having that taken into account in the regulations.

Mr J.C. KOBELKE: Exactly; it must be reasonable so that the overwhelming majority of employers will be supportive of it. The enforcement of the regulation may be required for a few on the fringe. If it were seen to be unreasonable and employers generally found it oppressive or unreasonable, the Parliament would not allow it.

Clause, as amended, put and passed.

Clause 49: Sections 35A, 35B, 35C and 35D inserted -

Mrs C.L. EDWARDES: The proposed sections deal with discrimination against safety and health representatives in relation to employment; discrimination against safety and health representatives in relation to contract for services, which obviously deals with contractors and the like; claims that may be referred to the tribunal; and remedies that may be granted.. The issue that has been raised is similar to that which was raised with workers compensation: when a protection is put in place, which is specific to a type of employee and/or a role that the employee plays, it can lead to discrimination. For example, with the issue of an unfair dismissal claim, if the circumstances are such that it is deemed reasonable to terminate the services of an occupational health and safety representative, where does the employer fit in? A clear example would be a charge of stealing. How does an employer deal with those circumstances under the provisions of proposed sections 35A and/or 35D?

Mr J.C. KOBELKE: An employer or prospective employer must not cause disadvantage to a person for the dominant or substantial reason that the person is or was a safety and health representative or is performing or has performed a function as a safety and health representative. The key wording is "for the dominant or substantial reason". My understanding is that those terms have been taken to mean that the issue is health and safety and not some other issue. If there is prima facie evidence that a person has transgressed by stealing or because of other matters of general performance in the workplace, that person will not be caught by these provisions, because this provision covers a person being disadvantaged for the dominant or substantial reason that he or she was or is a safety and health representative, and not for other reasons.

Clause put and passed.

Clause 50: Sections 36, 37, 38 and 39 repealed and replaced by a Division heading and sections 36 to 39G -

Leave granted for the following amendments to be moved together.

Mr J.C. KOBELKE: I move -

Page 65, line 5 - To delete "38(2)" and substitute "38(1)".

Page 65, lines 21 to 23 - To delete the lines and substitute the following -

(a) an employer -

(i) is under an obligation by operation of section 38(1); or

(ii) wishes to take action for the purposes of section 39B,

in respect of more than one workplace of the employer; and

Page 67, lines 3 to 9 - To delete the lines and substitute the following -

(2) Where -

(a) an agreement has been made under section 39C(2); or

(b) the matters referred to in section 39C(2) are governed by provisions consisting -

(i) wholly of a determination made under section 39D, whether or not it has been varied or confirmed under section 39G; or

(ii) partly of an agreement under section 39C(2) and partly of a determination made under section 39D, whether or not it has been varied or confirmed under section 39G,

the relevant parties may by agreement in writing made between them -

(c) vary -

(i) the agreement or provisions; or

(ii) if applicable, the agreement or provisions as previously varied under this subsection; and

(d) make any transitional provision that is necessary or expedient in respect of the variation.

Page 67, line 21 - To insert after "agreement" the words "or provisions".

Page 67, line 23 - To insert after "agreement" the words "or provisions".

The first amendment corrects the wrong subsection that has been cited. The second amendment covers the provision as it currently stands, which precludes a safety and health committee covering more than one workplace if the committee is established in any other way than by a request from an employee. In particular, a committee established by an employer's own volition would not be able to cover more than one workplace. The amended provision ensures that flexibility to cover more than one workplace can be accessed no matter how the committee comes into being. The third amendment has been moved because the provision as it currently stands provides for the parties to agree to vary an earlier agreement made regarding the composition of a safety and health committee to keep the arrangements flexible and to take into account changing circumstances. However, as the provision stands, if the commissioner had to assist the parties to reach agreement by making a determination under section 93D, the parties would be precluded from changing the composition of the committee. This was not intended; hence the three amendments to page 67.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 51: Savings and transitional provisions for existing safety and health committees -

Mr J.C. KOBELKE: I move -

Page 69, lines 8 and 9 - To delete "of the OSH Act inserted by section 50" and substitute the following -

or 39B of the OSH Act inserted by section 50, as the case may be

This change to the transitional provisions enables an existing committee to be recognised as having been established by a requirement to do so - section 38 - or by the employer's volition - section 39B - as the case may be.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 52 to 54 put and passed.

Clause 55: Part VI Division 2 inserted -

Mrs C.L. EDWARDES: Proposed section 51AB deals with the definition of "qualified representative". A person who will constitute a safety and health representative is one who can issue a provisional improvement notice; that is, one who has completed a course of training prescribed for the purposes of this definition. Could the minister bring us up to date with the training process that will be outlined by the committee that he has established? During the second reading debate we raised the issue of the course having to be competency-based training and the issue of assessment. There is no sense whatsoever in having the training if the safety and health representative who will be given the power to issue PI notices merely has to attend. It has no credence at all if it is merely the completion of five days training without some form of assessment. If the minister is really serious about competency-based training, it needs to include assessment as well as the completion of training.

Mr J.C. KOBELKE: As the member for Kingsley said, the training has to be competency based. That does not mean that there must be a specific test at the end of the training; however, the competency must be established through the program. Later on we may decide that a specific test is required at the end of the training; however, currently it is not required. The issue is that it is competency based and, as the member knows from being a former minister, this is how training is dealt with right across the training arena. The whole process is now competency based. This means that if people already have a range of skills and a high level of competence, the degree to which those skills have to be upgraded, improved or enhanced will be less than for a person who has a lower level of skill. That is what the training has to address. If a person comes in quite green and does not have a range of skills that are subset, his or her training may have to be more extensive. At the end of the day, the training has to be competency based. A person will have to show that he or she has reached the level of competence required. Various types of testing will be used. The testing can be done under the observation of a trainer or under the observation of those in the workplace - that will depend on the training program that is put in place. Specific competencies will have to be achieved and a person must reach a certain level of competence. From time to time, there are issues because people say that in order to ensure that competency, there has to be a testing program over the top of the training. We will certainly keep an eye on that and, if it becomes necessary to put another level of testing across the top, we will address that at the time. Under the current way in which these things are done, it is not assumed that we will need to do that. If it looks as though the way in which the training is run does not achieve the clearly stated competencies, we will be open to doing that. I have no reason to believe that that will not be the case. I am confident that the people who complete the course will have the competency; if they do not have the competency, they will not complete the course.

Mrs C.L. EDWARDES: The big concern that some of the occupational health and safety training has raised is the benchmarks that have been set and whether the training will be benchmarked nationally. Does the minister propose this competency-based training to be benchmarked nationally? Why did the minister not accept the Laing report's recommendation? Laing clearly recommended that elected safety and health representatives who have been assessed as competent should have the authority to issue provisional improvement notices. It was clear to Laing that not only must they be competent but also they must be assessed to be competent in order to be granted the authority to issue PINs.

Mr J.C. KOBELKE: The training scheme is a national scheme and, therefore, we will seek to make sure that there is national recognition. I cannot give an undertaking of what it will be because I do not have that information here. The issue is that we are developing what is required for Western Australia. To the extent that we can rely on modules and competencies clearly established in other States, we will clearly draw on those. However, I am not in a position to give the member for Kingsley a clear answer as to whether other States have competencies at a level that is acceptable to us and, therefore, whether we can draw on a national standard. Perhaps we will have to break new ground ourselves in developing this and seek to work with other jurisdictions. As a little aside - it is political - I am upset at the Commonwealth Government's move to abolish the National Occupational Health and Safety Commission. NOHSC really languished when Peter Reith was the federal minister. He did not want national standards established in a range of areas. Under the current minister, Tony Abbott, there has been a rejuvenation of NOHSC. It began setting national standards and the States could work with it for that purpose. A month or two ago we heard - it has been reiterated by the federal minister in the past couple of days - that the Commonwealth Government would not abolish NOHSC, but would gut it and move it over to a departmental agency, which would not have the same status.

Mrs C.L. Edwardes: National standards themselves were starting to lose their validity even in Western Australia, because employers, particularly small employers, did not have the capacity or even the money to download or pull off all of the standards that were necessary. As such, a process was undertaken when I was minister - I do not know whether it has been continued - to rewrite those regulations and establish codes of

practice that would be far more valuable to national standards. However, that is not what we are talking about in terms of training; we are talking about benchmarking, not national standards.

Mr J.C. KOBELKE: It is part of the same environment. I accept that I went off on a slight tangent; however, I thought it was an appropriate time to mention that, because the member for Kingsley asked whether we would be able to pick up national standards of training in Western Australia. I am saying that I cannot give her a specific answer because I do not have all the information about what standards are available in other States and to what extent they might meet our needs. Generally, if standards are available and programs and training courses meet our needs, we will certainly seek to do that because it makes sense to standardise where we can in a country whose population is only 20 million people. However, we will always seek to get the best arrangement for Western Australia. If slight modifications mean that we will meet a national standard and have greater uniformity, and if we can draw on the experience and development of work done elsewhere, we will certainly do that. However, our prime objective is to make sure that we apply the best possible standards for Western Australia.

Mrs C.L. Edwardes: I understand that you have established a committee to provide advice on training. When do you expect to receive that advice? Will you be looking at new training or will you provide a transitional course for those who are already well and truly established as occupational health and safety representatives?

Mr J.C. KOBELKE: That is something that is being developed under the auspices of the commission. It still has a long way to go. This legislation has to go to the other place. I am certainly hopeful that it will get through by the end of the year so that we can start implementing the provisions of the legislation early in the new year. Before we run the course, we have to set up the required standards and, clearly, we cannot have the people who have the competency until we establish the course and start running it. There is still a fair bit of work to be done.

Mrs C.L. EDWARDES: Proposed section 51AD refers to the consultation required before issuing a provisional improvement notice. In the second reading debate, I asked who would be included in any consultation, particularly under the head of power granted under proposed subsection (4), which provides that a qualified representative may, in specified circumstances, be required to consult with a person who holds a prescribed office in the department. Has the minister given any thought to whether those regulations will incorporate a WorkSafe inspector as someone whom a occupational health and safety representative will have to consult?

Mr J.C. KOBELKE: The member has quite rightly hit on a slightly contentious area. A range of slightly different models were considered in developing these particular issues of consultation before the issuing of PINs. Proposed subsection (4), to which the member alluded, is the regulation-making power that may require a qualified representative, in specific circumstances, to consult with a person who holds a prescribed office in the department. That is likely to be a WorkSafe inspector. It has been included as a fourth point because there was concern that every time a health and safety representative sought to issue a PIN he would be unable to do so unless he contacted a WorkSafe inspector. If that happened, we would destroy the reason for having PINs. These matters should be sorted out in the workplace; therefore, greater responsibility and acknowledgment should be given to the role of the health and safety representative, which is very important. That leads to his or her ability, in special circumstances, to issue PINs. The requirements of the safety and health representatives are set out in proposed subsections (2) and (3). Proposed subsection (4) is then available but, because it is by regulation, it may require a heavy touch, a light touch or no touch at all. I am hopeful that we do not need those regulations. I understand they can work in other jurisdictions without the requirement to consult the equivalent of a WorkSafe inspector. However, the power is in the Bill, which is really just a safety net. Consultation may be required if in particular areas it looks as though the provisional improvement notices are being abused. As I have indicated, consultation will be required in specific circumstances. It may relate only to certain types of PINs or certain industries in which a problem requires consultation. It is a general regulation-making power which is quite broad, but which enables it to be specific in an area in which a particular problem arises. However, I am hopeful that it will not be needed.

Clause put and passed.

Clauses 56 and 57 put and passed.

Clause 58: Section 42 replaced by sections 42, 42A, 42B and 42C -

Mrs C.L. EDWARDES: The whole of this clause relates to inspectors. Proposed new section 42 on the appointment of inspectors states -

> . . . to appoint such officers of the department as the Commissioner considers necessary to be inspectors for the purposes of this Act.

Proposed new section 42A refers to the appointment of restricted inspectors, which is an issue I raised during the second reading debate. Who is likely to be a appointed as a restricted inspector and for how long will the appointment last? The appointment may be for only a particular incident. Does the minister anticipate

appointing a local police officer for a period to carry out the powers under the Bill for a particular investigation? Again, this is a new provision. We do not want people who do not have the level of expertise to carry out investigations to be given these powers, when there is the likelihood of a charge being laid and a conviction recorded.

Mr J.C. KOBELKE: The existing requirement for an inspector to be appointed from the officers of the department is limiting, particularly in view of the vast regional areas of the State and the variety of circumstances in which occupational safety and health matters present themselves. These proposed new sections introduce new provisions to the Act to enable any person employed in the public service under part 3 of the Public Sector Management Act 1994 to be appointed as a restricted inspector for a specified period. A police officer could not be appointed, as police officers are not employed under part 3 of the Public Sector Management Act. The specified period could be a month or longer. Obviously it is for a specified period and is not ongoing. The commissioner may limit the appointment of a restricted inspector to certain functions in certain areas of the State, or he or she may make the appointment subject to any other limitations or conditions. The power to appoint restricted inspectors will provide the flexibility to enable public servants with particular skills or knowledge to be accessed for a particular purpose, such as an investigation involving expertise not held by WorkSafe inspectors. Similarly, the provision will improve the ability to service remote areas of the State, for example, by appointing restricted inspectors from among inspectors of another agency which has a presence in areas in which WorkSafe does not. There might be people in remote areas of the State who have expertise in electrical or gas matters and who work in the Energy Safety Directorate within the Department of Consumer and Employment Protection. Those people could be given certification as restricted inspectors to do work which is outside that specific area, but which relates to health and safety matters. Similarly, inspectors appointed under the Mines Safety and Inspection Act could be coopted as restricted inspectors in certain circumstances, particularly in remote areas. The clear intent of this legislative change is to open up those possibilities.

Clause put and passed.

Clause 59: Section 43 amended -

Mrs C.L. EDWARDES: This clause will amend section 43, which deals with the powers of an inspector for the purposes of the Act. Proposed new section 43(1)(k) allows an inspector up to three years to investigate and obtain evidence in any matter into which the inspector is inquiring. That appears to be a very extensive period in which to investigate a workplace incident. Why is a three-year period allowed for completing an investigation and prosecution? I would have thought in those circumstances that it would be unfair to all workplace parties.

Mr J.C. KOBELKE: This proposed subsection will remove an inconsistency, whereby the statute of limitations in the Act is three years, yet an inspector has the power to interview a person who the inspector has reasonable grounds to believe is or was at the time during the preceding two years an employee who worked at the workplace. Extending the latter provision to three years resolves the inconsistency.

Mrs C.L. Edwardes: Yes, but you are allowing an investigation to extend to three years. You might not prosecute for three years but the investigation will be allowed to extend for up to three years. It is not inconsistent.

Mr J.C. KOBELKE: We must meet the three-year statute of limitations. If an inspector started the investigation two years and 11 months after the incident, it is unlikely that the matter would meet the statute of limitations. However, an investigation may have started two months after an incident and be about to enter court at two years and 11 months. At that late stage, to complete the investigation, the inspector may be required to take evidence from someone who was at the workplace but had not given evidence before. The inspector could be ready to initiate a prosecution at that eleventh hour just short of the statute of limitations, but beyond the two years in which he or she could finalise the investigation by seeking evidence from someone who came to light only at the very end of the period.

Clause put and passed.

Clauses 60 and 61 put and passed.

Clause 62: Long title amended -

Mrs C.L. EDWARDES: This clause is at the beginning of part 6 on amendments relating to the establishment of a tribunal. The Opposition believes this amendment to the long title is totally unnecessary. It has not been proved that a tribunal is warranted. Nothing that the minister said has indicated that a safety matter would need to go back to the Western Australian Industrial Relations Commission. The very important issue, and the reason the occupational safety and health legislation was established by the then minister Des Dans in the mid 1980s, was to prevent safety from being used as an industrial tool. Although amendments have been made to the legislation subsequently, the premise on which this Parliament passed legislation was that safety would no longer

be used as an industrial tool. At every single step this Government has attempted to blur the edges by putting safety into the Industrial Relations Act as an industrial matter, which is absolutely and totally wrong. I will consistently say that.

The other issue is the establishment of the Occupational Safety and Health Tribunal within the Western Australian Industrial Relations Commission. Although there may be some synergies with the matters that the industrial commissioners deal with, that does not change the premise that safety is not an industrial matter and should not be used as an industrial tool. We do not believe that there has been the necessary expertise within the commission to deal with occupational safety and health matters and regulations, which is one of the reasons that the minister purportedly said, "Let's take it away from magistrates." Those magistrates put on an occupational safety and health magistrate's hat and deal with those issues. They do not have the expertise either, which is the point that has come forward, but the issue is that they are trained. However, for the issues under this legislation that will go before the tribunal, the lines are being blurred. If the appeals are also limited, I totally reject the need for the establishment of a tribunal. It is wrong on the premise of the occupational safety and health legislation. I hope that the minister does not rue the day when, in 10 years, there has been a total turnaround in the workplace, so that the responsibility for one's own safety in the workplace, let alone that of one's work mates, is handed over to somebody else. The concern with blurring the edges is that the responsibility for one's own safety and the safety of one's work mates can be handed over to somebody else. We absolutely and totally oppose the establishment of a tribunal.

Mr J.C. KOBELKE: Clearly, the two sides of the House have very different views on this. The Opposition sees this as people jumping out of shadows, trying to do the wrong thing. We see it as an issue of having efficient management so that matters can be dealt with expeditiously. The series of matters that will be available to go to the tribunal that will be established are quite narrow. They will benefit from being given specialised attention by someone who has expertise in this area. Currently, there is a range of industrial magistrates who may understand nothing about the Occupational Safety and Health Act, yet they are asked to deal with these procedural matters when they go to the Industrial Magistrates Court. Many of these matters are resolved by reference to the commission, and that will continue. However, if they cannot be resolved there, instead of going to the Industrial Magistrates Court, they will go to the new tribunal. The tribunal will be established through the Industrial Relations Commission, because it will not be a full-time job. There will be someone at the Industrial Relations Commission who has the expertise, or will very quickly get the expertise required through working in this area, as well as an understanding of the practices and requirements in this area to make sure that these matters are dealt with in an expeditious way.

The sorts of matters we are talking about are those in which a dispute arises about whether an employee who refuses to do unsafe work is entitled to pay or benefits. That would be best dealt with by this tribunal, not the Industrial Magistrates Court. There is a range of other issues relating to the election of safety and health representatives. Those matters are best dealt with by someone who deals with those matters - a single person. The tribunal will give the power to do that, rather than an industrial magistrate who has never dealt with a matter of that nature having to deal with these matters and, therefore, not having the understanding or experience that we hope will be gathered by providing a tribunal to deal with this limited range of matters.

Mrs C.L. EDWARDES: I believe the minister indicated to the House just now that it will not be a full-time job. There will be only a small number of matters. Indeed, the minister said in the second reading speech that there had been something like only 16 matters since 1996 for the safety and health magistrate.

Mr J.C. Kobelke: I think it might be 61. My recollection was about half a dozen or so a year.

Mrs C.L. EDWARDES: If that is the case, only a few matters go to the safety and health magistrates. If there is such a low call on the service, why go about setting up a new tribunal? Yes, there is a change of hat by the Industrial Relations Commission. There is legislation and there will be regulations. A set procedure will have to be laid down at the Industrial Relations Commission to deal with part VIB. As such, it will cost. When there is such a low call on the service, there does not seem to be a valid reason for establishing a special tribunal; and at what cost? There is no necessity to do so.

The minister talked about bogus claims or jumping at shadows in looking behind what is written in the legislation. There is likely to be abuse by unions. People need only read the report of the Cole royal commission - I know that the minister has done so. They will then understand how - I will use the example of one union in particular - the Construction, Forestry, Mining and Energy Union misused safety as an industrial relations weapon. It made bogus lost-time payment claims at the commission. This amendment only invites the continued abuse of safety as an industrial tool. When the bogus lost-time claims go before the commission, and it changes its hat to the safety hat, there is the real potential for an increasing number of those claims, which at the moment are limited. We are also dealing with black letter law with the magistrates.

Mr J.C. KOBELKE: I do not accept the member's suggestion that it will cost more. Clearly, when something new is established, work goes into establishing it, and that has a cost. However, this jurisdiction is likely to prove cheaper overall than having the matters dealt with in the Industrial Magistrates Court. I believe it will be far more efficient and fairer, and that is what we are seeking to achieve.

Clause put and passed.

Clause 63 put and passed.

New clause 64 -

Mr J.C. KOBELKE: I move -

Page 82, after line 18 - To insert the following -

64. Section 51A amended

Section 51A(6) is repealed.

This relates to the fact that section 51A(6) deals with the tribunal being able to refer to an expert when reviewing the decision on a notice. This is not necessary, as section 27(1)(i) and (2) of the Industrial Relations Act, which is picked up elsewhere, covers the situation. The section in the Occupational Safety and Health Act is removed to avoid any confusion.

New clause put and passed.

Clauses 64 and 65 put and passed.

Clause 66: Part VIB inserted -

Clause put and a division taken with the following result -

Ayes (26)

Mr P.W. Andrews	Mr S.R. Hill	Mr M. McGowan	Ms J.A. Radisich
Mr J.J.M. Bowler	Mr J.N. Hyde	Ms S.M. McHale	Mr E.S. Ripper
Mr C.M. Brown	Mr J.C. Kobelke	Mr A.D. McRae	Mr D.A. Templeman
Mr A.J. Carpenter	Mr R.C. Kucera	Mr N.R. Marlborough	Mr M.P. Whitely
Mr J.B. D'Orazio	Mr F.M. Logan	Mrs C.A. Martin	Ms M.M. Quirk *(Teller)*
Dr J.M. Edwards	Ms A.J. MacTiernan	Mr M.P. Murray	
Mrs D.J. Guise	Mr J.A. McGinty	Mr A.P. O'Gorman	

Noes (18)

Mr R.A. Ainsworth	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr W.J. McNee	Dr J.M. Woollard
Mr M.F. Board	Mr B.J. Grylls	Mr P.G. Pendal	Mr J.L. Bradshaw *(Teller)*
Dr E. Constable	Ms K. Hodson-Thomas	Mr R.N. Sweetman	
Mr J.H.D. Day	Mr M.G. House	Mr T.K. Waldron	

Pairs

Mrs M.H. Roberts	Mr M.J. Birney
Mr P.B. Watson	Mr A.D. Marshall
Dr G.I. Gallop	Mr P.D. Omodei
Mr J.R. Quigley	Mr M.W. Trenorden

Clause thus passed

Clause 67 put and passed.

Clause 68: Various references to a safety and health magistrate amended -

Mr J.C. KOBELKE: I move -

Page 89, lines 4 to 7 - To delete the lines.

Section 51A(6) of the Industrial Relations Act refers to the tribunal being able to refer to an expert when reviewing a decision on notice. The subclause is not necessary. Sections 27(1)(i) and 22 of the Industrial Relations Act cover this situation; those sections are picked up elsewhere in the Bill. The reference in the Occupational Safety and Health Act will be removed to avoid any confusion.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 69 to 108 put and passed.

Clause 109: Section 51AA inserted -

Mr J.C. KOBELKE: I move -

Page 113, line 30, to page 114, line 7 - To delete the lines and substitute the following -

(2) The power conferred by subsection (1) is not to be exercised in respect of a notice -

(a) during a period when a referral of the notice under section 51 is awaiting a determination of the Commissioner under that section; or

(b) after a decision in respect of the notice has been referred to the Tribunal under section 51A,

but may be exercised at any other time and whether or not the notice has been affirmed under section 51(5)(a) or (b).

The amendment is self-explanatory; that is, the commissioner's powers are not to be exercised during the referral period. The power under proposed section 51AA(1) is not to be used when a matter is awaiting a determination by the commissioner or the tribunal. It provides an out. The review power is provided, but it should not be applied when a matter is being considered through either paragraph (a) or (b) of section 51(5).

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 110 to 113 put and passed.

Clause 114: *Mines Safety and Inspection Act 1994* amended and saving provision -

Mrs C.L. EDWARDES: This provision makes amendments to the Mines Safety and Inspection Act. Subclause (3) will repeal section 90 in its entirely; that is, it will abolish the Mines Occupational Safety and Health Advisory Board. For all the reasons I outlined in the second reading debate, these changes are premature: these amendments should be introduced when amendment is made to the Mining Act to ensure that the transitional provisions are appropriate and consistent. Therefore, the Opposition opposes the clause.

Mr J.C. KOBELKE: This change was a clear recommendation of the Laing review. Drafting is currently under way to put in place matching amendments to the Mines Safety and Inspection Act. These match not only in provision, but also in a range of areas so that the statutes have similar wording and set up. The proclamation provision provides that if issues arise concerning the passage of time between the legislation, this provision will not need to be proclaimed. Management issues are involved. They will be taken on board in relation to progress of this Bill and amendments to be made to the Mines Safety and Inspection Act that are yet to be introduced into the House.

Clause put and a division taken with the following result -

Ayes (25)

Mr P.W. Andrews	Mr J.N. Hyde	Ms S.M. McHale	Mr E.S. Ripper
Mr J.J.M. Bowler	Mr J.C. Kobelke	Mr A.D. McRae	Mr D.A. Templeman
Mr C.M. Brown	Mr R.C. Kucera	Mr N.R. Marlborough	Mr M.P. Whitely
Mr J.B. D'Orazio	Mr F.M. Logan	Mrs C.A. Martin	Ms M.M. Quirk *(Teller)*
Dr J.M. Edwards	Ms A.J. MacTiernan	Mr M.P. Murray	
Mrs D.J. Guise	Mr J.A. McGinty	Mr A.P. O'Gorman	
Mr S.R. Hill	Mr M. McGowan	Ms J.A. Radisich	

Noes (18)

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Pairs

Mrs M.H. Roberts	Mr M.J. Birney
Mr P.B. Watson	Mr A.D. Marshall
Dr G.I. Gallop	Mr P.D. Omodei
Mr J.R. Quigley	Mr M.W. Trenorden

Clause thus passed.

Clause 115 put and passed.

Title put and passed.

Reconsideration in Detail - Motion

On motion by Mr J.C. Kobelke (Minister for Consumer and Employment Protection), resolved -

> That the Bill be reconsidered in detail for the purpose only of considering the minister's proposed amendments to clause 7 as listed on the notice paper.

Reconsideration in Detail

Clause 7: Sections 21B and 21C inserted -

Mr J.C. KOBELKE: I move -

> Page 4, lines 9 and 10 - To delete the lines and substitute the following -
>
> (1) If section 23D, 23E or 23F makes any other provision of this Act apply to a body corporate as if it were the employer of a particular person, this section and section 21C apply to the body corporate at such times as the other provision is made to apply.

Existing clause 7 of the Bill introduces a new section 21B that imposes duties on a body corporate that operates for gain or reward, but is not an employer. The new provisions require that such a body corporate is to ensure that, as far as practicable, the work undertaken does not adversely affect the health or safety of a person. The provision was drafted to cover an existing gap.

The ACTING SPEAKER (Mr A.J. Dean): Order, members! The Chamber is a bit noisy. I am having trouble hearing the minister. Can members take their conversations outside, please.

Mr J.C. KOBELKE: Employers and self-employed persons have duties under section 21 of the Act to ensure that work, or the work of any employee, does not adversely affect a non-employee. This provides protection to members of the public, clients visiting workplaces and people such as work experience students. However, with the rise of alternative working arrangements, many businesses now operate solely with non-employee labour, particularly labour-hire workers or contractors. A body corporate running a business solely using labour, for example, is neither an employer nor a self-employed person and, therefore, does not currently have a duty to ensure that the work does not adversely affect others. This issue arises in all kinds of industries, from manufacturing and construction through to service industries. During consideration in detail, concern was raised that the proposed provision of clause 7 could potentially apply to the fundraising activities of small community-based and incorporated associations, such as sporting clubs. This was not the intent. The intent is to cover situations that are annexed with work. The Government has taken the concerns on board and has concluded that the provisions of clause 7 should be cast in narrower terms to prevent any unintended consequences. As mentioned earlier, the intent is to cover work-related activities where alternative forms of paid labour are used, such as contractors, labour hire workers or other arrangements that resemble an employment relationship. These relationships are specifically covered in proposed sections 23D, 23E and 23F of the amended Act. However, each of those sections deals with the duty owed to the worker, not the duty owed to other persons such as members of the public. The proposed amendment narrows the scope of proposed section 21B by ensuring that it will apply only to a body corporate when it engages labour under one of the alternative labour arrangements covered elsewhere in the Act under proposed sections 23D, 23E or 23F. A body corporate that engages no labour or has solely volunteer labour will no longer be captured. It should also be noted that proposed sections 23D, 23E and 23F will apply only to situations in which labour is engaged in the course of trade or business. By referring to these sections, section 23B is simply limited to cases in which labour is engaged in the course of trade or business. By tightening the application of the new section 23B, the proposed amendments to clause 7 will overcome earlier concerns regarding unintended consequences.

Mrs C.L. EDWARDES: I had advised the minister that I would be asking about the football club that employed a bar manager and/or coach who is paid a stipend but not on a weekly basis. Does that capture the football club in those instances?

Mr J.C. KOBELKE: If a club runs a bar and employs a bar manager and there is a contract of employment, that is an employment relationship. That is not what we are seeking to avoid here.

Mrs C.L. Edwardes: Who is captured? Does that become a workplace and the football club an employer?

Mr J.C. KOBELKE: Yes. If the club is the employer of a bar manager or a bar worker with a clear contract of employment, it will be captured by the requirements of the Act that go to safety and the workplace in the relationship between the employer and the employee and their respective responsibilities. Voluntary organisations may get caught up in this because we want to make sure that people who are putting an employment arrangement in place, which is outside what has normally been the case, and who use people from labour hire firms etc, are captured as employers. We do not want to capture people who are volunteers working in an organisation. The amendment I have just moved makes sure that they are not caught.

Amendment put and passed.

Clause, as amended, put and a division taken with the following result -

Ayes (25)

Mr P.W. Andrews	Mr J.N. Hyde	Ms S.M. McHale	Mr E.S. Ripper
Mr J.J.M. Bowler	Mr J.C. Kobelke	Mr A.D. McRae	Mr D.A. Templeman
Mr C.M. Brown	Mr R.C. Kucera	Mr N.R. Marlborough	Mr M.P. Whitely
Mr J.B. D'Orazio	Mr F.M. Logan	Mrs C.A. Martin	Ms M.M. Quirk *(Teller)*
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Noes (18)

Mr R.A. Ainsworth	Mrs C.L. Edwardes	Mr R.F. Johnson	Ms S.E. Walker
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Mr P.B. Watson	Mr A.D. Marshall
Dr G.I. Gallop	Mr P.D. Omodei
Mr J.R. Quigley	Mr M.W. Trenorden

Clause, as amended, thus passed.

Sitting suspended from 6.02 to 7.00 pm