DIRECTORS' LIABILITY REFORM BILL 2022

Second Reading

Resumed from 17 November.

MS J.J. SHAW (Swan Hills — Parliamentary Secretary) [1.13 pm]: I rise to make a contribution to debate on the Directors' Liability Reform Bill. The personal criminal liability of directors and officers for offences committed by the companies for which they bear office is a controversial topic. Although it is generally accepted that directors should have personal criminal liability if they commit an offence themselves or are accessories to the commission of an offence, it has proven far more controversial to determine the extent to which personal criminal liability should be imposed on the director for wrongful or even criminal acts of a corporation in which the director had no personal involvement. As others have pointed out, back in 2012, the Council of Australian Governments agreed to a set of principles and guidelines for the imposition of personal criminal liability on directors for corporate offences. This bill, first introduced in 2015 and now back before Parliament, seeks to incorporate these principles and rationalise Western Australia's laws for directors' liability. In short, the bill will make directors personally criminally liable for offences committed by bodies corporate in circumstances in which they have not taken all reasonable steps to prevent the body corporate committing the offence. Others have gone to considerable lengths to outline how the bill's provisions will operate to this effect, so I will not go through that again but I want to contribute to this debate by reflecting on the vital role that directors play in setting the objectives and culture of an organisation, and the direct and indirect benefits that this can bring shareholders and society more broadly.

It is well known that directors hold a central role in corporate governance in their overall responsibility for a business's performance and compliance efforts. They have a core role in preserving shareholder values, setting strategic direction and driving culture and performance. They do this on behalf of the shareholders who appoint them. The director's role is becoming ever more complex. In addition to having an eye to the bottom line, directors now face shareholder activism on a range of issues like labour standards, climate change, relationships with First Nations peoples and external stakeholders who influence corporate activities. Directors must now have a mind to how their decisions might resonate in the wider community and either help or hinder their social licence to operate. There is also a growing and welcome recognition that the issues that challenge businesses, affect value and drive strategic direction are those that confront the whole planet—nations, governments, communities and individuals—and that businesses now have a central role in confronting those issues. They are not the remit of governments alone; the private sector can and must act.

In my inaugural speech, I spoke about my belief in the need for a strong, active state as an enabler for a dynamic private sector. I observed that the state provides a whole range of factors that deliver a secure and stable business environment, including the enforcement of our laws, the construction of infrastructure to enable industries to grow, the education, housing and protection of a healthy workforce and the investment in value-generating projects and support provided for innovation. I acknowledged the key roles that enterprises play in driving innovation and creating new markets, employment opportunities, goods and services. However, I also stated my belief that corporations have a duty to support the communities in which they operate. It is here that directors play such a vital role. Company directors drive corporate effort and fundamentally influence the extent to which the entities they control provide support to their communities. I very recently had cause to reflect on this at a macro scale. In the last fortnight, I had the great privilege to lead Western Australia's delegation to the B20 Summit in Indonesia, representing the Deputy Premier; Minister for State Development, Jobs and Trade, Hon Roger Cook. It was one of the most incredible experiences that I have had in my professional life and I was deeply grateful for the opportunity.

Since 2010, the Business 20—or B20—has been the official dialogue forum for the business community to communicate and share their aspirations with the G20. The G20, of course, is an intergovernmental forum bringing together the world's largest economies, comprising 19 countries and the European Union and accounting for more than 80 per cent of world GDP, 75 per cent of global trade and 60 per cent of the planet's population. The Bali B20 Summit was hosted by KADIN Indonesia, the nation's chamber of commerce and industry. The 2 000 delegates to the B20 summit included company owners, shareholders, directors, CEOs and senior business leaders. The companies participating in the work program of the B20 ranged from some of the largest in the world, through to micro, small and medium–sized enterprises. Australia had the largest delegation of any nation to B20 and I am proud to say that Western Australia provided the largest team of any Australian state—a little factoid I managed to work into every speaking engagement and every sideline meeting I had over there. It was just fantastic to fly the flag for our state, alongside some absolutely wonderful Western Australian business leaders.

In the year leading up to the summit, KADIN convened six task forces and an action council in: trade and investment; energy, sustainability and climate; digitalisation; finance and infrastructure; the future of work and education; integrity and compliance; and the Women in Business Action Council. These bodies formulated a series of policy recommendations that were issued to the G20 via a communiqué on the final day of the summit. The way that the work program was prosecuted meant there were lots of sets of three, and I think it is important to go through them.

The work of the groups was ordered by reference to three priorities for the B20, which were boosting an innovative global economy, forging an inclusive and sustainable future, and embracing collaborative recovery and growth. The three work areas that drew the main focus were, firstly, a sustainable energy transition, with a focus on empowering micro, small and medium–sized enterprises and disadvantaged groups, ensuring that we not only have green and sustainable economies, but also a just transition underway in both developed and developing countries; secondly, the strengthening of global health architecture by creating guidelines for health emergency preparedness and improving the coordination of crisis management; and, thirdly, advancing digital transformation to build on the foundations of equitable access and adoption of digital technology, bridging the digital divide and ensuring people-centred future innovations.

The task forces produced three messages associated with nine action clusters. These were outlined in the summit's plenary sessions and then discussed in detail in breakout parallel sessions. The first message was to promote innovation and unlock equitable post-crisis growth. The three actions associated with that are to advance digitalisation in a deliberate manner to bridge the digital divide, promote broader access to innovative financing models for projects that foster equitable growth, and implement measures to ensure that digital innovations are people centred, responsible and safe. The second key message was to facilitate sustainable development, inclusive of micro, small and medium–sized enterprises and vulnerable groups. The associated actions are to drive further inclusion of MSMEs and women-led businesses in the global economy, enable the implementation of sustainable business practices in MSMEs, and promote and protect women and other vulnerable groups in the workplace. The third key message was to drive multi-stakeholder collaboration across developed and developing countries to build a resilient and sustainable future. The associated actions are to accelerate a green and just transition, strengthen cooperation to build resilience against future shocks to the global economy, and further develop interoperability and enable safer and more robust global cooperation.

There is quite a bit of very detailed information on these plans and the key performance indicators associated with them. It was actually really interesting to see the ways in which the B20 went about setting KPIs to measure progress towards the achievement of the goals. It is well worth reading the B20 final communiqué.

The B20 and G20 summits adopted the common theme of growing together and growing stronger, referencing the impacts of the COVID-19 pandemic. The summits took place in the shadow of escalating geopolitical tensions and increasingly severe climate change impacts. We heard from world leaders, a range of ministers from around the world and across a range of portfolios, and a truly remarkable array of business and global institution leaders. Every session referenced the pandemic, climate change and political instability as affecting workforce development and availability, supply chains, business planning and continuity, investment flows, the movement of goods and people, and escalating costs and inflationary pressures.

There were three sessions in particular that really made an impression on me and I want to briefly discuss them. Firstly, Klaus Schwab, founder and executive chairman of the World Economic Forum, delivered a plenary address titled "Harnessing the Power of Innovation for Future Economic Growth". He spoke about the fundamental structural reform underway in the world trading system around energy, supply chains, the integration of external costs and the militarisation of economies. He suggested that businesses should work with governments towards constructing a future with purpose that is sustainable and inclusive. He observed the leadership role that governments took in response to COVID-19 and urged businesses to now step forward and work together with governments on recovery. He also stated that businesses needed to be trusted to take a leadership position and should consider the relevance of stakeholder capitalism—that business leaders should consider not just their shareholders, but also what they do for the betterment of people and the planet. He told the summit that businesses should be uncompromising about community standards.

My colleague Daisy Pope reminded me that the trade and investment parallel session was like a silent disco. We broke out into workstreams on the conference floor. With the multiple workstreams, having the sessions conducted in multiple languages and us all sitting there with our headphones on, it looked like a silent policy-wonk disco! I thought that was quite an amusing observation. There are some photos of us clapping along to the silent disco.

During that trade and investment session that I sat in on, there was a lot of discussion around the risks of increasing protectionism in the wake of COVID-19 and geopolitical instability, which serves to erode confidence in the international trading system and may lead global trade back to the inward-looking policies of the Great Depression era. Speakers warned against the decoupling of economies and the dismantling of supply chains and business relationships that have taken 25 years to develop. It was impressed upon us that there has never been a more important time to acknowledge and rely on interconnectedness and collaboration. Businesses rely on strong links through robust supply chains for their survival. Economic growth depends on access to markets for the sale of goods and services. The energy transition in particular will be far more readily achieved through scale and the interconnection of assets, rather than disaggregation and isolation. Business leaders were urged to raise their voices in favour of collaboration, to strengthen links and speak against the value destruction caused by a retreat into protectionism.

WA has an outward-facing economy and our links throughout the region are strong, with abundant potential. Our ability to support our neighbours to recover and, particularly, to transition to a more sustainable energy economy through our contribution to renewable and distributed energy supply chains, is second to none. We have a vested interest in shoring up and expanding ever greater trading links and we can work with our business leaders in Western Australia to achieve that.

The final contribution that really struck me, and is relevant to any discussion about the role of company directors, came from a Western Australian. In the summit dialogue session titled "Sustainable Resource Management for Economic Growth", the panellists spent a considerable portion of time focusing on energy resources and the need to mitigate carbon pollution. There was a lot of discussion on supranational, regional, national and subnational policies and initiatives to address climate change. Literally as he walked off the stage, the Fortescue Future Industries chairman and founder, Andrew Forrest, observed that action should not be left to government; the single most effective thing that many board members in the room could do to progress the B20's agenda was simply to direct their CEOs to pursue the objectives under discussion at the summit and then hold them to account for delivery. This is disarmingly simple and true. If company directors set clear metrics and KPIs for CEOs and executive teams that are linked to the pursuit of projects and initiatives that deliver both commercial returns and positive social and environmental outcomes that are aligned with the broader public policy goals of the countries within which they operate, significant advances can and will be made.

Another takeaway from the visit was that I left with the distinct impression that there is an incredible opportunity to build a much stronger trading relationship with our host, Indonesia, particularly in energy. WA has a longstanding sister relationship with East Java, and Indonesia is currently our ninth-largest trading partner. We trade predominantly in iron ore, wheat, alumina and live cattle, but our relationship can and should diversify into a range of commodities, goods and services that stand to deliver benefits to both of our economies and societies. During Indonesia's presidency of the B20, the government of Indonesia organised a B20 delegation roadshow to Australia. Its final event was held right here in Perth—a global energy transition forum.

On the first evening of our B20 visit, the Australian delegation was hosted by the Indonesia Australia Business Council. I would like to thank the national president, Mr George Iwan Marantika, and his team for their kind hospitality. I then had the great pleasure of meeting with the chairman of KADIN Indonesia and B20 host, Mr Arsjad Rasjid, who spoke with me at length about the opportunities for strengthened business links between Western Australia and Indonesia. We were honoured to have Mr Rasjid as our guest and keynote speaker at a welcome sundowner hosted by the Department of Jobs, Tourism, Science and Innovation on the second evening, at which I again reminded all the Australians in the room that WA was the biggest game in town.

I also had the opportunity to meet with the Indonesian Minister of Investment, Mr Bahlil Lahadalia, who was very positive about the prospects for forging a closer partnership with Western Australia across a range of sectors, particularly in energy technologies. The Indonesian government is committed to moving its economy to a more sustainable model and contributing to global efforts towards decarbonisation. There is a great opportunity for Western Australia to partner in this initiative, become a central and strategic link in the world's supply chains, and whilst Indonesia develops its own industries for global export, be a reliable supplier of many of the inputs required for battery manufacturing, including lithium.

At the closing session of the summit, Prime Minister Anthony Albanese accompanied President Joko Widodo. The Prime Minister was the only world leader to do that, which perhaps signals the importance of the relationship between Australia and Indonesia. The speeches of both of them highlighted the great prospects for deepening our economic ties, particularly in energy.

Despite the enormous challenges discussed during the B20 summit, it showed me that there is considerable optimism in the Western Australian business community about the prospects for recovery and the opportunities for Western Australia in Indonesia and beyond. Although some extremely complex geopolitical issues are clearly in play, businesses and subnational governments can continue with the important work of fostering trade, augmenting business links and maintaining pathways to markets, and, through that, links to communities. Business-to-business links are often the ballast to assist international relationships weather stormy seas, and state governments play a vital, frontline role in promoting and enhancing those links.

[Member's time extended.]

Ms J.J. SHAW: In that vein, it was great to meet our hardworking Department of Jobs, Tourism, Science and Innovation team, who are doing the heavy lifting for WA. I would like to thank Daisy Pope, Krista Dunstan and Diyas Herrianti for the fantastic support they provided to the delegation. They clearly have been working very hard to maintain and strengthen WA's presence in the market. I received a lot of very positive feedback about their work building Brand WA. My thanks go also to Anthea Griffin, the Consul-General in Bali, and to the Department of Foreign Affairs and Trade and Austrade teams for their assistance during the summit, and their ongoing support

for Western Australia's efforts in Indonesia. Anthea actually helped us get home on the closing night of the summit, because the traffic around the whole of Nusa Dua was pretty crazy; otherwise, we might have gotten into a bit of trouble.

I would also like to thank the members of the official party. The first is Michael Lynn from Deloitte, whom I know from my past life in the energy sector. It was absolutely delightful to see him on the delegation and to be able to spend a bit of time together, particularly given that he has just stepped back from a leading practice role in Deloitte's ASEAN practice, particularly around energy. It was great to be able to pick his brain and gain his thoughts and insights. Another is Larissa Taylor, chair of the WA chapter of the Australia Indonesia Business Council. I do not think there is a person key to the Australia–Indonesia relationship whom Larissa does not know, and I appreciated the many introductions that she made and the many conversations that she facilitated. Another is Robbie Gaspar, president of the Indonesia Institute, who spent a bit of time briefing me before my departure for the visit. I also want to mention the business delegates who were part of the official party: Adam Bennett, CEO of Red Piranha; Wayne Liubinskas from Village Energy; and Honny Palayukan from Terra Aurum Minerals. I really appreciated their advice and insights. A number of other Western Australian businesses were part of the Australian delegation. As I have said, we were the largest contingent. It was great to also meet the many other Western Australian businesses that were present.

My participation in the B20 delegation reinforced my belief that the state and the market are necessarily entwined, occupy the same space, and often exercise similar functions. They exist and depend on one another in a symbiotic relationship, sharing both rights and responsibilities. If we are to have any hope at all of tackling the challenges facing us, including post-pandemic reconstruction and the growing threat of climate change, we must recognise that concepts such as mutual support, shared objectives and collective responsibility are highly relevant to the functioning of the state and the market. The only way we will be able to achieve anything for Western Australia is through the joint efforts of governments and industry. This was on clear display at the B20 summit.

Directors have a significant ability to lead and influence shareholder and public value. Insofar as this legislation will underscore and reinforce the ability of directors to influence their corporations, I commend it to the house.

MR M. HUGHES (Kalamunda) [1.33 pm]: I wish to make a small contribution to the second reading debate on the Directors' Liability Reform Bill 2022. As we have heard, the bill was introduced in 2015 in the thirty-ninth Parliament but failed to be legislated. The 2015 bill, and the bill now before us in the forty-first Parliament, make amendments to limit and standardise provisions that will impose personal criminal liability on directors for corporate misconduct.

I read with interest a report published by MinterEllison in January 2017, which coincidentally was just ahead of the 2017 state election, titled *Protecting your position: Western Australian laws imposing personal liability on directors and officers*. The report identified in excess of 90 Western Australian statutes that impose personal liability on directors and officers. Directors have to be cognisant of a significant suite of statutes in order to ensure that they exercise their responsibilities with due diligence. The MinterEllison report identified three policy issues that remain to be considered, some of which I will address in the course of my contribution to this debate.

As it stands, there remains broad, albeit qualified, support for the bill across the corporate governance sector. The sector has generally welcomed the proposed amendments to the Criminal Code and portfolio legislation to comply with the Council of Australian Governments' principles laid down at its meeting on 23 July 2012. These principles aim to ensure that derivative liability is imposed on directors and other corporate officers in accordance with the principles of good corporate governance and criminal justice, and is not imposed on individuals as a matter of course by virtue of the fact that they are directors or officers of a body corporate.

There has been longstanding opposition to executive or derivative liability provisions that impose criminal liability in situations in which directors may not be aware of, or do not have the ability to prevent, the commission of an offence by the company. I note, however, that the Australian Institute of Company Directors, in its comments on the 2015 bill to the Standing Committee on Uniform Legislation and Statutes Review of the Legislative Council, was strongly of the view that the presumption of innocence should always apply. I therefore presume that its opposition to the retention of the type 3 director liability provisions by virtue of the limitations of the bill remains. The institute should pause to acknowledge that provisions reversing the onus of proof are by no means limited to the laws on personal liability of directors. A large number of provisions in our statutes aimed at important public safety values in the areas of motor traffic, drug trafficking, the environment, public health and work safety have for many years included the reversal of the usual onus of proof. Such provisions, in which offences are defined so as not to require proof of a "guilty mind", have been upheld by the High Court of Australia, and have also been specifically held not to be in breach of the human rights obligations imposed by the English Court of Appeal. In that regard, the reversal of the onus of proof can be justified given the importance of social justice issues and the inherent difficulties faced by prosecutors in this sphere of legislation.

Nothing in the bill is offensive to the principle that where companies contravene statutory requirements, liability should be imposed in the first instance on the company itself, and that personal criminal liability of a corporate officer

for the misconduct of the corporation should be limited to situations in which the officer knowingly encouraged or assisted in the commission of the offence or was reckless in attending to their duties as a corporate officer, thus allowing the offence to occur—that is, accessorial liability.

The 2012 COAG principles were agreed following a report to the government from the Corporations and Markets Advisory Committee in 2006. We have heard this before, but I will go through it again. The COAG principles categorise the directors' liability provisions into three types of offences. Type 1 offences require the prosecution to prove every element of the offence. A director will be presumed to have taken reasonable steps to prevent the commission of the offence, and, as a result, not be liable, unless the prosecution proves otherwise. Under type 2 offences, a director is presumed to be guilty of the offence unless the director can produce at least enough evidence to suggest that there is a reasonable possibility that the director took reasonable steps to ensure that the corporation did not engage in the conduct constituting the offence. Once this evidence is produced, the prosecution will bear the onus of proving beyond reasonable doubt that those reasonable steps were not taken or that other reasonable steps should also have been taken.

The type 3 provisions that the Australia Institute is a little concerned about are similar to type 2 in that they presume that the director is guilty, but to avoid liability, the director is required to prove on the balance of probabilities that they took reasonable steps. A significant feature of the legislative changes to directors' liability in other jurisdictions—one contemplated before us today—is that some type 2 and type 3 offences will be reduced to type 1 offences, and some type 3 offences to type 2 offences. It is important to note, however, that the directors' liability amendments contained in this bill do not affect direct liability or liability as an accessory. Directors will continue to be criminally liable for offences committed by them personally; in such cases, the person is not liable because of the office they hold but because they are the offender, and directors will continue to be criminally liable if they have acted as an accessory.

I was going to range over some of the Corporations and Markets Advisory Committee's report, *Personal liability for corporate fault* from September 2006, which effectively gave rise to the COAG principles, but I will leave that to one side. In short, the two principal areas of concern that the Corporations and Markets Advisory Committee identified were —

- a marked tendency in legislation across Australia to include provisions that impose personal criminal sanctions on individuals for corporate breach by reason of their office or role within the company (rather than their actual acts or omissions) unless they can establish an available defence
- considerable disparities in the terms of personal liability provisions, resulting in undue complexity and less clarity about requirements for compliance.

This is evidenced by MinterEllison's 63-page report on the number of Western Australian statutes that directors and officers must be mindful of. The Corporations and Markets Advisory Committee's principal concerns were —

> … overreach in the treatment of individuals where the company is in breach of the law, together with lack of harmony in the standards of personal responsibility required under various provisions.

The committee also noted that this move to overreach was not new and referred to various inquiries dating back to 1989. The CAMAC report set out strict criteria for the distinction between derivative and accessorial liability, stating —

- liability for breach of a legal requirement by a company should fall in the first place on the company itself. It should not be assumed that appropriately weighted monetary or other penalties will not have an impact on shareholders and others who have a stake in the success of a company or will not influence the behaviour of those individuals who control and manage the company, whether through their being held accountable by shareholders or otherwise
- in addition, an individual who is personally implicated in such a breach—who helps in or is privy to the misconduct—should be exposed to personal liability as an accessory in accordance with ordinary criminal law principles.

The committee considered that great care should be taken in considering any extension of personal liability for the breach of a law by a company, and that proper account should be taken of the individual rights of corporate officers and how their proposed treatment compared with the way other citizens, including individuals involved in the governance of non-corporate organisations, are dealt with, as well as the interest in promoting corporate compliance with relevant statutory requirements. The committee acknowledged that in some circumstances, a legislature may judge it appropriate to go beyond accessorial liability and impose a duty on a specified individual to ensure that a company complies with a particular legislative requirement. In effect, provisions of this kind impose a form of strict liability upon a designated officer.

The committee considered that any such provision should be confined to responsibility for ensuring that a company complies with a specific operational or administrative requirement, such as filing a return by a particular date, and that it should not extend to areas in which compliance requires the exercise of significant judgement or discretion.

This bill meets not only the six COAG principles that others have referred to, but also the criteria set out in the Corporations and Markets Advisory Committee report. It is concerned not with the criminal liability of directors who have committed offences themselves or with those who are accessories to offences committed by bodies corporate, but only with situations in which a director is made liable simply on the grounds of having been a director of a body corporate that has committed an offence.

The CAMAC report noted that in reaching its position —

> The Committee reviewed relevant provisions in Commonwealth, state and territory environmental protection, occupational health and safety, hazardous goods and fair trading laws. While not exhaustive of all statutes containing personal liability provisions, those categories were chosen because of their significance to the commercial operations of many enterprises … These differences in legislative approach, even in the same areas of regulation, and the consequential lack of harmony result in complexity and lack of clarity for individuals in considering their responsibilities.

This gave rise to MinterEllison providing almost a checklist of statutes that directors and officers have to go through to ensure that they are well aware of their duties and responsibilities under various aspects of Western Australian law.

I will not go through the COAG principles again. It would just be tiresome.

The bill will facilitate a national economy by providing for a strong degree of consistency across jurisdictions in provisions that impose personal liability on company directors and officers for corporate offences or corporate fault. The McGowan government should be commended for ensuring that Western Australia finally fulfils its commitment to implementing the recommendations of the COAG directors' liability reform project. The bill is a sensible and measured approach. It will not do away with derivative liability from Western Australian legislation altogether, but it will ensure that officers continue to be held appropriately accountable for their failures to prevent bodies corporate from offending. It will remove the existing blunt-instrument approach in which officers are exposed to personal criminal liability for each and every offence that a body corporate might commit. The bill will hold officers to account in appropriate circumstances and will ensure that when legislation seeks to impose derivative liability, it will not do so as a general blanket provision but rather with specific consideration of the seriousness of the offence, including the liability in the form of deterrent that properly ought to be imposed on any individual to protect the public. The provisions of the bill will substantially reduce the number of derivative liability provisions on our statute book. Importantly, as the Attorney General stated in his second reading speech —

> … further confining those provisions that reverse the onus of proof, whilst leaving in place a sufficient layer of regulation to ensure that officers of bodies corporate take all reasonable steps to protect the public from corporate offending.

With that, I conclude my contribution to the bill.

MR J.R. QUIGLEY (Butler — Attorney General) [1.48 pm] — in reply: I rise to thank members for their thoughtful and considered contributions on the Directors' Liability Reform Bill 2022. The house is now well versed on the COAG principles and policy, and intent of the bill.

I will now take the opportunity to comment on the contributions made and answer some of the questions asked during debate. I am pleased to note that the opposition will support this bill, which has been nearly a decade in the making and will conclude our state's obligations for directors' liability reform that was required under the 2008 intergovernmental agreement.

Members will have noticed an amendment on the notice paper that will be considered when we move to consideration in detail on the bill. I will provide more detail and an explanation for the rationale behind this amendment, but I can briefly advise that it has become necessary as a consequence of the recent passage of the Emergency Management Amendment (Temporary COVID-19 Provisions) Act 2022, which created a new offence in the principal act that merits the imposition of derivative liability.

First, I would like to thank the lead speaker for the opposition, the member for Moore, for his comprehensive comments on the bill. He indicated his preference to ventilate his queries regarding the bill during the consideration in detail in stage, and I thank him for that advance notice. In response to the member's first question regarding the interaction between the bill and the Work Health and Safety Act 2020, I can firstly advise that the bill does not propose to amend the Work Health and Safety Act 2020 because at the time that the COAG considered the issue of directors' liability reform in 2010, it was acknowledged that the model work health and safety laws contained provisions that specifically dealt with the liability of officers and provided their own due diligence criteria. Western Australia has now adopted the model work health and safety laws through the operation of the Work Health and Safety Act 2020, which came into effect on 31 March 2022 and has resulted in the amendment to the Mines Safety and Inspection Act no longer being required. The approach taken in the Work Health and Safety Act 2020 is based on the model work health and safety laws and is not directly inconsistent with this bill. It imposes a different standard on officers and requires them to exercise due diligence as defined in section 27 of that act to ensure compliance with work, health

and safety duties. The definitions in the bill do not affect the obligations on officers as defined in the Work Health and Safety Act 2020 and the two regimes can exist side by side.

In response to the member for Moore's second question regarding the Emergency Management Act 2005 and why the Department of Fire and Emergency Services is exempt from amendments in this bill that would reform directors' liability, I can advise that DFES is not exempt from the important provisions at all. The 2015 bill previously proposed to delete section 98 of the Emergency Management Act in its entirety, as that provision imposes blanket derivative liability on officers in contravention of COAG principals. Following the reengagement with the Department of Fire and Emergency Services and the drafting of this bill in 2019, the position was reached whereby DFES analysed the Emergency Management Act and specific provisions within that act were identified as meriting application of derivative liability according to the guidance principles set out in the guidelines by COAG. The third query that the member for Moore raised was about the consultation that occurred. I can advise the member for Moore that there is a long history of consultation on this bill dating back to 2012. During the drafting of the 2015 bill, the Department of Justice coordinated significant consultation with government agencies across 18 portfolios regarding the amendments to other acts. The department also reengaged with many agencies affected by consequential amendments to their legislation as part of the drafting of the bill between 2019 and 2022. The Law Society of Western Australia, the Australian Institute of Company Directors and the Office of the Director of Public Prosecutions were given the opportunity to comment on the bill, and they advised their support for the bill. With regard to the member for Moore's final point regarding the use of the words "all reasonable steps" in the bill, I can advise that according to the new sections proposed to be inserted in the Criminal Code, an officer will be liable if they fail to take all reasonable steps to prevent the body corporate from committing an offence. The words, "all reasonable steps" take into account the possibility that there may have been only one step that was reasonable or indeed multiple steps. In some cases, a court may find that there were no reasonable steps that ought to have been taken by a particular officer, thus they could not be held liable for the body corporate's offending. The member referred to variants of the language used in the bill and I can confirm that "reasonable steps" omitting the preface "all" in proposed sections 39(3), 40(4) and 41(4) is a grammatical requirement for the drafting of the provisions.

I now turn to other members' contributions. I thank the member for Mount Lawley for his very comprehensive summation of the background of this bill, including the history behind the COAG agreement and the infamous James Hardie scandal. I particularly thank the member for Cockburn for his comments on the bill and his personal insight as a legal practitioner director in his life before entering Parliament. The member for Mirrabooka provided her perspective on the bill as someone with firsthand experience as a director in various capacities. I thank her for her comments. I also thank the member for Thornlie, who drew the attention of the house to the importance of continuing to hold environmental polluters to account, which the bill certainly seeks to do. I appreciate his support for this bill. The member for Bicton noted the importance of increasing diversity on the boards of directors in her comments on the bill, and she shared her personal experiences working within local government. The member for Victoria Park reiterated the importance of the COAG principles and outlined the critical reforms to the statute book that the bill will achieve. I thank her for her cooperation. In her comments, the member for Churchlands referred to the bill being futureproof and noted the important nature of the reforms. I thank the member for taking an interest in directors' liability reform. The member for Belmont also made a valuable contribution about her own professional experience with corporations during the global financial crisis of the 2000s. The member for Carine outlined his support for the bill and provided background information on the duties and values that directors are expected to adhere to under incorporations law in Australia. I thank the member for Willagee for his contribution to the second reading debate on the Directors' Liability Reform Bill 2022, in which he noted the long history that forms the basis of corporate governance principles, and recounted his own experiences as a director on boards, both commercial and in cabinet. Finally, I note the member for Landsdale's contribution to the second reading debate, particularly with regard to the ethical responsibilities incumbent upon corporations and the significance of directors' duties.

As was mentioned in my second reading speech, this is not a standalone bill. It is quite technical in nature, and will amend 69 separate acts. It will insert three templates of directors' liability provisions into the Criminal Code.

Debate interrupted, pursuant to standing orders.

[Continued on page 5671.]