LABOUR RELATIONS REFORM BILL 2002

Consideration in Detail

Resumed from an earlier stage of the sitting.

Part 6: Amendments about industrial agreements and good faith bargaining -

Debate was interrupted after Mrs Edwardes had moved the following amendment -

Page 141, line 2 - To insert after "party" the following -

and after providing the parties a reasonable opportunity to be heard

Mrs EDWARDES: A number of amendments stand in my name to proposed section 42H, which is headed "Commission may declare that bargaining has ended". Other amendments to this proposed section include, to insert, at line 5, after the word "faith" the words "and not engaged in industrial action and the claim is not unreasonable". That surely would be what good faith is all about. Another amendment to this proposed section extends the level of appeal on the ground that there has been an error of law. This is a tightening up of this proposed section, in dealing with circumstances under which bargaining can be concluded. The commission can end a bargaining period if there is a clear breach of the good faith bargaining provisions. I would have thought that the Government would want to ensure that industrial action is not used by unions as a device for terminating a bargaining period, and that the claims are reasonable. That is the intent of good faith bargaining.

Mr KOBELKE: The amendment moved by the member for Kingsley seeks to insert words into line 2, so that proposed section 42H(1) would read -

> If, on the application of a negotiating party, and after providing the parties a reasonable opportunity to be heard, the Commission constituted by a single Commissioner determines that -

Under standard procedure, one would expect the commissioner to provide parties with a reasonable opportunity to be heard. There is no need to go through all the various sections and duplicate the procedures expected to be complied with by the commission, or a commissioner, in this case.

Amendment put and negatived.

Mrs EDWARDES: I refer the minister to proposed section 42I, to which again I have a number of amendments standing in my name. This proposed section is headed "Commission may make enterprise orders". Presumably this will occur in cases in which good faith bargaining and industrial agreements have broken down. In such cases, the commission may make an enterprise order. One critical thing that is missing here deals with who can make an application for an enterprise order. The only person able to make application for an enterprise order should not be the person who has been unfairly bargaining during the process of good faith bargaining. That test is not outlined in this clause. Other amendments I have put forward again provide for an opportunity to be heard, and amending lines 3 and 4 on page 142 adds the public interest consideration to the requirement to be fair and reasonable. A public interest test is outlined in the proposed sections dealing with employer-employee agreements, but no such test is applied to industrial agreements. At page 143, after line 2, five new subsections are to be included, which outline the clear need to ensure that no enterprise order can be put in place when there has been a failure to bargain in good faith. This amendment ensures that a registered organisation cannot pursue an enterprise order against a party when that organisation has failed to bargain. The Opposition believes that those amendments add strength to proposed section 42I.

As has been previously discussed, enterprise orders are made by the commission when there is no agreement between the parties and good faith bargaining has presumably broken down, and when no other agreement is in place. The only concession that has been provided is that an EEA can be entered into while an enterprise order is in force. The order also is in existence for only two years, as against the three-year life of an industrial agreement. There are some severe concerns about this provision. It is an imposition of an order upon the workplace, for both employees and employers, without an agreement. The minister refers to this as the big stick - I have used the phrase as well - which means that parties will proceed down the path of good faith bargaining to pursue an industrial agreement. The minister has it back to front. He should not necessarily be providing all paths towards an industrial agreement. This will not be a path upon which all parties will be readily engaged.

The minister referred to a group of employers who have approached a union. I have no doubt that will occur, because unless employers move to the federal system they will have no alternative. One of the concerns in some of those industries is that they will go broke if they do not proceed down that path. I move -

Page 143, after line 2 - To insert the following -

(5) To avoid doubt, the provisions of section 26 apply and the Commission must also apply any principles established under section 51.

(6) A matter may not be included in an enterprise order if it could not reasonably have been expected to be agreed between the parties.

(7) To avoid doubt, an appeal lies under section 49 against an enterprise order.

(8) Other than in the exercise of its power of conciliation, an application under this section for an enterprise order must be heard and determined by a Commission in Court Session.

(9) The Commission shall not make an enterprise order under this section if the Commission is of the view that the applicant for that order failed to bargain in good faith as required under section 42B.

Mr KOBELKE: The member placed a raft of amendments on the Notice Paper and spoke to them, but then moved only one of them. The member for Kingsley indicated that the general theme of her amendments was to shift the emphasis in the way these provisions would work. Proposed sections 42 to 42M are part of an array of matters that are carefully balanced to achieve the overall objective of allowing parties to enter into industrial agreements and seeking to do that in a way that is based on good faith bargaining. The amendments proposed by the member for Kingsley seek to insert impediments or extra checks and balances in the system. Although, individually, some of the amendments might have some merit, the overall structure will not add to the value of the Bill. I can see the merit behind some parts of the amendment moved, but the overall structure does not complement the Bill.

Amendment put and negatived.

Mr KOBELKE: I move -

Page 144, line 14 - To delete "employees" and substitute "employers".

Page 144, line 17 - To delete "employees" and substitute "employers".

This will fix typographical errors.

Amendments put and passed.

Mrs EDWARDES: I move -

Page 144, after line 20 - To insert the following -

(7) To avoid doubt, an enterprise order does not affect an employer-employee agreement.

This amendment might assist the minister the next time somebody asks him which clause says that an EEA can exist at the same time as an enterprise order. The minister was searching for that section last night. Even when he found it, it was implied and not specifically stated. To avoid doubt, the amendment that I have proposed will ensure that an enterprise order does not affect an employer-employee agreement.

Mr KOBELKE: The Government does not have a problem with the intent of the member's amendment, because that is a clearly stated principle in the Bill. However, the amendment takes up a somewhat different matter. The Government has said that the issuing of an enterprise order applying to an area of work in which someone then wished to register an employer-employee agreement would not in any way preclude that. We have a preclusion from registering an employer-employee agreement while an industrial agreement is in place. The amendment relates to an enterprise order, which is quite a different instrument, and deliberately so, in order not to preclude the registering of an employer-employee agreement. The issue is the registering of the employer-employee agreement. The wording in the amendment says that it "does not affect". That is a totally different issue and relates to what may or may not be a reference of one to the other. The Government has given a clear undertaking. I think the member is trying to say that people should not be prevented from registering an employer-employee agreement because an enterprise order is in place for the work that will be done by a person who will be employed on an employer-employee agreement. The Government is committed to that, and does not think that is in doubt. However, in seeking to put in a double protection or guarantee that that is the case, the wording of the member's amendment goes well off into other things. On that basis, the amendment is not acceptable.

Amendment put and negatived.

Mrs EDWARDES: I refer to the amendment standing in my name on the Notice Paper for page 145, lines 16 to 21. This amendment limits the time period for an enterprise order. Unlike the provisions surrounding an EEA, an enterprise order stays in existence until such time as a new agreement is put in place. Although I do not propose to move that amendment, I wish to highlight the point.

I do not propose to move the amendment standing in my name for page 145, line 28. This amendment would have ensured that in any bargaining process - we debated that earlier today - there ought to be only one bargaining period at any one time within any one jurisdiction. This highlights the confusion that exists and the contrivance that might occur if a bargaining period operated in the state system and in the federal system. Essentially, it would allow for protected action within the federal system, which would totally confuse the state system. The minister said that the federal legislation would override the state law. Again, that relates to similar employers and circumstances and the like, which may be the case. We have a real potential for jurisdiction hopping in the initiation of a bargaining period.

I move -

Page 145, after line 28 - To insert the following -

42M. Threats and Intimidation

A person must not by threat or intimidation persuade or attempt to persuade another person into, or not to enter into -

(a) an industrial agreement; or

(b) an industrial agreement that contains or does not contain particular provisions.

Penalty: $20 000.

42N. Misinformation

A person must not make or give to another person any misleading statement or information with intent to persuade that other person to enter into, or not enter into -

(a) an industrial agreement; or

(b) an industrial agreement that contains or does not contain particular provisions.

Penalty: $20 000.

I have lifted those sections from the EEA provisions in the Bill. I included them because instances of threats, intimidation and misinformation are more likely to occur in the development of an industrial agreement than in an EEA, given some of the activities of particular union officials and unions. I think it is absolutely necessary to include these two clauses in the industrial agreement section. I am not surprised that the Government has not included them. I have moved this amendment in an endeavour to highlight the fact that the Liberal Party believes this is a serious issue. The provisions dealing with improper conduct and right of entry that the minister has inserted go nowhere near what will be required to prevent the conduct exhibited on building sites in the city centre during the past 12 months.

Mr KOBELKE: The member seems to predicate these amendments on the basis that the threats and intimidation occurring within the Liberal Party also occur in the industrial relations arena. It just does not happen.

Mrs Edwardes: I am disappointed that the minister is treating this issue with such levity. That does not become him or the Government. Evidence of that activity has been presented to him.

Mr KOBELKE: The member might be used to taking that view of the world given the recent behaviour in the Liberal Party and the letters that friendly Liberal senators have written to each other.

The Government knows that those activities occur from time to time and that they must be taken into account. However, it does not automatically assume they will occur.

Mrs Edwardes: Why put it in the EEA?

Mr KOBELKE: We know it has been happening with workplace agreements.

Mrs Edwardes: You know it has been happening on building construction sites today, yesterday, last month and the month before that. Your rationale is inconsistent.

Mr KOBELKE: Many industries use federally certified agreements, although we hope they will use state industrial agreements. The commonwealth legislation contains no such requirement; the Commonwealth Government does not see the need for it. A general requirement in the Act covers this area. When enabling the registration of industrial agreements and assisting in the development of industrial agreements, the commission will clearly take account of threats, intimidation and misinformation. Those matters will be handled within the good faith bargaining provisions.

Mrs Edwardes: Nonsense! There is nothing of a similar nature.

Mr KOBELKE: When reaching agreement, which is the aim, the commission will take into account the fact that the negotiations were not conducted in good faith.

Mrs EDWARDES: This clearly demonstrates that the minister is not serious about dealing with this activity. He has been presented with evidence during his term as minister. If he intends to close his eyes to these activities on building construction sites, the community will have no confidence in him or this Government. The minister's response to the evidence about union officials allegedly breaking the law at the Pindan site and his comments yesterday about the WACA dispute encouraged me to feel confident. Perhaps the member for Peel has frightened the minister and is making him back off. He is softly tiptoeing through the tulips. The community will have confidence in this legislation only if the minister states clearly that no-one will be above the law. The minister should assure the community that he will take action whenever breaches occur. If the minister does not accept the need to provide much stronger penalties to deal with the intimidation, threats and misinformation on building construction sites, he has his head in the sand.

[Interruption from the gallery.]

The ACTING SPEAKER (Mr McRae): The people in the gallery are aware from previous experience in this place that members of the public are more than welcome to observe the functions of this Parliament. It is the people's Parliament. However, they are not welcome to participate in the debate or to interject. I ask that the outbursts cease and warn that they will not be tolerated.

Mr KOBELKE: I know the Opposition likes to get off on this, but it does not make sense. When in government, members opposite regularly introduced drastic legislation, but they never saw the need for provisions such as these. We have had industrial agreements for years, but they never saw the need to include these provisions. Industrial agreements are just that - agreements. We do not need to include provisions that suggest criminal activity will occur. If people are clearly threatening and intimidating others, criminal action can be initiated. There is no need to include provisions that members opposite did not bother to include in the legislation when they were in government. They included extreme provisions in the legislation, but they did not require provisions such as these to deal with industrial agreements.

Amendment put and a division taken with the following result -

Ayes (19)

Mr Board	Mr Grylls	Mr Omodei	Mr Waldron
Dr Constable	Ms Hodson-Thomas	Mr Pendal	Ms Sue Walker
Mr Day	Mr Johnson	Mr Barron-Sullivan	Dr Woollard
Mrs Edwardes	Mr McNee	Mr Sweetman	Mr Bradshaw *(Teller)*
Mr Edwards	Mr Masters	Mr Trenorden	

Noes (26)

Mr Andrews	Mr Hill	Mr McGowan	Mr Ripper
Mr Bowler	Mr Hyde	Ms McHale	Mr Templeman
Mr Brown	Mr Kobelke	Mr Marlborough	Mr Watson
Mr Carpenter	Mr Kucera	Mrs Martin	Mr Whitely
Mr Dean	Mr Logan	Mr Murray	Ms Quirk *(Teller)*
Mr D'Orazio	Ms MacTiernan	Mr Quigley	
Dr Edwards	Mr McGinty	Ms Radisich	

Pairs

Mr Ainsworth	Dr Gallop
Mr House	Mrs Roberts

Amendment thus negatived.

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

Ayes (26)

Mr Andrews	Mr Hill	Mr McGowan	Mr Ripper
Mr Bowler	Mr Hyde	Ms McHale	Mr Templeman
Mr Brown	Mr Kobelke	Mr Marlborough	Mr Watson
Mr Carpenter	Mr Kucera	Mrs Martin	Mr Whitely
Mr Dean	Mr Logan	Mr Murray	Ms Quirk *(Teller)*
Mr D'Orazio	Ms MacTiernan	Mr Quigley	
Dr Edwards	Mr McGinty	Ms Radisich	

Noes (19)

Mr Board	Mr Grylls	Mr Omodei	Mr Waldron
Dr Constable	Ms Hodson-Thomas	Mr Pendal	Ms Sue Walker
Mr Day	Mr Johnson	Mr Barron-Sullivan	Dr Woollard
Mrs Edwardes	Mr McNee	Mr Sweetman	Mr Bradshaw *(Teller)*
Mr Edwards	Mr Masters	Mr Trenorden	

Pairs

Mrs Roberts	Mr House
Dr Gallop	Mr Ainsworth

Part, as amended, thus passed.

The ACTING SPEAKER (Mr McRae): In accordance with the order of business agreed to by motion earlier today, the next clauses to be taken in order are 97, 103 and 104.

Postponed clause 97: Powers in relation to transitional provisions -

Mrs EDWARDES: If the minister agrees, I would like to debate clauses 97, 103 and 104 together so that we can get an answer to the issues we want to raise. We can then put to the vote the individual clauses and/or any amendments that are proposed accordingly. When we left these three clauses on the last occasion, members on

this side of the House believed that clauses 97 and 104 were ultra vires. We were not sure what the words "consequential amendment" meant with regard to clause 103(2)(b). Further, the question of retrospectivity in clause 103(3) is also of considerable concern. I ask the minister to outline to the House the answers to our concerns. We had asked for parliamentary counsel to be present so that we could ask those questions and receive the appropriate answers. I understand that the minister has advice from parliamentary counsel.

The ACTING SPEAKER (Mr Andrews): It is possible, with the accord of the House, for the debate to range across all three clauses at the one time, but the question must be put for each clause.

Mr KOBELKE: Mr Acting Speaker, that is appropriate, particularly with clauses 97 and 104, which relate to the same matter. We can deal with the principles in clause 97 and then refer to clause 104 for specific detail, because they will substantially deal with the same matters of principle.

I have a letter from Ms Lee Harvey, Assistant Parliamentary Counsel, copies of which I am happy to make available to members. The letter has attached to it sections from five other Bills, and, in part, states -

> I attach 5 recent examples of provisions which enable the modification (by regulation or order) of Acts for the purpose of smoothing transitional procedures. 2 of the examples are in the same terms as clauses 97 and 104 of the *Labour Relations Reform Bill*.
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> A search of Acts passed since 1990 shows that the following Acts made provision for transitional provisions to be made by order:
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> - *Energy Corporations (Transitional and Consequential Provisions) Act 1994;*
> - *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995;*
> - *Curriculum Council Act 1997;*
> - *Country Housing Act 1998;*
> - *Marketing of Meat Amendment Act 1999;*
> - *Dairy Industry and Herd Improvement Legislation Repeal Act 2000;*
> - *Rights in Water and Irrigation Amendment Act 2002.*

Those are five examples of similar Acts. With the help of the Clerk, I will provide copies of that letter to the members for Kingsley and South Perth so that they can see that the provisions in this Bill are identical with or similar to the provisions that have been passed in the past five years by this Parliament.

Mr PENDAL: I raised this matter last week, I suppose in a rhetorical sense, because I had a reasonably good idea of the answer. Notwithstanding the fact that the practice has been used in a limited way, probably five or six times in the past 10 years, I believe it is a bad practice. I will move an amendment, but not to stifle the Government's objective. It will be able to achieve what it wants to achieve under clause 97. I ask members to focus for a moment on whether they understand what the House is doing. The House is being asked to deal with what is called a Henry VIII clause. A Henry VIII clause has been the subject of almost countless parliamentary inquiries around Australia in the past 10 years. We are at a point in this Parliament, and indeed in Australia, at which we should not be using these sorts of clauses.

I ask members to dwell on the definition of Henry VIII clauses, and I will then offer a solution by way of an amendment. We are being asked to give the Minister for Consumer and Employment Protection the power to alter the provisions of this Bill - of his own volition - once it leaves Parliament, and is sent to the Executive; that is, the Governor. I refer members to clause 97(2), which essentially deals with the transition from the fairly old system to the new system. It states -

> If in the opinion of the Minister an anomaly arises in the carrying of any provision -

The minister is able to correct an anomaly without referring it to Parliament. The minister can send a change to the Governor, who will then authorise its gazettal. One minister has the opportunity to change this law during its transitional period. I ask members on the other side of the House whether they would feel comfortable if such a power were exercised by a Liberal Party or National Party minister of the Crown. I am sure they would say no. We should not give the power of a Henry VIII clause to the current minister; nor should we give it to a future minister without, at the very least, treating any change as a regulation. This would mean that once the minister has dealt with the so-called anomaly, he must come back to this House, table the instrument, and that instrument would then be subject to disallowance. I intend to move an amendment that is no more sophisticated or complicated than that.

I ask members to consider the words that are used in clause 97, which states -

> If in the opinion of the Minister an anomaly arises -

What is an anomaly? One dictionary defines it as an irregularity or an abnormality. No-one has considered the fact that the minister will be able to change a provision in a way that he sees fit and that it will then be printed in the *Government Gazette*.

Clause 97(2)(d) states that the Governor may by order published in the gazette "make such provision as is necessary or expedient". Members should think of the consequences if we allow the word "expedient" to be used in the laws of Western Australia. I invite members to look at a dictionary definition. The word "expedient" means being more politic than just. We are now talking about what is politically correct or politically acceptable, rather than what is just in the eyes of the law.

Mr BOARD: I would like to hear the member for South Perth further expand his argument.

Mr PENDAL: I thank the member for that consideration.

In the past seven or eight years, I was one of several people in this place who was involved in what was previously called the Standing Committee on Uniform Legislation and Intergovernmental Agreements. This Parliament, in conjunction with the Queensland Parliament and, to a lesser extent, the Commonwealth Parliament, spent between four and five years trying to limit the way in which the Executive could make decisions that Parliament had to accept. I assure members that this is a double-edged sword. This measure will affect not only the Liberal and National Parties, but also the Labor Party, and everyone in Parliament. No Parliament in the Westminster system will say that Henry VIII clauses are good. They are considered the worst possible instruments, because members of the Executive are allowed, at will, to vary the will of the Parliament. I ask that members keep in mind the fact that this situation can be partly corrected by supporting my amendment, which requires that when the minister corrects an anomaly, it will be treated as a regulation. Therefore, it will be tabled in this House so that members will have a chance to have it disallowed or, at the very least, to have the matter debated.

Mrs EDWARDES: I would like the member for South Perth to continue to contribute to this debate.

Mr PENDAL: I refer to the 1997 Queensland Parliament's Scrutiny of Legislation Committee report titled "The Use of 'Henry VIII Clauses' in Queensland Legislation" which states -

> *A "Henry VIII clause" is a clause in an Act of Parliament which enables the Act to be amended by subordinate or delegated legislation.*

There are many ways in which our legislation can be affected in this manner, but rarely do we give the opportunity for that legislation to be amended without being subjected to disallowance. I do not want the minister to respond by saying that parliamentary counsel could find only five occasions on which it has been allowed in the past 12 years. Even then I objected to it being used. The Minister for Consumer and Employment Protection now has the opportunity to provide that, having corrected the anomalies, the changes will be brought back to Parliament as a tabled instrument and, therefore, will be subjected to disallowance.

I turn to paragraph 2.38 of the report, which states -

> There seems to be a consensus amongst Parliamentarians that the power of disallowance -

That is the humble measure that I seek -

> does not make "Henry VIII clauses" more palatable because they are still not subject to sufficient or effective Parliamentary control. The Committee supports this view.

That is the Queensland Parliament's view about the shortcomings of what this Parliament is allowing to happen.

I turn to paragraph 3.10, and the view expressed by Senator Bronwyn Bishop. She stated -

> *I personally would like to err on the side...of saying that "Henry VIII clauses" are intrinsically bad and ought to be avoided at every possible instance.*

In paragraph 3.11, Senator Mal Colston expressed the following view -

> *I can see that it would be very easy for counsel and perhaps bureaucrats to think that it would be good to have "Henry VIII clauses" so that when particular issues come up they can just add parts to Acts or change Acts in a certain way. But one of the things that people are forgetting is that under our system of democracy it is Parliament which makes the law; it is not the bureaucracy; it is not the Executive; it is Parliament.*

I will quote another member of Parliament who gave evidence. Point 3.12 of the same document states -

> *I join with those who have expressed their opposition to anything which may seek to retain the "Henry VIII clauses" as they have been suggested. I think that this goes to the heart of what we are here about . . . to try to ensure that we have Governments operating correctly within the Acts of Parliament . . . and being accountable . . . back to the Parliament and subsequently to the people.*

I could go on at some considerable length, but I do not intend to do so. I have made my point. I intend to move my amendment shortly. I appeal to the minister and members opposite to not let clause 97 go through. It is a clause that will allow anomalies in the transition period from the old system to the new to be corrected only by the minister without reference to the Parliament. The minister will go to Government House and ask the Governor to sign the instrument, which will be published in the *Government Gazette*. Does any member believe that our rights as legislators and reviewers ought to be something less than the staffers of the *Government Gazette*? Notwithstanding the fact that I do not like Henry VIII clauses, having the power to treat them as a regulation and having them possibly subject to disallowance, it leaves me to move -

The ACTING SPEAKER (Mr McRae): Before the member moves his amendment, the minister has a number of amendments on the Notice Paper to be moved. They relate to page 111 of the Bill. They must be moved before the member seeks leave to move his amendment. Other things may be revealed in the process.

Mr PENDAL: It is best that I signal what I intend to do. At the appropriate time, I intend to move an amendment at page 111, after line 31. It will be the inclusion of a new subclause, which will read "An order made under this section is deemed to be a regulation and is subject to the provisions of section 42 of the Interpretation Act 1984." I am not moving it at this stage, but it is a signal to the minister that this does not interfere with the Labor Party's agenda. The Labor Party will get its way tonight because it has the numbers. It will ensure that the minister, if he discovers anomalies in the transitional period and corrects them consistently with the provisions of the Act, will be required to table them as if they were regulations. As such, they would be subject to a possible disallowance. It is a pity that this House does not have a culture and history in keeping with disallowance motions. Since I have been a member of this House, it has been accepted that these things are best left to the upper House. We are a House of Parliament that is separate from the other place. Not having a history of disallowing regulations is a reflection on all of us. It is perhaps an invitation for us to do something better in the future. My amendment, when I seek to move it, will not prevent the minister from making changes to what he may discover to be anomalies. It is particularly important in this case. We are not dealing with an ordinary piece of machinery of government legislation. We are dealing with something that is fundamental to the Labor Party and I accept its right to introduce it. It is important that the Parliament remains in charge of its own legislation and the capacity to review it. When I move my amendment in a few minutes, I will ask that the House consider it favourably.

Mr KOBELKE: I have already put on the record that clause 97 is something that the previous Government used on five occasions. It is strange that members who voted for it on all five occasions now find it anathema to their political ideology and philosophy. When we debated this the other day, I commented that it is appropriate that such matters should be disallowable. I work on the premise that they would be disallowed only if they were in the public interest and if a clear case was made. In such a case, we would be willing to run the gauntlet of the Parliament and disallow the use of this provision that is detrimental in any way to any party. I ask members to look at version B dated 27 March 2002 for the list of amendments. I refer members to postponed clause 97. It shows a number of amendments in my name that seek to ensure that things must be done by regulation. As such, they are disallowable. That was not done in the five Bills voted on in the past 10 years. As I understand it, they were not disallowable. I will move that they will be disallowable by the Parliament.

Mr Pendal: What will be?

Mr KOBELKE: Any use of clause 97. I will do the same for clause 104. When clause 97 is used, it will be done by regulation and it will be disallowable by the Parliament.

Mr Pendal: As such, the minister will have no difficulty in including my amendment?

Mr KOBELKE: I will come to that in a moment. My amendments must be moved first. I ask members to pay attention to the amendments as there are a large number of them. I do not wish to waste the time of the House. They ensure in each instance that the word "*Gazette*" or "order" is removed and is replaced with the word "regulations". There is also a grammatical change. I seek the approval of the House for me to move all the amendments en bloc rather than one at a time. If I am given approval to move all the amendments under postponed clause 97, I will read them for the sake of clarity.

Mr Pendal: Will the minister use the next two minutes to explain further?

Mr KOBELKE: I do not need any more time. I seek approval to move the amendments en bloc.

Mr Pendal: I want the minister to explain further.

Mr KOBELKE: After I have moved them en bloc, I will speak to them in detail. They are all technical amendments. Will the member approve en bloc?

Mr Pendal: I am not saying that. I want the minister to repeat what he has said in the past 30 seconds.

Mr KOBELKE: I will repeat it for the benefit of the member. At least five Bills in the past five years - I have circulated copies of relevant extracts of Bills to members - have contained provisions similar or identical to clause 97. A key element of clause 97 is that it is controlled by the minister and the Executive Council. I assumed incorrectly last week that it was disallowable by the Parliament. I am now advised that it is doubtful whether it is. Through my amendments on the Notice Paper, I seek to require any use of clause 97 to be disallowable by the Parliament. They are a range of technical amendments that will achieve that. They will remove the requirement to be published in the *Government Gazette* and will be put into effect by regulation. I seek leave of the House to move them en bloc.

The ACTING SPEAKER (Mr McRae): I want to make sure that all members understand the procedure. There are amendments on the Notice Paper that relate to clause 97(1), (2) and (3) and two that relate to subclause (4). The minister seeks leave to deal with all the amendments as a single motion.

[Leave granted.]

Mr KOBELKE: I move -

> Page 111, line 4 - To delete "order published in the *Gazette*" and substitute "regulations".
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> Page 111, line 10 - To delete "order published in the *Gazette*" and substitute "regulations".
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> Page 111, line 14 - To delete "An order" and substitute "Regulations".
>
> Page 111, line 17 - To delete "order" and substitute "regulations".
>
> Page 111, line 18 - To delete "its" and substitute "their".

I thank members for helping expedite this matter. The amendments clearly ensure that clause 97, which is a valuable clause, is really just a catch-all clause. As I said last week, the Government does not anticipate having to use it, but many possible consequences could arise that could cause considerable detriment to parties who are locked in a situation because of a legal stranglehold. This clause enables those matters to be tidied up. Subclause (4) is a detriment subclause. The provision cannot be used in a way that is prejudicial to any person. The issue is that if it were used in extreme circumstances in an attempt to fix a problem, it will now be disallowable by the Parliament. That is the intent of the amendments before the House.

Mr PENDAL: I think what the minister said more than satisfies what I have sought. However, I will briefly recycle his argument in my own words to ensure that we are talking about the same thing. I will then pose a question to the minister. I understood that another member intended amending my amendment in order to apply the same principle to the clauses that follow - clauses 98, 99, 100 and maybe 101. It is not for me to pursue that, because that was not what I intended my proposed amendment to do. I want to know what the effect on those subsequent clauses would be if we went down that track. Having said that, I will recycle the minister's words back to him to make sure that we are both kicking in the same direction.

Mr Kobelke: I think so.

Mr PENDAL: Okay. My understanding of what the minister said was that clause 97 contains a provision to allow the minister to correct anomalies by taking the matter to the Governor in Executive Council and publishing it in the *Government Gazette*. I further understand that if I do not proceed with or withdraw my amendment, at a later stage we will accept the minister's amendments to achieve the end that I raised a week ago; that is, if he or a future minister discharged his obligations to correct an anomaly for a transitional arrangement, it would be treated as a regulation and would therefore be tabled in the House and be subject to disallowance.

Mr Kobelke: That is the clear intent of the amendments before the House.

Mr PENDAL: That was certainly the intent of the amendment I had proposed to move. Human nature being what it is, ministers and Governments always say that their way of doing things is better than the way of a mere mortal like me. Now that the minister has given his agreement that that will occur, I do not need to move my amendment. I am pleased that the minister is on record with that position. Another member approached me about widening the provisions of my amendment to take in subsequent clauses 103 and 104. Therefore, it would

perhaps be a good idea for that member to raise that point with the minister, to see whether the minister's amendments are intended to cover that.

Mr Kobelke: No, we will fix that after we have dealt with this clause.

Mr PENDAL: So long as we have that assurance that we are now going to deal with these as regulations, which would be tabled, which would go beyond the *Government Gazette* and which would be capable of disallowance, that would certainly remove some of the objections I have.

Amendments put and passed.

Postponed clause, as amended, put and passed.

Postponed clause 103: Consequential amendment of other laws -

Mr KOBELKE: The member for Kingsley has asked me to address this clause. I do not have a letter on the clause, but the advice I have received is that it is not unusual. It deals with all the consequential amendments; that is the heading of the clause. There are two structures through which that can be handled. When the workplace agreements legislation was brought in, it amended a range of other Acts. It simply put the word in the appropriate place of another Act for it to be enabled. The other way of doing it is to have a schedule to the Bill that lists all the other Acts and goes back and picks out the workplace agreements or other relevant clauses where they no longer have any application. It is a cross-referencing issue, because it relates to consequential amendments to other Acts. It is not of any principal importance. Instead of doing it by way of a schedule, it is an accepted and fairly regular practice to include a clause such as this in a Bill. The other point I make is that the member should note that it is by way of regulation. It is clearly disallowable. It is clear that the provisions contained in clause 103 are given effect by regulation and are therefore disallowable.

Mrs EDWARDES: I refer the minister to subclause (3), and the retrospectivity that is applied.

Mr KOBELKE: That could be included because a matter simply did not come to a person's notice - it was overlooked - and it is subsequently raised as an anomaly. A hypothetical case is of a person who was underpaid under a workplace agreement. A couple of years later, presumably still under the statute of limitations, the person could say that under the law that currently applied, he was underpaid three years ago. He could seek to gain a benefit, because he was correctly paid according to the workplace agreement that existed at the time he was employed. The workplace agreement has been taken away and the person now seeks, retrospectively, to establish a new standard. If that sort of thing needs to be taken care of, it can be ensured by way of regulation that no retrospective anomaly or injustice arises through the change. My understanding of the matter is that that is the sort of thing we need to take into account with subclause (3).

Mrs EDWARDES: The other concern the Opposition raised was that the regulations would not necessarily be tabled in Parliament. We were disappointed that parliamentary counsel was not present when the Opposition had asked that parliamentary counsel be present. The mere fact that the advice says that this has been done on five other occasions, and that the minister therefore does not need to answer my questions, is not good enough, quite frankly. The member for South Perth has gone through that in some detail. The question I would have asked of parliamentary counsel about clause 103 was whether it was subject to section 42 of the Interpretation Act, or whether we were being duped and that was not the case. The minister's understanding of clauses 97 and 104 was incorrect last week. That clearly demonstrated one of the values of going through a piece of legislation clause by clause. It may be painful for members opposite, but that was a clear demonstration of the value of doing so. Even the minister's understanding of the effect of that clause was wrong.

Mr KOBELKE: Although I spent many months working on it, I do not profess to have total and complete knowledge of the legislation; I do not have the expertise. The member has shot down her own argument. This provision was in at least five pieces of legislation that she as minister had responsibility for, not as minister in charge of in its passage through the House, but as a minister in Cabinet. A few days ago, the members for Kingsley and South Perth said that they doubted whether they had seen this type of provision before. There is nothing unusual about it. We have included extra checks that we think are appropriate that also meet the concerns expressed by a couple of members opposite. However, that does not go to the point made by the member for Kingsley that somehow we would do an injustice to this place if we were to proceed with the provision. It reflects something that is almost common practice.

Mr PENDAL: The minister has turned himself around like the *Queen Mary* from being almost gracious to being fairly ungracious. He is smiling, so he must know the point I am making. It takes a long time in this place for things to sink in to members.

Mr McRae interjected.

Mr PENDAL: I am sorry; I have a distinct hearing disability on my left side and I cannot understand the member. The last comment made by the minister is not true. He said something to the effect that this type of provision had almost become commonplace. It has not. By his own admission, it has happened five times in the past 10 or 11 years. It is not good enough to say that the member for Kingsley was a minister in the Government that used this type of provision five times in 10 or 11 years. That does not make it commonplace.

Mr Kobelke: That number was arrived at without a thorough search.

Mr PENDAL: I am sorry that the minister would come back here and say that he has done something before conducting a thorough search. I am trying to explain to the minister that we may have got a message across, not only to ourselves as legislators but also to those valuable officers who assist us, including the parliamentary draftsmen and everyone else who do a superb job. If we decide that we do not need to rely on Henry VIII clauses beyond what is absolutely necessary, it would be an indication that all of us had learnt something. That was found to be the case in a Queensland parliamentary report of 1997. In essence, that report said that Henry VIII clauses are anathema to modern Parliaments, as they should be. It is no good the minister saying that the previous Government did it. That just perpetuates the notion that Governments are prepared to extend bad legislative practice.

It is a pity that the minister was being ungracious towards the end of his remarks. The final part of the point that was raised last week was to ask the parliamentary counsel to consider the provision and report via the minister. In the meantime, that triggered a thought process that perhaps it was a good point and that the Government could do better for the people of Western Australia. I think that is the case. Last week the member for Kingsley, the minister handling the Bill and I had amendments on the Notice Paper. Now, everyone wins. We do not need the minister to lack graciousness. We also do not need to hear the misinformation that these types of things have become par for the course; they have not. To be fair to the previous Government, it used this type of provision in five statutes in about eight years. If we have learnt nothing else tonight, we should remember that in five, 10 or 15 years perhaps none of us will be here to have to put up with having to rely on a Henry VIII clause. The outcome is good. I am interested to find out what it does to subsequent clauses. If members are to do things and change directions, they should be more gracious about it.

Postponed clause put and passed.

Postponed clause 104: Powers in relation to transitional provisions -

Mr KOBELKE: I move -

> Page 114, lines 22 and 23 - To delete "order published in the *Gazette*" and substitute "regulations".
>
> Page 114, lines 27 - To insert before "section" the word "of".
>
> Page 114, line 30 - To delete "order published in the *Gazette*" and substitute "regulations".
>
> Page 115, line 3 - To delete "an order" and substitute "regulations".
>
> Page 115, line 5 - To delete "order is" and substitute "regulations are".

These amendment have the same effect as those that we previously passed and will ensure that any use of clause 104 will be by regulation and therefore will be disallowable.

Amendments put and passed.

Postponed clause, as amended, put and passed.

Part 8: Amendments about right of entry, record keeping and inspection of records -

Mrs EDWARDES: Before I move my amendment to clause 144, I will make some comments about the right of entry in addition to the comments I made during the second reading debate. I reiterate that the rights of entry being provided for under this Bill are not similar to provisions in the federal Act. Both the minister and the Premier have wrongly claimed that they are. In my speech during the second reading debate, I outlined a number of provisions in which the Bill is clearly different, and I do not propose to go back through those again.

The right of entry will be available, not just to an officer or employee of the union, but to any representative nominated or authorised by the union. That change occurred only between the draft that went out to limited stakeholders and the Bill that came into this place. Why would people other than officers of the union be appointed as authorised representatives? That means that anyone can go into a workplace if he or she is authorised. The registrar must grant the permit to that nominated person. It is a very serious matter. Entry to the workplace to investigate breaches or to inspect records is granted regardless of whether or not the union has

members in that workplace. Some terminology is used about eligible members, but in the breach provisions even that qualification is done away with. The breach does not have to be identified to the individual, and, worse than that, the Occupational Safety and Health Act 1984 has been included in the breach provisions. Over the years there has been a very strong trend towards the separation of safety issues from industrial issues. As a consequence, Western Australia has seen a marked reduction in workplace accidents, which went down by more than half between 1998 and last year. In particular, in the past three to four years there has been a 30 per cent reduction. Western Australia has a very stable system of workplace safety as a result of the committed work of safety representatives, employees and employers making workplaces safe places.

Even worse than this is the attack on the privacy of employees. I mentioned that right of entry is granted to union representatives, not necessarily members or officers of the union, to inspect records, even those of non-union members. This is a total breach of privacy and a complete change from what has been done previously in this State. With the passage of the Privacy Act last December, there is a great deal of recognition in the community that people have a right to privacy, including the privacy of their personal employment records. Wages and time sheets are not the main issue. The agreement or award will be available, although an employer-employee agreement will not be available if an employee refuses the right of inspection. This legislation contains a clear breach of the privacy of personal employment records. I will go through that section to indicate that there is a major concern in the community. There is no real restriction on the timing, duration and frequency of access to work sites by union representatives. I do not know what would constitute undue interference.

Mr BOARD: I would like the opportunity to hear the member for Kingsley further expand her comments about part 8.

Mrs EDWARDES: The issue of notice was very badly portrayed by the minister. When the Bill was first sent to the stakeholders, it was suggested that the notice period would be 24 hours. That notice is provided, but the fine print says "unless an award or agreement provides otherwise". The notice is whatever the award or agreement says, which is generally no notice period, or if there is no provision, it is 24 hours. It was put the other way to give the impression that 24 hours notice was being provided, without reference to the fine print, which tells the full story.

I move -

> Page 159, line 13 - To insert before "An" the following -
>
> Subject to the conditions set out in subsection (5),

This will amend proposed section 49E, which provides for access to employment records. I have also proposed a number of other amendments similarly providing for obligations. I do not propose to move the amendment to insert words after line 17, because I have incorporated that in a later amendment. I will also move an amendment to page 159, line 28, to insert after the word "records" some detail which will provide for the cost of providing information and taking copies to be recouped by employers. The amendment to page 160, after line 18, will ensure that there are obligations to produce records and permit entry, but conditions are attached to ensure that access and the production of records takes place at reasonable times, during the normal business hours of the employer. There is no reason for union representatives to be on an employer's premises outside normal business hours. The amendment will also provide an opportunity for the employer to make an application to the commission, if it is suspected that the request to produce records is vexatious, frivolous or unduly onerous. I do not see why the minister should have any difficult in agreeing to that. If he comes back and says, as the member for South Perth and I have heard on numerous occasions today and in recent weeks, that this was done by the previous Government, it is in legislation that the Opposition passed when in Government or it is provided for in the federal legislation, where does he go with such an argument? Is it an absolute answer to any question for the minister to say that the provisions exist somewhere else? If they exist somewhere else, the minister should put them in place here, and if they are not in existence somewhere else, he should consider whether they should be put in place in Western Australia. Whatever the minister answers about where the provisions are or are not in place, the Opposition would like conditions put in place on the right of entry and access to employment records.

Mr KOBELKE: It is difficult to respond positively, and with substance, to shadows. The suggestion that somehow I am not responding to the substance of the matter is in most, if not all cases, due to the fact that the member for Kingsley is proposing a total fabrication of worries and concerns. I suggest the House look at the proposed section the member is seeking to amend to understand that there is no need for the amendment. Proposed section 49E, "Access to employment records", reads, in part -

> (1) An employer, on written request by a relevant person, must -

Members should note that the proposed section specifies a written request. The representative must write a letter first of all and cannot barge through the door. The proposed section continues -

(a) produce to the person the employment records relating to an employee; and

(b) let the person inspect the employment records.

Employers must provide access. To continue -

(2) The duty placed on an employer by subsection (1) -

(a) continues so long as the records are required to be kept under section 49D(3);

They expire after a certain substantial period -

(b) is not affected by the fact that the employee is no longer employed by the employer or that the industrial instrument no longer applies to him or her;

After the conditions, the person can still have access.

Mrs Edwardes: We can read this section; you do not need to filibuster.

Mr KOBELKE: It seems to me that the member for Kingsley has not read it. I am emphasising the points so that she understands them. I continue -

(c) includes the further duties -

(i) to let the relevant person enter premises of the employer for the purpose of inspecting the records; and

(ii) to let the relevant person take copies of or extracts from the records;

and

The member has suggested that somehow unions will be able to do that whenever they like.

(d) must be complied with not later than -

(i) at the end of the next pay period after the request is received; or

If an employer pays monthly, he will have a month to allocate when he wishes to comply with the requirements. If an employer pays weekly, he will have at least seven or eight days in which to decide how he will comply with the request. To continue -

(ii) the seventh day after the day on which the request was made to the employer.

The suggestion that this will somehow impose a harsh and unreasonable imposition on employers does not stand up to a simple reading of the provisions of proposed section 49E.

Mrs EDWARDES: As I have indicated in this House previously, the minister is showing a lack of understanding of workplace practice. I ask the minister to picture this scenario: a person has a letter of authorisation in his hand and walks through the door or onto a building site and says, "We need the records."

Mr Kobelke: The employee will not have right of entry.

Mrs EDWARDES: I am not talking about an employee; I am talking about an authorised representative. The minister should listen to the debate.

Mr Kobelke: Are you referring to proposed section 49E?

Mrs EDWARDES: Yes. Is the minister wasting my time and the time of this House or is he going to listen? We are debating the amendment I moved to proposed section 49E, headed "Access to employment records". I am asking the minister to picture this scenario: a person talks to subcontractors and says that he wants to see the employment records. Will the subcontractor ask for the person's authority to do that and by what provisions of the Act the person can go on site? Of course not. He will not have a copy of the Labour Relations Reform Act in his back pocket that he can bring out and see what he is allowed to do. The union representative will say, "$5 000 or $500 a day unless you do as I'm asking." The subcontractor will say, "I can't afford that. What do you want? Here it is." He might pay monthly. The minister's expectations will not be met in practice. This proposed section clearly shows that the minister does not understand. Perhaps he should go onto some work sites and talk to the people on the ground to see whether he can get a better understanding of what happens in practice.

Even if, as the minister says, the provision is a safeguard, how many provisions are in this legislation to put it beyond doubt?

Mr KOBELKE: I was listening to the member. Perhaps she will correct me if I am wrong, but I thought she said the person would have right of entry.

Mrs Edwardes: We are dealing with proposed section 49E.

Mr KOBELKE: The relevant person will not have the same right of entry as a union official or someone who has union authorisation. The only right of entry under this proposed section will be for the relevant person, who can be the employee, the representative of a represented person - that is, someone with mental disabilities - a person authorised in writing by the employee, or an officer referred to in section 93, which would be an officer designated in writing by the registrar.

Mrs Edwardes: Now we are back to the union representative.

Mr KOBELKE: That provision is under another proposed section. We can argue about that, but let us not confuse the two. Special arrangements and authorisations apply to someone who is a representative of a union. We are dealing with proposed section 49E, which provides for an employee who seeks, either directly or through one of the relevant persons, to gain the information. An employee will not have right of entry except under this proposed section. This section requires the employee to put the request in writing. Proposed subsection (2)(d) provides that the request must be complied with at the end of the next pay period after the request is received or the seventh day after the day on which the request was made. I understand that the period will default to the longest period in the event of the possibility of prosecution for failure to comply.

Mrs Edwardes: How would you relate proposed section 49E to proposed section 49I(2)?

Mr KOBELKE: Proposed section 49I applies to an authorised representative of an organisation; that is, a union official. It provides a specific power with respect to investigation of breaches.

Mrs Edwardes: The authorised representative can also seek access to any employment records of employees or other documents other than workplace agreements.

Mr KOBELKE: Yes.

Mrs Edwardes: The minister should envision a practical situation and describe how proposed sections 49E and 49I(2) will work together.

Mr KOBELKE: Although the member has raised some valid issues, she is accusing me of not providing substantial answers. In order to do that I must address the specifics of her questions. The member's question was about proposed section 49E in relation, I understand, to union officials. Proposed section 49E does not apply to union officials; they are dealt with in another proposed section. The member has moved an amendment to proposed section 49E. She may care to move on and refer to a number of provisions that relate to a union official's right of entry.

Mrs Edwardes: I did jump ahead, because in a practical sense the two provisions will work very closely together. It does not matter what advice you get. It may well stand on its own. In certain circumstances union officials will not need proposed section 49E.

Mr KOBELKE: It does not cover union officials. If an employee were taking action against his employer, he could.

Mrs Edwardes: Under proposed subsection (4)(c), the relevant person could be a person authorised in writing by the employee. However, we should not indulge in semantics; we should deal with the issue.

Mr KOBELKE: The employee might seek to use a union official as the authorised person under proposed subsection (4)(c).

Mr BOARD: We should move on, but some issues need clarification. Is the minister saying that under proposed section 49E(4), either (c) or (d), a person authorised in writing by the employee or an officer referred to in section 93 as authorised by the registrar cannot be a union official?

Mr KOBELKE: No. Proposed subsection (4)(d) relates to a government officer. Proposed subsection 4(c) could refer to a union official. An individual would not seek advantage using proposed section 49E. If an employee says, "This union official is my friend; I want him to do it for me on a personal basis", all the employee will do is give that person a letter, which that person will send or front up to the workplace with, and

the employer will say, "Come back next week or next month." That person does not have right of entry. A right of entry is contained in proposed section 49E, but it is only as provided for in 49E; it is quite limited. If a person wants to get more direct access through the union official, he would use the right of entry provided for union officials. That is not in proposed section 49E.

Mr Board: In effect it will work the same way. The union official will not go in and quote proposed section 49E. He will say, "I am a union official and I want access to the records."

Mr KOBELKE: I do not want to sidestep the issue of right of entry. It is a major issue and if we disagree I will go through the details. Let us talk sense about the provisions we are dealing with. Although proposed section 49E theoretically allows someone to use a union official, it provides the official with less power than he has in other sections. It is not designed for use by union officials; it is designed for use by individual employees who do not want a union official but who want to get access to their records because of a complaint. I am happy to address the bigger issue that was alluded to in the question; that is, that somehow this will drastically change the rights of unions and how they operate. I will give the member the right of entry provision that is contained in the building award.

Mrs Edwardes: I have a copy.

Mr KOBELKE: I do not want to take up time -

Mrs Edwardes: Not much.

Mr KOBELKE: It is very clear. The difference is that they do not currently need authorisation from the registrar to do this. They only need authorisation from the union secretary or another duly elected representative. We have included the extra protection whereby they have to go to the commission and get that authority; and the further and significant protection is that that authorisation can now be withdrawn. That cannot be done under the current system.

Amendment put and negatived.

Mrs EDWARDES: I have outlined the amendments standing in my name which I do not propose to move. Proposed section 49H covers the right of entry for discussions with employees. It is well known that a certain CFMEU officer's idea of having discussions with employees is to try to convince them to join the union.

Ms Sue Walker: Persuade.

Mrs EDWARDES: Yes. This is what "discussions with employees" is all about. "Discussions" is a nice, soft word that does not reflect what happens in the workplace. I move -

> Page 161, line 8 - To insert before "An" the words "Subject to the section,".

I do not propose to move the other amendment at page 161, line 8, primarily because I have incorporated that elsewhere. The same to with the amendment to page 161, line 9. I have also incorporated elsewhere the proposed amendment to page 161, after line 13. The other amendments dealing with proposed section 49H are similarly outlined.

This proposed section refers to an authorised representative of an organisation and it means no more than two at any one time, and that is as a consequence of a case that was decided early last year relating to the number of union officials that could attend a site at any one time. I have picked up the particular provision so that we do not have carloads of representatives turning up on site, but an organised and orderly entry of people for discussions with employees, and there should be no more than two people at any one time. The authorised representative may enter during working hours only and may hold discussions only during the employee's mealtime or other break and the meeting should not be disruptive. The issue is the level of interference and disruption that can occur. I could refer to the right of entry clause the minister was going to refer to earlier. I can give the minister copies of a number of other clauses from other awards and/or agreements if he is interested. Those right of entry clauses contain prescriptions which are not detailed in this legislation. Why is that so? Proposed subsection (2) states that an authorised representative is not required to give notice for entry onto premises. If an award provides for a right of entry with a number of conditions, that is acceptable, but most of those awards and/or agreements do not provide notice. If a person has given 24 hours notice it does not matter; there does not need to be a condition. In some respects the consistency and the thought process is lacking. Proposed section 49H is a significant provision and we believe that the amendments we have been discussing reflect in some way what is already known and well used in right of entry provisions in other awards or agreements.

Mr KOBELKE: I agree that in most circumstances more than two union officials going onto a site is likely to lead to trouble and is not what we would expect; however, this should be determined not by numbers but by behaviour. The member will see in proposed section 49J that if any of these union officials pursuant to right of entry act in an improper manner in the exercise of any power conferred on them, or if they intentionally and unduly hinder an employer or employee during their working time by that right of entry, the commission can revoke or suspend that authorisation for a period. They can be taken out of the game altogether. If they go in and misbehave, whether there be one, two or five of them, they will lose their right of entry. That is a better way to handle it rather than to say that we would normally expect that one union representative is sufficient, occasionally it could be two, but beyond that number is unnecessary. In most cases the member would be right, but why determine that by a hard and fast rule when it may be appropriate on a large work site for a team of people to go in and move to different sections? That could occur without disruption to the workplace. If that is the case it should not be outlawed, especially on a very large work site with a lot of meal areas that union representatives can visit during the meal break. They simply cannot go in with just three or four people and have them go to different areas where people are having their meals during the lunch break and conduct business that way. It is not appropriate to set a limit on a number. It is appropriate for employers to take cases to the commission if anyone operating under that right of entry authority acts in an improper manner or intentionally or unduly hinders an employer or an employee during working hours. Under these provisions, which have never been under the state jurisdiction before, there will be a power for unions to lose their right of entry, not just for that site but across all sites. It may be for a limited period or the right may be revoked totally.

Amendment put and negatived.

Dr WOOLLARD: In relation to proposed section 49H, right of entry for discussions with employees, I understand that unions would like to go onto work sites to explain to employees about the unions and the benefits of joining them. I have been approached by people in the business sector about being given notification of a union coming onto their work site to speak with employees.

A request has been made for employers to be given 48 hours notice. Let us take the nursing industry as an example. If union members or industrial officers or organisers want to go onto a workplace in the health sector, 48 hours notice would be the minimum required by the workplace. It would need to ensure that it had adequate staffing to cover the time that the union would be on the premises, so that the union was given time to explain to the employees what it wished to tell them. I move -

Page 161, lines 21 and 22 - To delete the words and substitute the following -

the authorised representative is required to give 48 hours' written notice to the employer

Mr KOBELKE: It is most unfortunate that the view of many members opposite is coloured by a fear or an expectation of the negative things that have happened in a limited number of cases. That does not under-emphasise that there have been some very high-profile cases in which people were not happy with such a provision. People seem to forget that through the 1980s and into the 1990s, Australia had huge growth in productivity. We led the developed world in job creation. We did better than the rest of the world over that extended period and we still have low inflation and high productivity. Members should not forget that unions, under Labor Governments and the accord, delivered that; yet members are saying that unions should not be able to organise, seek new members or look after those members with a broader view of the community. A number of unions run various charities and aid organisations. What they delivered to this nation has not been delivered to any other developed nation in the past 10 to 15 years. That was done through Labor Governments and the accord in the 1980s; that is what set this country on the path to international competitiveness, huge job growth and an increase in productivity. That was done by unions representing their members and having the ability to access those members. All we see on that side of the House is the dead hand wanting to kill unions and not let them represent people, seek membership or look after their interests and therefore advance the interests of this nation.

I feel very sorry that members opposite have a narrow and negative view of the importance of unions to this nation. That improvement happened not just in the 1980s and 1990s; for over 100 years, unions have been crucial to the development of standards of living in this country. Members opposite want to hogtie unions and cut them out whenever they can. For the very first time we are taking very strong steps to allow people to take action if there is an abuse of that right to represent workers. That should not colour how important it is that we protect the rights of individual working men and women of this State. We must allow unions to represent those people.

I challenge all members opposite to talk to the people in their electorates. They should not just give them their political spiel; they should ask those people how they feel about their jobs, the increase in job insecurity across this nation and the fact that many of them are working harder and longer just to keep themselves and their families. If members opposite cannot pick that up from talking to those people, they have no ability to listen. That has happened while there has been a tax on unions in this State. People have not had someone to stand up for them and represent their rights. If unions are to do that effectively, and responsibly, they must have the right to seek members and to represent their members. It is crucial that they have a form of right of entry that is effective and fair to both employees and employers. We believe we have a very balanced package, which will ensure that union representatives are responsible when they go into a workplace. They should have the right to represent their members and to talk to other workers who may wish to join the union.

Dr WOOLLARD: I am absolutely astounded at what the minister has just said. I did not say that unions should not have the right to enter workplaces; I simply asked that the union give the employer 48 hours written notice. I said that it is important that unions explain to people who may not be members what their union is all about, as well as the benefits of joining the union. The minister seems to have gone off on a tangent.

Mr Kobelke: Many unions do not have to do that now, so why delay their ability to access members and potential members?

Dr WOOLLARD: There are a lot of employers. I gave the minister the example of the nursing sector. I was asked to address this issue from the point of view of the business sector. It is much easier for me to speak about the health sector. It is only reasonable that a union write to an employer and say that it would like to visit the workplace to address a group of nurses on such and such a date, so that the employer has the time to organise the shifts to ensure that they are covered and that there will be an adequate and safe level of nursing care while the union meeting is held.

Mrs EDWARDES: I will make a couple of points to the minister. First, he was just playing to the audience. If he proceeds to respond to our questions by getting on his soapbox and not answering the question directly, it is highly unorthodox and unacceptable. He has limited the debate on this Bill by putting in place a sessional order. This debate will finish at three o'clock tomorrow. We expect to be shown some sort of respect and to be allowed to debate the Bill. We are debating it in a short and succinct manner. We are doing it in an economical manner. We do not need the minister on his soapbox. The minister has forgotten the monopolistic approach that he is giving to the unions. The minister mentioned the accord. This has nothing to do with the principles behind the accord. The minister is taking this legislation back beyond the 1980s, which he claims led to the major resource boom and high employment and wage levels. The statistics do not support that. Why did people leave unions in droves when union deductions were no longer taken from their pay, which was easier for them? Why has the wish to be a member of a union reached such a low point? Because unions have not been representing their members and they have not been providing services. The minister said that the Opposition was highlighting the standards of certain unions. He mentioned one that is quite notorious. That might be the case. There may be unions that we never hear of because they go about their job quietly; they may be working for their members and doing the job they are paid to do. Do not forget that they are getting paid to do a job for their members. A number of other unions have said, "The legislation is in place, mate, and we want to come into your place and we want to join up all your employees." That is coming from unions other than the Construction, Forestry, Mining and Energy Union. That is happening now in small businesses in industrial areas. If the minister is serious about finding out what is going on, I suggest he visit workplaces and find out. The minister did not even take the opportunity of attending the Osborne Park businessmen's association lunch, when there was the opportunity to speak to employers and hear about such things as the Transport Workers Union turning up on someone's doorstep on Friday morning. The minister did not hear about the language used. The minister does not want to hear; he does not care. He is interested only in giving monopolistic power to the unions to create a greater bucket of money for the Labor Party.

Mr KOBELKE: Does the member want me to answer the question she put to me?

Mrs Edwardes: Does the minister remember what it was?

Mr KOBELKE: I am happy to, but the member berated me for making a contribution to the debate. She berated me earlier for not answering the question she wanted answered.

Mrs Edwardes: Answer the questions.

Mr KOBELKE: Does the member want me to answer the question about the role played by unions and why union membership has fallen away?

Mrs Edwardes: No, I am not interested, because the minister has got it wrong. Answer the member for Alfred Cove's question. I can read all the surveys and papers that have been written on the subject. I do not need the minister to give me his biased, one-sided view. Answer the question of the member for Alfred Cove.

Mr KOBELKE: I will not attempt to answer questions, rhetorical or otherwise, for the member as she has indicated she does not want an answer. I have been misrepresented in a number of things she has said, but I will not go through and answer those points as I do not think much credence will be given to what she said. However, I make one point. It seems that the rules of debate or the judgment of contributions to the debate appears to differ totally according to which side of the House a member is on. Members on one side made statements of principle according to their bias, but I am not allowed to make statements about the fundamental driving principles of the legislation. It seems absurd in the extreme.

The member for Alfred Cove triggered me to make one of the few statements I have made when I spoke forcefully about underlying principles. I apologise if that was unfair in terms of her amendment to extend current arrangements to 48 hours notice. The Government is allowing the current situation under awards to continue. The time is set in the awards, and for many it is zero. We do not see why that should be curtailed. Where there is not a standard, it will be 24 hours. That is the same as provided under the commonwealth Act. It is a fair and reasonable approach. It has some consistency with the commonwealth legislation, although it is not identical. That is helpful. We do not want anything that seeks to constrain or limit the ability of union officials to do their job or the ability of ordinary workers to organise and ensure that they have representation. Similarly, we do not want any organisation to impinge negatively on the production or effectiveness of a business enterprise. We think we have a balance. Over the past few years there would have been hundreds of thousands of occasions when union officials went onto a site and there was no industrial disruption. That is how it should be and that is how it will continue to be. The Government does not think there is any real benefit in having an artificial constraint of giving 48 hours notice. It makes it very difficult to organise, because the union official may be on the road and realise that he is near another workplace but is not able to call in because he has not given 48 hours notice. If it is within the rules that they can have access, they should be able to get that access. Members must understand that these are the rules that have to be complied with if the issue is in any way contested or if an employer wishes to impose the minimum requirements. An employer often allows a union official to go on-site even though there is a requirement for 24 hours notice. A union official on the road may phone an employer and say that he will be in the area in five minutes and ask whether he can call in. Quite often, an employer will say yes. Those unofficial arrangements happen all the time. We are putting in place the rules so that people have a standard requirement, particularly when there is antagonism or confrontation. In those circumstances, people want to play by the rules and the rules are there for that good purpose.

Points of Order

Mr CARPENTER: Is the member for Alfred Cove attached to a mobile phone? I have asked whether she is and she said she could not hear as she had something in her ear.

The SPEAKER: It would be disorderly if she were using a mobile phone. I am sure it is not. All members know the rules about mobile phones. I am sure the member for Alfred Cove knows that.

Dr WOOLLARD: I am not using a mobile phone. I have great difficulty hearing the discussion in the House. Something needs to be done about the acoustics. I am using an amplifier so that I can hear the debate clearly.

Mr CARPENTER: I am satisfied with the explanation.

Debate Resumed

Dr WOOLLARD: My amendment would make unions give 48 hours notice to employers. In his response, the minister made a glib statement that this side of the House was anti-union and that my amendment was trying to block unions from doing their work. I remind the minister that I am still a member of the Australian Nursing Federation. The Australian Nursing Federation is a very professional union. As the minister said, a phone call could be made by an official to say that he is passing by and that he would like to drop in to see if there are any problems. This issue has come to me from the business sector, because businesses are obviously concerned that unions that represent some of their employees may not act in such a professional manner. The business community is asking that there be an allowance so that employers are given 48 hours notice that someone is coming into the workplace. I request that the minister once again consider that substitution.

Amendment put and negatived.

Dr WOOLLARD: I will not move my proposed amendment to page 161, line 27, which was to support the previous amendment to provide 48 hours notice. I move -

Page 161, after line 27 - To insert the following -

(4) An authorised representative may not exercise a right of entry under this section on more than 3 occasions in any period of twelve months unless the employer has given written consent.

The SPEAKER: I seek to clarify a point with the member for Kingsley. An amendment appears on the Notice Paper in the member for Kingsley's name before the amendment the member for Alfred Cove is endeavouring to now move. Will the member for Kingsley move the amendment to page 161, line 23, to delete the words?

Mrs EDWARDES: Thank you, Mr Speaker, for bringing that to my attention. I now do not propose to move that amendment. It sought to delete the words "If subsection (2) does not apply,". Proposed section 49H(2) essentially deals with awards, orders or industrial agreements. If the words were deleted, it would have ensured that the authorised representative would not be entitled to exercise a power of entry without 24 hours notice. The amendment clearly aimed at putting on the record that there was no other choice - the authorised representative had to give 24 hours notice. That is one of the clear differences between the federal provisions and these proposed state provisions.

Dr WOOLLARD: I believe that it is important that union officials be able to enter workplaces to explain to employees the benefits of joining a union and what a union has to offer. However, it would be more than adequate in most workplaces for a union representative to visit on three occasions in 12 months. If a union needs to go into a workplace on more than three occasions, it should approach the employer to do so. Some employers are concerned about bullying and intimidation by some unions, which may go into a workplace week after week after week. They have asked that a specified number of visits by union officials be determined.

Mr KOBELKE: I understand that some people are fearful of this legislation and that it will somehow change the way unions operate. I do not share that fear or think it is well grounded. It serves no useful purpose to put in place further artificial restraints. That is what I was saying earlier. If people abuse the right - if they disrupt the workplace - they lose that right of entry. The Government does not seek to constrain, through artificial and technical means, how many times or how often unions can enter a workplace. A large workplace may be negotiating an enterprise agreement and unions may be required to go into the workplace every couple of days. If the employer wanted to negotiate the industrial agreement, the official might regularly go to the workplace for meetings with key people and shop stewards or for mass meetings. That may be a crucial part of concluding the industrial agreement, which the employer is happy to negotiate. This amendment wants a written approval for that to occur. It puts another administrative obstacle in the way. It is not necessary.

Dr WOOLLARD: The minister said that a union might want to go into a workplace on repeat occasions, which an employer might be happy about. This amendment allows for that to occur. It allows for an employer allowing a union to enter his workplace and help organise an award or agreement; it facilitates that. However, it stops what some employers are concerned about - union officials who want to use this right as a form of bullying.

Mrs EDWARDES: I seek to clarify a point. There are two amendments on the Notice Paper for page 161, after line 27 - the one that has been moved by the member for Alfred Cove and the one standing in my name. I do not propose to move the amendment standing in my name, if that assists the debate. However, I proposed that amendment to lay out some conditions. It was not to set up constrictions, to which the minister keeps referring. Those conditions were essentially that discussions should be held in non-working areas during break periods applicable to the relevant employees; that there should be no disruption to the ordinary performance of work or conduct of the employer's business; entry is subject to the authorised representative complying with the employer's directions in respect of workplace safety; and entry is permissible no more than once a week unless otherwise agreed between the employer and the authorised representative. Those are valid points for all the reasons that have been outlined, including those in the contribution by the member for Alfred Cove on the amendment she has just moved. They are not constrictions. The minister keeps saying, "Hang on, the grant can be removed". That happens further down the track. Why not set out the guidelines up front? They are not restrictions to constrict activities. They should be outlined for both parties, so that they know how the game will be played.

Amendment put and negatived.

Mrs EDWARDES: We are moving on to proposed section 49I, which covers the right of entry to investigate breaches. Again, a number of amendments to this proposed section are standing in my name on the Notice Paper, as well as one in the name of the member for Alfred Cove. Essentially, the amendments cover three points. The first is that they would put in place some obligations for that right of entry to investigate breaches. The second concerns the removal of the Occupational Safety and Health Act. There has clearly been a move to

keep workplace safety separate from industrial matters. I will go into that in a little more detail. The third is the issue of privacy of employment records. I move -

Page 161, line 29 - To insert before "An" the words "Subject to the section,".

I will speak on all the amendments to ensure that what we are talking about here is the right of entry to investigate breaches, and to remove the word "relevant". We are talking about places in which the employees are members of an organisation of which the person is an authorised representative. We are not providing carte blanche for unions to have a right of entry if there are no union members.

They should notify the employer of the breach that they claim has occurred. Why would there not be notification of the breach? We have had sufficient examples in which union officials have come onto a site and said there is a breach of workplace safety, and that has been the extent of the identification of the breach. Worse than that, this proposed section will allow union officials to go onto a site and say that they are investigating a breach of this Bill, the Long Service Leave Act, the Minimum Conditions of Employment Act, the Occupational Safety and Health Act, or an award, order or industrial agreement, without being required to notify the employer of the breach. The employer must also allow the authorised representative to inspect, during working hours at the employer's premises or at any mutually convenient time and place, any employment records of employees or other documents, other than workplace agreements, kept by the employer; make copies of them; and inspect or view any work, material, machinery or appliance that is relevant to the suspected breach. Under this proposed section the authorised representative is not entitled to require an employer to produce an employment record of an employee if the employee has made a written request to the employer that the record not be available for inspection by an authorised representative. That protection should be available to all employees, not merely those who are subject to an employer-employee agreement. An authorised representative, who does not have to be a union official or officer, will be able to go onto a site and access any personal employment records. Only those employees who are subject to an EEA will have the right to refuse access. That is clearly in breach of what every person would regard as the protection of their employment record.

The minister has said that this proposed section does not go that far and does not deal with issues other than time records, pay sheets and so on. If that is the case, the minister should have no trouble whatsoever in accepting my proposed amendment to delete the words "any employment records of employees". The proposed section is far broader than he believes it to be. He has to go only as far as the commonwealth Privacy Act to determine what the words "employee records" mean. The Bill contains no definition of those words other than what is outlined in the proposed sections.

Mr BOARD: I would like to hear more of what the member for Kingsley is expounding on this issue.

Mrs EDWARDES: Section 6 of the Privacy Act states that the term "employee record" in relation to an employee means a record of personal information relating to the employment of the employee. It states also that examples of personal information relating to the employment of the employee are health information about the employee, and personal information about the engagement, training, disciplining, resignation or termination of employment of the employee; the employee's performance or conduct; the employee's hours of employment; the employee's salary or wages; the employee's personal and emergency contact details; the employee's membership of a professional or trade association, or trade union membership; the employee's recreation, long service, sick, personal, maternity, paternity or other leave; and the employee's taxation, banking or superannuation affairs. It will also allow access to any record that is linked to the pay records, and the Commonwealth should look at that. Personal information such as garnishee orders or child support orders will now be available to a third party. This is an invasion of privacy. All employees whether they be union members or not, or are paid under an EEA, an industrial agreement, an award or some other agreement should have the right to request that their records not be available for inspection by a union official or an authorised representative of the union. People should have the right to protect their privacy. Until now the basic information that unions have needed so that they can check that breaches are not occurring have been essentially wages and times records. The documents relating to employment contracts are already available. I suggest that the minister look carefully at that section.

As indicated, I have written to the federal minister and asked that in the review of the Privacy Act that will be carried out this year, he look at protecting employees' personal information. Employment records should not be exempt under the Privacy Act. It should be of concern to all employees that unions can access their personal information. I highlighted a number of key examples in the second reading debate. The minister picked up on names and addresses of public servants on EEAs. I am concerned that the address of a woman who has been subject to domestic violence will be available to third parties. She has probably had to shift house several times

and has taken out restraining and violence orders, yet an official of a union can access her address. That is a disgrace. I am sure the minister would not want anyone in his family to be in that situation.

Mr KOBELKE: This is a totally unfounded scare campaign. These provisions have been available for decades. They are in the commonwealth legislation in a similar form. They do not allow people to abuse the rights and privacy of employees. These changes do not breach the federal Privacy Act. The Bill allows for access to employment records. Employment records are defined in proposed section 49D. The employer is required to record the details of employees names. If employees are under 21 years of age the employer is required to record their date of birth. That is applicable because if they are under 21 they might be on a junior wage rate. Employers will also be able to access any industrial instrument that applies to employees; that is, a copy of the industrial agreement or the award under which they are paid. The employer is required to record the date on which employees commence employment. This will enable a union to find out when employees start and finish work, the periods for which they are paid, and details of work breaks, including meal breaks. Employers are required for each pay period to keep records of their employees' designation, the gross and net amounts paid to employees under the industrial instrument, and all deductions and the reasons for them, whether it be tax or superannuation.

Mrs Edwardes: Child support schemes, garnishee orders.

Mr KOBELKE: If the employee has those deductions the representative will have access to details of them. Otherwise, it would not be possible to calculate wages. The proposed section continues -

(f) all leave taken by the employee, whether paid, partly paid or unpaid;

(g) the information necessary for the calculation of the entitlement to, and payment for long service leave under the *Long Service Leave Act 195*8, the *Construction Industry Portable Paid Long Service Leave Act 1985* or the industrial instrument;

(h) any other information in respect of the employee required under the industrial instrument to be recorded; and

(i) any information, not otherwise covered by this subsection, that is necessary to show that the remuneration and benefits received by the employee comply with the industrial instrument.

That is the full extent of documents that the representative can access under the definition of employee records. Proposed section 49I also allows for access to other documents, but that access, along with the access to employment records, has the qualification that all such documents sought are available only insofar as they relate to the suspected breach. Proposed section 49I deals with the right of entry to investigate breaches. The representative must be able to say that the documents are being sought because they relate to a certain breach, otherwise there is no right of access. The scare campaign that this provision may allow the address of people who have been subject to sexual harassment or stalking to be found is not relevant to what this section deals with. These provisions have been in the federal legislation for decades in similar form and there has been no cry from employees that those rights have been somehow affected. Proposed section 49I(3)(b) allows a person with a conscientious objection to letting a union official see his records to make a written request to the employer that his records not be made available for inspection.

Mrs Edwardes: That provision applies only if the employee is party to an EEA. No other employee will have right unless the minister agrees to my amendment to delete proposed section 49I(3)(a).

Mr KOBELKE: If the employee is on an EEA and makes that request, then those records will not be made available.

Mrs EDWARDES: That shows clearly that the minister does not read the proposed sections before he stands up to speak about them. It shows also that he does not listen. He has just confirmed what I have said; namely, that personal employment records will be made available. He says there is no issue in the federal Workplace Relations Act, and there will not be one here. The Privacy Act came into force on 1 December 2001, and members of the community are clearly much more aware of the protection of privacy that they have. It will be an issue. I have suggested to the minister - although I did not hear a response - that he support the review to be carried out by the federal minister this year of the workplace relations legislation of not just this State but all the States and Territories to ensure that all employment records have some level of protection under the Privacy Act. It was not moved in the first instance, because a number of Acts need to be reviewed thoroughly. The minister says that it is not a problem.

I do not know if you, Mr Speaker, have ever been in the position of keeping employee records. I have been a paymaster in a number of organisations. They do not keep two sets of books - one that complies with the

provisions outlined by the minister, and another that contains every other piece of information. All the information is kept together. There is generally a file labelled with the name of the employee, and all the information is in that one file. It is clear that there are some serious issues -

Mr Marlborough: The member is a charlatan.

Withdrawal of Remark

The SPEAKER: I ask the member to withdraw that remark.

Mr MARLBOROUGH: I withdraw.

Debate Resumed

Mrs EDWARDES: The question I raised with the minister was whether he supports the confidentiality of employees' records. If so, will he support the federal review on the protection of employees' privacy. I agree that the provision does not offend the Privacy Act. I did not say that it did. For the sake of employees in this State, the minister should support and work with the federal minister to ensure that the records of Western Australian employees will be protected.

I refer now to the Occupational Safety and Health Act. This legislation represents a clear break in the occupational safety trend. That trend was begun by the Labor Government in 1995 when it established the WorkSafe Commission, which still operates today. It is one of the very few bodies established at that time that is still in existence. The Labor Government also established major legislation to deal with occupational health and safety as it was known at that time.

The trend in accidents documented from 1988 to 2001 clearly shows a major reduction. In 1988-89 the number of reported accidents was 81 124, which decreased to 43 944 in 2000. Twenty-nine point five per cent of that reduction occurred between the years of 1997 and 2001. The minister is responsible for recently initiating a major WorkSafe conference in Western Australia. All the participants over the past two days acknowledged that it was an outstanding success. The minister should be commended for that initiative. It is clearly a very important issue, particularly in this State. We needed to do something different, so the minister took a big step and organised a conference, which was very successful.

I am illustrating that the minister has a clear commitment to workplace safety.

Mr BOARD: I am enthralled by the argument that the member for Kingsley is mounting and I would like to hear more.

Mrs EDWARDES: The minister has an obvious commitment to workplace safety. Reports from the likes of Robens in the United Kingdom, Ham and Burkett in Ontario, Williams in New South Wales and Kelly and Laing in Western Australia have shared a number of key themes. One of those themes is a unified approach to occupational safety and health, which is essential to avoid inconsistency and uncertainty. Consistency and certainty have been achieved through the unified approach we have in Western Australia, which started under a previous Labor Government. The coalition Government cannot take full credit for the stabilisation that that unified approach has provided.

The other theme is the need for meaningful consultation at all levels, particularly in the workplace. Organisations that are committed to ensuring workplace safety try to avoid adversarial situations. Industrial matters become adversarial. Occupational safety and health should not be adversarial. The indications are that when adversarial situations arise in the workplace the number of incidents increases and the level of commitment to workplace safety diminishes.

There are advantages in maintaining a separate occupational safety department and I have expressed previously my concern about its inclusion under the one umbrella. It is critical to ensure that the relevant departments have the competence to handle matters expediently. That extends to the training of health and safety representatives, policies implemented by employers and employees accepting responsibility and making the decisions to look after not only their own safety but also that of their mates working alongside them. That is a major factor in the reduction of workplace incidents in Western Australia.

It should be internalised, not externalised. If it were externalised, we would lose the unified approach that has been critical to and one of the key factors in Western Australia's success. Including it in one of the Acts as a right of entry to investigate a breach and also in the definition of an industrial matter will again make workplace safety an industrial issue. If that were to happen, we would lose the great gains this State has made in reducing incidents. This provision will make union officials government inspectors. They will no longer need to use the Occupational Safety and Health Act, and that is a major concern.

I know that the unions did not like the move to safety magistrates. Former Minister for Industrial Relations, Hon Des Dans, said that it was done because there was no alternative structure. The historical information I have read indicates that that was clearly the case. However, it was seen at that time as an interim solution. In the early 1980s, work on central business district construction sites was held up because of safety issues. I have mentioned the Hamburger report on a number of occasions in this House. It clearly identified safety issues as a tool for gaining power in other areas, and usually in the industrial area. Including the Occupational Safety and Health Act in this provision will not improve workplace safety. In fact, it will have the opposite effect; it will reintroduce the adversarial approach. The Liberal Party strongly opposes this clause.

Mr KOBELKE: The member referred to access to private information. The legislation provides that 24 hours' notice must be given when seeking information about a breach under proposed new section 49I. If company files contained personal information that was superfluous to the employment records, this provision would allow time for that to be removed.

The member requested that I work with Minister Abbott to address these issues. The state and commonwealth ministers are already looking to standardise record keeping, and this Bill goes some way to achieving that aim. I support the principle of greater legislative uniformity across the country. However, that must always be governed by what is in the best interests of Western Australia. I do not agree with blanket standardisation across the country, but sometimes it can be achieved. As a general rule, we should have more uniformity across the various jurisdictions because ours is increasingly a national and international economy. We do not want companies that operate across the country to be required to work to different rules in different States. Generally, the other States require more record keeping than does Western Australia.

We are addressing that process with other ministers, and Minister Abbott is involved. My limited experience of ministerial meetings with Minister Abbott is that he is quite a pleasant fellow who is easy to get on with, but he is a political head kicker; he likes to play politics. The member for Kingsley is saying that I should sign up for his political agenda, and that when he wants to go out and kick heads about private information, that somehow there is a benefit to Western Australia. That is a nonsense. He is one of the chief head kickers for the Liberal Party in the federal Parliament, and most of the time he plays politics with industrial relations. The member is saying I should somehow or other be involved in his grubby sort of politics. I do not intend to do that.

We have consulted with WorkSafe Western Australia about the drafting of health and safety issues. WorkSafe did not object in any way. The Laing preliminary report suggested it should be done. Jurisdictional issues are covered in other sections. I agree with one aspect of what the minister said. I am totally opposed to and will take whatever action is available to me if people abuse health and safety issues for other purposes, because that totally undermines our efforts on health and safety. I do not support that in any way at all and would seek to stamp it out. The commission is hamstrung if it is not permitted to deal with health and safety issues in appropriate ways; it has stopped functioning in a whole range of areas. It does not make sense to exclude from the jurisdiction of the commission the ability at appropriate times to deal with matters which arise under the Occupational Safety and Health Act 1984.

Amendment put and negatived.

The ACTING SPEAKER (Mr Dean): A number of amendments appear in the name of the member for Kingsley.

Mrs EDWARDES: I have a number of amendments on the Notice Paper in my name. In order to save time I have referred to some of them during the debate rather than moving them. I will not move any of those amendments right down to where the member for Alfred Cove comes in at page 164.

The ACTING SPEAKER: The member has an amendment in line 1.

Mrs EDWARDES: I am reluctant to move that without providing the member for Alfred Cove with the opportunity of moving her amendment. Can we defer those amendments? I am seeking some guidance. I do not intend moving the amendment to page 164, after line 3, in any event. The member for Alfred Cove could come back and deal with her amendments.

Mr Marlborough interjected.

The ACTING SPEAKER: Order, member for Peel!

Mrs EDWARDES: I could move an amendment at page 164, line 7 that removes her amendment.

The ACTING SPEAKER: I do not know where the member for Alfred Cove is. We can deal only with members' amendments if the members are present. I will move part 8 and that will provide the member for Kingsley with an opportunity to speak generally.

Mrs EDWARDES: I refer the minister to page 164, line 7 and ask why he changed proposed subsection (1) to a person to be nominated by the union and not just an officer or employee of the union, which was in the draft that went out for discussion with limited stakeholders.

Mr KOBELKE: This proposed subsection relates to the authority of unions in remote parts of Western Australia to nominate someone from a different union to represent them. That would be denied to those unions if proposed subsection (1) permitted only officers or employees of the organisation to represent them. For example, the Australian Workers Union may authorise somebody from the Australian Manufacturing Workers Union to go to a particular site. The member's suggestion would prevent that from happening in remote parts of Western Australia, and that is inappropriate.

Mrs EDWARDES: If it were intended that the person nominated be a member of another union, those words could have been put in this proposed subsection. The words in this proposed subsection allow any person to be nominated by the union, and the registrar must issue an authority. The minister's representative at the Stirling Business Association lunch was asked whether the commission, upon application, must grant a permit to a member of the Coffin Cheaters if that person was authorised by the union under the right of entry provisions. The minister's representative acknowledged to the audience at that lunch that there was no restriction to prevent the commission from doing so. Any person nominated by the union, whoever that person is, must be granted a permit by the registrar. Proposed subsection (1) states -

> The Registrar, on application by the secretary of an organization of employees to issue an authority for the purposes of this Division to a person nominated by the secretary in the application, must issue the authority.

It is clear that although the minister's intention is to allow unions to nominate members of other unions, this subsection is far wider than that.

Mr KOBELKE: Currently, a union secretary, or any other duly accredited representative, can authorise anyone to have that right of entry. There is no requirement for the right of entry to be vetted by the commission. We have added an extra layer in that the commission must tick off on it. That is not the main effect of this proposed subsection. Its main effect is the ability to have that authorisation withdrawn. That provision can be found in proposed section 49J(5), which states that if a person who has been authorised has acted in an improper manner or has intentionally and unduly hindered an employer or employee during their working time, any person may apply to the commission to have that authorisation withdrawn. That provision does not currently exist; therefore, it is a considerable tightening up of the current situation.

Mrs EDWARDES: The proposed subsection referred to by the minister, which gives the commission the power to revoke or suspend the authority for a period determined by the commission if the person has acted in an improper manner or has intentionally and unduly hindered employees and employers, is totally inadequate to deal with the behaviour that has occurred on building sites and the like. If the minister were serious about ensuring that an authorised person was an officer or employee of the organisation, it would have been an easy amendment to draft. Clearly the proposed subsection is much wider than that. Although there may be some sniggers about the possibility of a member of the Coffin Cheaters being appointed as an authorised representative, it could also be someone who has left the union and is employed on another workplace site. There could be a range of scenarios. Ultimately the question is: who will be responsible for the actions of that individual officer? If that person is not an officer or employee of the union, the union will say that it is not responsible for the actions of that person. Officers of unions in Victoria already say that such officers acted of their own independent will. This proposed section will give unions more of an out to deny responsibility for the actions of those people. Why was it necessary to change the draft of the Bill? If the intention was that members of other unions in country regions could represent each other, that would have been a simple amendment to draft. That clearly was not the intention behind the brief to the draftspeople.

I move on to a very important amendment.

The SPEAKER: For my clarification, as the member for Kingsley is moving this amendment, does that mean that the member for Alfred Cove will not move her amendment?

Mrs EDWARDES: Yes. The member for Alfred Cove has indicated that to me. Perhaps she could give that indication to the House.

The SPEAKER: Does the member for Alfred Cove not intend to move the amendment standing in her name?

Dr WOOLLARD: No. I believe that the discussion took place on the previous amendment that I tried to move. Therefore, I am quite happy for the debate to continue.

Mrs EDWARDES: I move -

Page 165, after line 11 - To insert the following -

49JA. Exemption from Certain Provisions on Religious Grounds

The rights empowered on a representative of an organisation in Sections 49E, 49H and 49I shall be transferred to the Industrial Inspectorate where -

(a) all employees employed in the workplace are employed by an employer who holds a current certificate of exemption issued under Section 49JB; and

(b) none of the employees employed in the workplace is a member of a union; and

(c) there are no more than 20 employees employed to work in the workplace.

49JB. Issue of Certificate of Exemption

(a) The Industrial Registrar may, for the purposes of Section 49JA, issue a certificate of exemption to an employer who is an individual if the Industrial Registrar is satisfied that the employer is a practising member of a religious society or order whose doctrines of beliefs preclude membership of any other organisation or body other than the religious society or order of which the employer is a member.

(b) The Industrial Registrar may revoke a Certificate of Exemption if -

(i) the employer to whom it has been issued agrees; or

(ii) it was issued in error; or

(iii) the Industrial Registrar is satisfied that the employer has ceased to be a person eligible to be issued with the certificate.

This is a very important amendment. I say that knowing that many members of the brethren are in the gallery tonight, and that many of its members have been in the gallery throughout the debate on this Bill. They sought from the Government the two amendments that I have moved. One stated that the rights empowered on a representative of an organisation, as outlined in the proposed sections with which we have just dealt - that is, proposed sections 49E, 49H and 49A - shall not apply when all the employees in the workplace are employed by an employer who holds a current certificate of exemption issued under section 49JB; none of the employees employed in the workplace is a member of a union; and no more than 20 employees are employed to work in the workplace.

I will deal with the issue of a certificate of exemption. Under my proposed section 49JA, the rights empowered on a representative of an organisation in proposed sections 49E, 49H and 49I shall be transferred to the industrial inspectorate. Therefore, it is not as if these employers wish to hide from the requirements of the legislation. That is clearly anathema to them. They believe that they provide a very caring workplace for their employees, and they want to meet all the requirements of any legislation, Act, order or agreement that is in place in respect of their employees. However, they have a firmly held belief that they do not belong to any form of organisation. Mr Speaker belongs to other organisations as well as being a member of Parliament. I belong to other organisations, and many members in this place belong to other organisations. We are not members of this religious order. We cannot say that what we have and do and believe in is what they should believe in. We have promoted harmony and tolerance quite vehemently in this place over the past few years. We should respect their views. In doing so, it is clear that they do not want members of an organisation in which they do not believe, or would not be a member of, attending their workplace. They would not discriminate against someone who is a member of a union being employed at their workplace. They are very happy for a government inspector to attend their workplace Quite rightly, they would make available to a government inspector all and everything required to investigate any so-called breaches, including access to employment records and whatever else was needed to be conveyed to the inspector. A number of members of the Plymouth Brethren live and work in Western Australia. They have put forward an amendment that should be acceptable to the minister and the Government. The amendment is similar in nature to one in New South Wales. Since it has been in operation in New South Wales over the past few years, there have been no problems or concerns arising from any of the exemptions granted. If it works well in New Zealand and New South Wales, it should work well in Western

Australia. Whatever are our beliefs, we should be able to put aside our philosophical differences and have a bipartisan approach in respect of the amendment I have put forward. It is supported strongly by the member for South Perth, who also has a similar amendment in his name. He will speak to it later. Members of the National Party have members of the Plymouth Brethren in their electorates, as does the member for Murdoch. We strongly urge the minister and the Government to allow an exemption and have government inspectors investigate if there are any concerns about operations at the workplace.

Mr BOARD: I strongly support this amendment. This is not a question of choice for these people; it is a question of conscience. This is not a situation that they can tolerate. This goes to the essence of their religion. This Parliament has the opportunity to give an exemption on religious grounds to people who find themselves in a situation in which, in good conscience, they will not be able to abide by a law of this Parliament. As a result of that, they will find themselves in difficult circumstances. They will either have to abide by the law or break their religion. They will choose not to break their religion and, in most cases, they will have to close to their businesses. That will be a huge tragedy for Western Australia. I am not a member of the Plymouth Brethren; nor have I benefited from the brethren or their group in any way. However, I have learnt over time exactly what they believe about this issue. I will read from a document about the brethren, written by Bryan Wilson PhD, on the federal employment relations Bill. He is seen around the world as an expert. He has written various articles and has been an expert witness for jurisdictions around the world including Britain, Australia, New Zealand, South Africa, France and the Netherlands, all of which have dealt with this issue. The document states -

> The Brethren are committed to pursuing a way of life and faith in strict accordance with biblical prescriptions, as they understand them. A central concern of their theology is to avoid any compromise with whatever they perceive as evil or as practices not ordained of God. To this end, they also seek to obey the biblical injunction to be separate from the world. This is part of their endeavour to lead pure and holy lives. It might be said that, in avoiding association with secular activities and institutions, their moral stance, except for their commitment to family life, is not so very different from that of a religious order within the Catholic Church. Whilst they do not seek to be . . . separated from the wider society, they do keep themselves morally apart, and seek to establish arrangements which allow them to maintain their own distinctive biblically-prescribed life-style.
>
> Despite their avoidance of involvement in the social, political, and recreational concerns of modern life, it must be emphasized that the Brethren have, throughout their history, maintained exemplary citizenship with respect to their civic and fiscal obligations. They support government, are scrupulous about paying their taxes and discharging honourably all their financial obligations, domestic, business and civic. One consequence of the sense of responsibility required of each member of this Christian fraternity is that delinquency and crime are virtually unknown among them, and as a community they rarely present any charge upon the wider society. Like some other nonconformist Christian bodies, they espouse an ethic which promotes integrity, self-reliance, independence and enterprise which encourages many of them to engage in business. There is no reason to believe that in their hundred-and-seventy year history they have been anything other than exemplary employers in the numerous small businesses which individual Brethren have created.
>
> The Employment Relations Bill, currently going through Parliament, -

That is not this Parliament, but this document was written about it -

> creates particular anxieties for the Brethren who are employers, since it could, if unamended, conflict with their Christian convictions about employer-employee relations. The Brethren believe that the Bible does not recognize any union intervention between employer and employee . . . They have consistently refused to take membership in either employers' organizations or trades unions, and they sustain that position today. Nor would they find it consistent with the dictates of conscience to become associated with such organizations by engaging in discussion with them on such matters as the Bill envisages, i.e. in admitting a union access to their businesses, or in negotiating with them on any issue. It would be unacceptable to Brethren to have their employees' concerns expressed by, or to be represented by a trades union official.

Mr TRENORDEN: I give the member for Murdoch the opportunity to continue.

Mr BOARD: The document continues -

> As in other matters in which they have sought relief for their conscientious scruples, the Brethren seek to maintain a co-operative attitude with the authorities. If the government is apprehensive that the creation of an exemption clause for those with conscientious concerns in respect of employment

> relations might lead to an undue excess of spurious claims, the Brethren would readily provide witnesses to attest to the *bona fides* of any employer who belonged to their fellowship. Such provisions were adopted by government in the matter of conscientious objection in periods of conscription for compulsory military service during the First and Second World Wars, and proved to be an adequate safeguard against unwarranted exploitation of conscience clauses by unprincipled impostors. Alternatively, the Brethren would be ready to endorse applications of any of their number should the Government elect to issue exemption certificates for *bona fide* conscientious objectors in their community in advance of the Bill becoming law.

The Brethren have shown in previous issues affecting conscience that they place obedience to Scripture above worldly or financial advantage, and that they have been prepared even to sacrifice their livelihood and to relinquish their professional status before they would surrender their conscientious scruples. The Brethren seek to co-operate as fully as possible with Government, but would earnestly hope that the Government might re-consider its position with respect to the introduction of some form of conscience clause or a mechanism within the regulations which would have the same effect.

That letter was written by Bryan Wilson, who was employed by the federal Government to provide advice on this issue. I will also quote Hon Gareth Evans.

The ACTING SPEAKER (Mr Andrews): How long is the next quote?

Mr BOARD: Just five lines. Enclosure 2 states that in his paper on conscientious objection to unionism, Hon Gareth Evans quoted Hon Simon Crean saying -

> "Unions are prepared to recognize genuine conscientious objection cases. They have done so in the past - at least when religious claims have been made - and will continue to do so in the future whatever the law."

Because a sessional order is in place, I do not have the opportunity to read into *Hansard* some 50 independently written letters that I have received from all over the State. These letters represent some of the 180 businesses that are owned and operated by brethren in this State, which employ more than 2 000 people. I can read some of those letters into *Hansard*, but to paraphrase what they say, the brethren have a conscientious objection to this provision of the legislation. It is a question of conscience and religion. They are prepared to close their businesses, rather than to be in conflict with the Government and break the law. It is anathema to them to break the law. They will put their religion and faith before the imposition of a ridiculous law. They could abide by that law if another representative - a government official - were to come into the premises and provide everything that the Government requires. They are not asking to be exempt from this Bill. They are asking to be exempt from having a union representative come into their workplaces. They are asking that an industrial inspector come in and have the opportunity to inspect the premises and do all those things. They do not want someone coming in who is part of an association and who wants to talk to brethren members about that association, because that is anathema to their religion. They cannot abide by that. As a result, they are prepared to see their businesses close.

I am happy to table all those letters, so that members of Parliament can see how strongly those people feel about this legislation. They are prepared to put their concerns in writing. Some of these people have been in business for 40 and 50 years. They have lived in their own fellowships and employed many Western Australians. They have generated income in this State. They pay taxes and are good citizens of this State. Their religion will not allow them to substitute in the case of this Bill. They are prepared to go to any length to accommodate Government wishes, but they cannot allow union involvement in their workplaces. They are prepared for that to occur through an industrial inspector. I implore the minister to tonight consider their concerns, which have already been considered by the federal Government, the New Zealand Government, the New South Wales Government and other jurisdictions around the world. Let us not put their businesses or the employment of people in jeopardy. Why cause that conflict in Western Australia? The Government will get what it wants through another means.

Mr GRYLLS: I support the amendment put forward by the member for Kingsley. This amendment is of particular interest to my electorate of Merredin, which includes the towns of Dalwallinu, Kalannie and Cunderdin. Those towns all have a strong brethren business community and are defying the trend of small country towns - they are moving ahead at a rate of knots, because of the economic development brought to these towns by brethren businesses. This must be recognised. I will strongly support the amendment for that reason.

I recognise the members of the brethren community from Dalwallinu, Kalannie and Cunderdin who have travelled to Perth to attend these proceedings. This is no small contribution to the debate. I commend them for

the way they have conducted themselves during this debate and during the many long nights of sittings in an attempt to indicate their concerns to this Parliament. I hope that those concerns are recognised.

The brethren run 19 businesses in the towns of Dalwallinu and Kalannie that employ 96 people. The flow-on effects of those businesses is enormous economic wealth to not only those towns, but also our whole region. I strongly support the amendments put forward by the member for Kingsley. I hope these amendments are passed, because it would be devastating if the new labour relations legislation puts the brethren businesses under additional pressure and forces them to reconsider their tenure in our small country towns. This amendment is absolutely vital. I implore the minister to consider it with the utmost concern.

Mr PENDAL: I had intended to move a not dissimilar amendment at a later stage as the result of a request by a constituent of mine. However, if the member for Kingsley's amendment is agreed to, mine will not be needed; and if the amendment is not agreed to, mine similarly will fall by the wayside. We have not yet had a response from the Government, although I suspect we have been given a suggestion of it through the sniggering interjections of the Minister for Planning and Infrastructure.

Ms MacTiernan: I believe very strongly that this is immoral and outrageous.

Mr PENDAL: The snorting and huffing I keep hearing from that corner demonstrates the long journey this country has made over the past 50 years from the Evatts and Whitlams and those great people in the human rights movement who reflected everything that is good in the United Nations Universal Declaration of Human Rights to a point at which the conservatives in these matters are now leading members of the Labor Party. I refer to those people who have been interjecting and seeking to demean this debate since it began five or 10 minutes ago. We are dealing with inherent bigotry and intolerance. What is the difference between including in this statute a conscientious objection clause for people of a firm belief - incidentally, it is not a view I hold - and the conscientious objection clause of 30 years ago that allowed people, probably including the Minister for Planning and Infrastructure, to encourage others to not show themselves for service in the Vietnam War? There is no difference at all.

Ms MacTiernan: I will answer that.

Mr PENDAL: If the minister wants to answer it, she should get on her feet rather than sit there snorting and puffing and huffing in the way that she does.

Ms MacTiernan: I am happy to answer it.

Mr PENDAL: She is a bigot and she is proving it by her interjections tonight. We live in a liberal democracy that we hold up as a example for the rest of the world. There are many occasions when we turn our law to accommodate those people who have a conscientious objection borne from their religious beliefs. We saw in this House through the abortion debate only four years ago how people will fight what they believe to the death. I was one of them. I absolutely object to the sort of interjection that has been made tonight, in a quasi-sense from the Government. I hope the minister at the Table contradicts that. I object to such inherent bigotry and intolerance. It is a rejection of everything that the Evatts and Whitlams of this world believed in; and a rejection of the actions of those people who, during the Vietnam War, when I was in the newspaper field, protested at the front of this place. They took the view that conscientious objection was something that Legislatures should pay heed to.

The brethren are asking for nothing more and nothing less. The member for Kingsley went out of her way to say that the proposed amendment is not designed to circumvent the activities of the union movement. Members heard her say that it is not meant to deny official government inspectors access to the workplace. The amendment would make provision for people who have a genuinely held conscientious objection borne from their religious views. Where have we got to in the year 2002? By some demeaning interjections, the Minister for Planning and Infrastructure was able to turn the scope of this debate away from the view that has been expressed for the past 30, 40, or 50 years by members of her party. The radicals in this society have turned out to be the reactionaries. One of those reactionaries is the member for Armadale who sits on the front bench and demeans other people by her bigoted remarks.

Withdrawal of Remark

Mr KOBELKE: The member is totally out of order to infer issues of bigotry to another member, and I ask him to withdraw the remark.

Mr JOHNSON: This is another ploy by the Leader of the House to stifle the member for South Perth. The member did not call the Minister for Planning and Infrastructure a bigot. He said, "her bigoted remarks". There

is a big difference. The comments for which the Leader of the House made a request for a withdrawal of remark were "her bigoted remarks". Members of this House are allowed to say those sorts of things.

The ACTING SPEAKER (Mr Andrews): I heard the member say "her bigotry", and I ask him to withdraw that remark.

Mr PENDAL: Am I being asked to withdraw the word "bigotry"? I could understand it if I was asked to withdraw my remark if I called the minister a bigot, which indeed I did, but I am charging her with bigotry. If you say that is unparliamentary, Mr Acting Speaker, I will bow to your request and withdraw the remark.

Debate Resumed

Mr TRENORDEN: It is a sad day when events like this happen in this House. I have lived in the central wheatbelt for most of my life. I was born and bred in Wyalkatchem. I have spent some time in the metropolitan area but for most of the time I have lived around the wheatbelt. For a long time, the brethren have operated from the wheatbelt. I have been to Kalannie, Dalwallinu and Cunderdin many times because for a long time I have lived at Northam and Wyalkatchem. I have been to many of the businesses run by the brethren. I have no reason to doubt the veracity of those people.

I will say something similar to the comments made by the member for South Perth. Historically, during the First World War, the Second World War and the Vietnam War, the Australian Labor Party allowed people to make a stand on matters of principle. It is a sad day for Parliament when the Government acts this way over such a minor matter. What difference will be made to Western Australia if this amendment is allowed to pass? It is such a minor matter that it does not warrant the discussion here tonight. Most members in this Chamber would know that the brethren have a conscientious objection to voting. Members of this House do not make long speeches about their not voting. I hope that no member in this place would say that the members of the brethren are not Western Australians who do not participate in society and do not pay their taxes. They are good citizens.

Why would we move from a situation in which the brethren are free not to cast a vote because of their religion and their conscientious objection, to the position outlined in this Bill? I am sure that no member can recall a time when the brethren caused the State of Western Australia a problem. Why are we causing them a problem?

I have not seen the figures that the member for Murdoch put forward, but I would not be surprised to hear that the brethren have 2 000 employees. They do not employ only their own kind but are employers in their own right. They operate correct procedures and within the law. Why should we look upon them any differently and have such a harsh view of them?

I often listen to the person I call the acting Premier, the member for Victoria Park, who often refers to the great Australian Labor Party. What is so great about the ALP if it is not prepared to back up its principles of 100 years? None of the government members was involved in the heady and more important days of the First World War. They were not there. Young Australians were going out and dying and becoming fewer and fewer on the ground.

Mr Hyde: Are you trying to say that you were there?

Mr TRENORDEN: No, none of us was there.

Mr Hyde: I wish your conscientious affiliation was present in the gay and lesbian debate. That would have been really good to hear.

Mr TRENORDEN: What did I say during the gay and lesbian debate?

Mr Hyde: Your votes are there.

Mr TRENORDEN: Tell me what I said during the gay and lesbian debate.

Mr Hyde: You are selectively conscientious.

Mr TRENORDEN: I have hit a chord. There is no logical reason for the ALP not to accept these amendments.

During the First World War, a time of great stress, who held the line? Who held the line during the Second World War, which was also a time of great stress? The Vietnam War was a different matter, but nevertheless that was another time when the ALP made its principles very clear. Where have those principles gone?

Mr WALDRON: I support the amendments and the views of the speakers before me. I am not a very religious person, but I try to lead a good life and I certainly respect other people's beliefs. In my role as an estate agent in the great southern area over many years I dealt with the brethren on many occasions, particularly in the areas around Gnowangerup. The brethren contribute to the community. I found them to be very genuine. I know how

important their beliefs and their religion are to them. They respect the State. Their principles and conscientious objection should be taken into account. As the member for Kingsley stressed, the brethren are not trying to circumvent the rights of an inspector to inspect their places of work. That should be taken into account. The Government talks all the time about fairness, understanding, tolerance and harmony. I agree with that. I strongly support the views of the members who have spoken, and I support the amendments.

Mr KOBELKE: We are debating here a matter of principle. All members at various times have principles that they wish to speak to and stand by, but some of the contributions to the debate let members down because they got carried away with political point scoring rather than addressing the principle that must clearly be addressed here. The brethren are people of a conscientious religious belief. It is a firmly held belief that they should not have any involvement with organisations, and that includes organisations of employees, which are unions. I respect them for that. It is a part of their religious conviction. It is a longstanding religious conviction and they have been willing to uphold their beliefs by taking actions that most people would see are to their disadvantage. It is clear that this involves a firm principle and it is right that the member for Kingsley should seek to do something about that. However, I note that in the eight years she was in government, and in all the Bills the coalition Government brought forward on industrial relations, despite the pleadings of the brethren, she did not see fit to do anything about it. It was a matter before the former coalition Government; it was considered and rejected.

Mrs Edwardes: The current legislation does not prohibit union access where there are no union members. The Government is putting forward a totally different issue.

Mr KOBELKE: It tightens it up. There has been a problem and there still is. We recognise that and the member seeks to provide a remedy for it. However, it is not a situation of the members of the brethren simply not wanting to join a union because that would be adequately covered under freedom of association. The issue is that according to their firmly held religious beliefs; they do not wish to deal with organisations. Therefore, if a member of the brethren is running a business and employing people, it is a religious problem for that person to deal with his or her employees if they seek to organise and be members of a union. The difficulty that members on this side have is that runs into conflict with the well-held principle that is sustained through the International Labour Organisation charter that people should have the right to organise themselves and to seek to protect and to bargain for their wages. That is a principle that we cannot put aside lightly. I genuinely would like to find a compromise between those two matters. As I have already indicated, I respect the sincerity of their beliefs. One does not like the situation in which the rule of the majority overrides the position of a minority that has firmly held beliefs to which it is willing to pay a price to adhere. Here and across the world people should have the right to organise and to join a union. That right, clearly expounded in the International Labour Organisation charter and its various principles, is that the right to be a member of a union is also the right to organise and take action through that union. If we say that employees in a company that is managed by a member of the brethren do not have that right, that impinges on the rights of other members of our society. I genuinely would like to find a way of resolving that, but I have not found a way. The methods put forward are reasonable proposals, and they have tried to deal properly with it and I see that they advance the cause. However, they do not resolve that conflict between the rights of two different groups. I have given an undertaking to the brethren that I will continue to discuss the matter with them. I will continue over time to see whether we can come to an agreement for which I can get support and that tries to find a way of reconciling those two differences. I recognise that we have a conflict of two different principles, and it is a matter of how to resolve those to recognise the rights of the brethren.

Mrs EDWARDES: I hope the minister is genuine about trying to resolve the issue. The minister asked what would happen if someone in the employ of the brethren were a union member. I refer the minister to the amendment that I have put forward for proposed section 49JA(b), which would void the exemption. One of the bases for seeking the exemption is that none of the employees employed in the workplace is a member of a union, so it is not an issue. The issue the minister raised has just been overcome quite clearly.

I will go further and answer a couple of queries that may be in the mind of the minister. What if a union member is employed by the brethren, or subsequently joins the union? In the first place, the brethren will not break the law; they respect freedom of association. A person who is employed, but as it is a requirement under proposed section 49JA(b) that, in order to gain the certificate, no employee can be a union member, that would void the certificate. There is no issue in that regard.

The other question was, what if an employee contacts a union? Again, it is not an issue for the brethren, because any employee who works for a member of the brethren is free to do that at any time. History has shown them that if their workers are looked after, and are paid above award conditions, they generally do not need any

contact with the union. However, it is not as though the employees would have to look over their shoulders if they were to contact the union. They are quite free to do that. The brethren will accept it if an employee wishes to contact or become a member of a union.

The third issue that has been raised is why a member of the Government's industrial inspectorate is being allowed to visit. It is quite clear that the brethren's conscience governs every area of their lives, and they happily recognise that the authority in government is God-given. Therefore, they operate their businesses in the fear of God and according to the law. They would consider that there is no need for a third party to intervene. The minister mentioned that this is a matter of principle, and he is right. However, the principle is not one of denying union access when, in a small number of workplaces, an exemption is being sought. Since the exemption provisions have been in operation since 1996, no application for exemption has been received by any organisation other than the brethren. The opportunity to extend that part has never even occurred in New South Wales. The firmly held principle is not being extended; rather, the opportunity is being provided for an exemption for a group of people who belong to a religious order.

The principle that I believe is coming through is that there will be no exemptions to this legislation whatsoever. That narrows down the capacity for the Government to insist, as it has done before in this House and to the brethren, that it governs for all Western Australians. If the Government is governing for all Western Australians, it is governing for all individuals, which would include the members of the brethren. They are seeking respect. They understand that the Government respects their beliefs, but they would like the Government to understand their need in this regard, and that this amendment is critical to them, and would exhibit a level of tolerance on the part of the Government. It does not pass me by that we are celebrating Easter this weekend.

Mr BOARD: The member for Kingsley indicated that no other religious group in New South Wales had applied for an exemption. In fact, no other religious group could apply because no other religious group has non-association embedded at the very core of its religion. Only the brethren can qualify under this exemption. We are not talking about any other group. I would like the minister to tell me about one other religion that prohibits its members from joining a parents and citizens group or any other group or association. I understand that members of the brethren cannot even sit down with a non-member in fellowship. We are talking about a group that has no choice in this issue. This is not a question of objection based on this group's dislike of unions. Its members have no choice. That is the point. The core of their objection is that their businesses are based around their religion, not that religion just happens to be an integral part of their business; it is the business. The fact that they operate as businesses, work together and come together in fellowship is their religion. That is the way they operate. It is not as though they have any choice in this matter.

If the minister does not agree to the amendment he will allow a situation to arise that will lead to confrontation and embarrassment to not only the brethren but also the State. No-one wants to see the conflict that will arise when those businesses deny someone access and therefore break the law based on religious beliefs, which we should protect and to which they are entitled.

The brethren is a small group. In many ways we must accommodate that. It is not as though this is a first in Australia or anywhere else in the world. It is accommodated in many jurisdictions, including the federal jurisdiction, New South Wales and New Zealand. Those jurisdictions have all recognised the justification for protecting these people and offering an exemption based on religion, albeit not a total exemption, to prohibit people from coming onto their premises and inspecting work records. Those records could be available to an industrial inspector or government employee who can check safety measures and wages. The brethren are not hiding from that or trying to get away from work practices, safety requirements or other requirements under the law. This is not what this amendment is about. It is about a fundamental belief that gives the brethren no choice. The minister and other members of the Government must be aware of what they are doing tonight. If the amendment is not passed, this legislation will jeopardise those people's businesses. I am genuinely trying to argue this case and I am happy to table these letters. This is not an idle threat and I am not seeking confrontation. The minister should not smirk about it. I am serious.

Mr Kobelke: I thought your use of the word "threat" was inappropriate.

Mr BOARD: The minister probably thinks it is a threat. The brethren will have no choice. The minister should read the letter from the Shire of Dalwallinu, and these other letters. They are begging the minister to ensure the existence of their businesses and the employees in their town. Hundreds of them are concerned about their livelihood and want the minister to give them an opportunity to continue. If the minister does not support this exemption, some of the unions will visit their workplaces the day after the Bill is proclaimed to single them out and put them to the test by seeking right of entry. However, they will be denied a right of entry. What will happen then? Why is the Government doing this? It is a ridiculous thing to do when all the minister must do is

implement the same exemption provisions that other jurisdictions in Australia have. The brethren have no choice in this matter and I ask the minister to please consider supporting this amendment.

Ms MacTIERNAN: I understand and respect that many people in our community subscribe to a variety of views. I understand and respect that those views are often held as matters of profound conscience. Members on this side of the House have very strong views that we hold most conscientiously. They relate to the rights of working people to organise and to be protected by the union movement. Because those rights would be infringed if they were not protected by this legislation, we cannot support an exemption.

I made various interjections for two reasons: first, I feel particularly strongly about this issue because during my time as the opposition spokesperson on industrial relations I had contact with a number of employees of the brethren who felt extremely vulnerable because of the views of their employer and their inability to seek openly the intercession of their unions. A number of those people - who were in their 50s and 60s - were very concerned and felt harshly dealt with by the amendments made to the legislation by the previous Government.

Secondly, we routinely draw boundaries around the religious tolerance that we extend. For example, we have not exempted Rastafarians - who profoundly believe that they must imbibe in the sacred herb - from our laws that prohibit the use of marijuana. Likewise, we do not allow Muslim people who might profoundly subscribe to the sharia law the flexibility to impose that law. Nigeria is currently struggling with how to delimit religious tolerance in a very graphic way.

Contrary to what some members believe, I was not snickering or snorting when I interjected. My responses arose out of a profoundly held belief in the right of people to organise. If we are to argue this as a matter of religious tolerance, we must analyse our conduct and ask ourselves whether we are prepared to extend that religious tolerance to other groups whose religious views we might find unacceptable.

Mr PENDAL: One of the benefits of the Minister for Planning and Infrastructure's snickering was that by the time she got to her feet she displayed a little more respect for the views of other people, particularly those in the gallery.

The Minister for Labour Relations' response was good. He admitted his dilemma and said that, if there were a way around this issue, he would be happy to pursue it. I ask the minister to do two things: first, to consider a similar scenario in New South Wales. The dilemma was not without resolution for the New South Wales Carr Labor Government. The amendments moved in that State's upper House were ultimately accepted by the Government in the lower House, which was dominated by the Labor Party. Indeed, my amendment is not dissimilar to that moved in the New South Wales upper House. Secondly, if the minister is genuine, he would give us some comfort by making an effort to have this matter looked at by the Standing Committee on Legislation in the upper House. It does not matter what is done here. The Bill will pass according to the demands of the Government. When it reaches the upper House that may well be different. I invite the minister to give us some indication, as an extension of the goodwill that he has already expressed, that he has no objection by way of resolution to the Standing Committee on Legislation in the upper House looking, firstly, at the New South Wales model and, secondly, at the federal model, because this issue was dealt with in the House of Representatives some time in 2000.

This is not rocket science. Conscientious objection clauses are not unusual. I repeat, on something as difficult as the Vietnam War we were able to find a way out. I suggest the minister can find a way out if he is prepared to suggest that this Bill should go to the Standing Committee on Legislation in the other House.

Mr BARNETT: As Leader of the Liberal Party, I place firmly on the record this party's full support for the amendment moved by the member for Kingsley and supported by the members for Murdoch, South Perth and others. This is a fundamental issue about the freedom and the right of people to practise their religion and to worship the way in which they wish. That is a basic tenet of liberal democracy in our society. I can tell by the look on the faces of some members opposite that they know what they are about to do is wrong. It is against everything that this country and the people in it have stood for. This amendment is about religious freedom, and the Government is about to vote to deny people the right to worship as they wish. I find that deplorable.

Mr BOARD: In one last bid, Mr Acting Speaker, would the minister be prepared, if we made a commitment not to debate this issue any further tomorrow -

Mr Kobelke: We do not have time. We can have a vote tonight or we can adjourn and have a vote tomorrow.

Mr BOARD: Would the minister be prepared to think about this issue overnight -

Mr Kobelke: I have thought about this issue for some time and I cannot advance it tonight. I would like to say some more, but I cannot advance the issue tonight. The point is either we adjourn the House now or we take the vote. It is in your hands.

Mrs Edwardes: You will not accept the amendment tonight and you will not accept it tomorrow morning?

Mr Kobelke: No. I would like more time to explain why, but no.

Mr BOARD: This is an intolerable situation. We find ourselves dealing with an incredibly important amendment under the time constraints brought about by the minister's ridiculous sessional order. I find it extremely difficult, given the commitments we have made, to progress this legislation. We find ourselves in a difficult position. I am not happy with the process.

Mr BARNETT: The minister has time to respond. He should at least have that decency.

Mr KOBELKE: It seems members would like to have some debate. I would like to say more.

Adjournment of Debate

Mr KOBELKE: I move -

That the debate be adjourned.

Question put and a division taken with the following result -

Ayes (25)

Mr Bowler	Mr Hyde	Ms McHale	Mr Templeman
Mr Brown	Mr Kobelke	Mr McRae	Mr Watson
Mr Carpenter	Mr Kucera	Mr Marlborough	Mr Whitely
Mr Dean	Mr Logan	Mrs Martin	Ms Quirk *(Teller)*
Mr D'Orazio	Ms MacTiernan	Mr Murray	
Dr Edwards	Mr McGinty	Mr Quigley	
Mr Hill	Mr McGowan	Ms Radisich	

Noes (20)

Mr Barnett	Mr Edwards	Mr Masters	Mr Trenorden
Mr Board	Mr Grylls	Mr Omodei	Mr Waldron
Dr Constable	Ms Hodson-Thomas	Mr Pendal	Ms Sue Walker
Mr Day	Mr Johnson	Mr Barron-Sullivan	Dr Woollard
Mrs Edwardes	Mr McNee	Mr Sweetman	Mr Bradshaw *(Teller)*

Pair

Dr Gallop	Mr House

Question thus passed.

Debate thus adjourned.