

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

### *Second Reading*

Resumed from 8 April.

**MRS C.L. EDWARDES** (Kingsley) [4.19 pm]: The community regards death and injury in the workplace as unacceptable. Nobody wants to say goodbye in the morning to his or her loved ones and not have them home for dinner in the evening. However much our injury rates have improved since the legislation first came into existence, they are still far too high, as are those for fatalities. Therefore, we must continue to be vigilant in ensuring that workplaces are safe. The Liberal Party supports firm but fair enforcement of the Occupational Safety and Health Act. We would like Western Australia to have the safest workplaces. In fact, since the legislation first came into operation, Western Australia has made enormous strides in the reduction of injuries and fatalities.

I believe the success has been in two areas. One has been the commission itself, which operates outside the department. It has had a major responsibility for policy development. By ensuring that the commission comprises industry representatives and experts, it has been able to advise the department and the minister of the day about what is happening in workplaces. The other aspect of success has been the huge role that Western Australia has played in putting forward major preventive education and training programs. In the short time that I was the minister, following a long lead-in, I continued the advertising programs, booklets, advice and recognition of the special work that corporations, businesses and employees had done in an endeavour to make workplaces much safer places in which to work. Those two areas have held Western Australia in good stead. Indeed, other States that established and subsequently abolished commissions are now asking Western Australia how its commission was established and how successful it has been. The reports that the commission has released show that the commission has taken its role very seriously and dealt with it in a proactive way.

We accept that there is also a need for constant review and, when necessary, for changes to be made. We are now dealing with the amendments that have flowed from the recommendations of the review that started when the coalition was in government. I called for the review and appointed then Senior Commissioner Gavin Fielding, who retired in 2001, to conduct the review. Commissioner Laing then took over the review. In the main, this legislation has arisen from many of the recommendations made as a result of that review. I hope that the minister will be able to tell us which recommendations have been incorporated in this legislation, in whole or in part, and, where there are variations, which recommendations have not been incorporated and the reasons for that. I know that some recommendations will be able to be implemented in an administrative way. I hope that the minister will also tell us where the Government is going with the rest of the recommendations.

I will not go through the origins of the legislation arising from the report of the committee chaired by Lord Robens entitled "Safety and Health at Work: Report of the Committee 1970-72". It was referred to in the second reading speech, and the history, origins and development of the Act have been covered quite extensively in the respective reviews that have been carried out under the Occupational Safety and Health Act.

Some of the legislative amendments do nothing to provide support or incentives for employers and employees to take responsibility for workplace safety. The legislation increases penalties and provides a new layer of penalties. It provides a big stick in the way of penalties by creating a new tier of imprisonment, and a huge fine for corporations. The word "corporations" is used. However, when we are talking about corporations, we are often talking about corporations owned by mums and dads; we are not necessarily talking about huge corporations of giant status. The concern that I have with the minister's comments leading up to his introducing the legislation is his reference to dodgy bosses. Both the minister and the Premier have referred to dodgy bosses and the fact that the State Government is cracking down on dangerous work sites and negligent employers. On 1 May last year the Premier said -

The days of hazardous workplaces and dodgy bosses who put profit before the safety and health of their workers are fast drawing to a close . . .

On 6 July last year the Minister for Consumer and Employment Protection said -

We have cracked down on unsafe work practices, and dodgy employers, and the new reforms will substantially increase penalties for corporations who put workers at risk through a failure of their duty of care . . .

I will take up those points. The legislation and the amendments that have been introduced into this House will attack all businesses, large and small. We are talking about a great diversity of corporations; we are not talking about just the BHPs of this world. I do not wish to name companies, because somebody might pick it up as one

of the references made by the minister. I wish only to identify that there are large corporations and small companies. However, both are regarded as corporations. Large businesses may have the resources to put in good, safe work practices at their workplaces, and they should do that. However, the small companies do not necessarily have the same level of resources.

When a prosecution is brought against a large corporation, it has the resources to appropriately defend itself, if need be. I would not support any people defending themselves when it is quite clear that they have been recalcitrant in the operation of their workplace. When people are facing the new penalties of imprisonment, which are criminal penalties, and they are facing the definition of “gross negligence”, as it is defined in the legislation, a large number of mums and dads will be put at risk - not just company directors and chief executive officers. An enormous group of people is involved, such as farmers, fruit and vegetable growers and, indeed, the candlestick maker, if we go that far. They are not all dodgy bosses. This term reflects badly on the Government. I suggest that what is intended will also reflect badly on businesses. Most employers and employees want to do the right thing. Their brothers, sisters and kids go to workplaces every day. They do not want their kids to go to an unsafe work environment. Only a handful of employers do not do the right thing. I put to the minister that in the legislation the Government should not lump all employers into the category of dodgy bosses that it will crack down on. The definition of “gross negligence” carries a level 4 penalty. An individual would be eligible for a fine of \$250 000 for a first offence and imprisonment for two years, and for a subsequent offence the fine would be \$312 500 and imprisonment for two years. I am talking about the contravention of a provision mentioned in proposed subsection (1), referring mainly to the duty of care provisions, which states -

... is committed in circumstances of gross negligence if -

(a) the offender -

That is, the dodgy boss or the person who wants to do the right thing -

(i) knew that the contravention would be likely to cause the death of, or serious harm to, a person to whom a duty is owed under that provision; but

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

and

(b) the contravention did in fact cause the death of, or serious harm to, such a person.

I will go through some of the legal interpretations of the word “know”. It is too broad. The minister has not qualified it well enough by just linking it to those people who might be the recalcitrants within the industry. For instance, the Government will catch the farmer who has his workshop out the back where he may have put something 25 years ago, knowing that it was dangerous at that time, but forgot about it until one of his workers was seriously injured. It might apply to any other aspect that is contained within that workshop. The employee may not have even been permitted to go into that workshop. The definition of “gross negligence” is liable to make that farmer guilty of gross negligence and therefore subject to imprisonment. That clause is far wider than the minister intended it to be. I would be surprised if the minister intended it to be as broad as my legal advice indicates it is.

The minister talks about dodgy bosses, but statistics show that 80 to 90 per cent of accidents result from human error. David Uren said in an article that between 80 and 90 per cent of accidents include human error. Even today, a worker can cause an accident through human error after the employer has put in place a very strong WorkSafe plan. In this example, the employer has been accredited and given the four ticks for his operation. He inducted his workers when they were first employed and he re-inducts them every year. This employer is safety conscious, but he is getting fed up with the accidents that are occurring at his place of work because he takes safety very seriously. What can that employer do with that employee? Nothing. He cannot sack him, even though that employee is not following all the requirements for the work safety aspects that have been put in place at that workplace. The minister talks about dodgy bosses. What about an employee who simply does not get it? I am talking about an example that was brought to my attention when I was in government. This employee did not deliberately go out of his way to cause accidents; he just did not understand what his requirements were. Most employees are now being trained to look after themselves and their workmates, which is very important, and that is the message we need to get across. That is one of the reasons we are concerned that safety has been made an industrial matter under the Industrial Relations Act, because workers may have the perception that unions are taking over the role of safety on their behalf. That is not what this is all about. The minister has re-emphasised that in the way he has put safety and health committees in place. On the one hand, he has re-emphasised the role of the employees in the workplace. On the other hand, he has created the perception through his media releases that this is an attack on dodgy bosses. He is not balancing what he is trying to achieve. The minister can make political points to suit his union mates, but at the end of the day, safety in the workplace must

be above politics. The minister cannot introduce emotive language like that and think it will do the job, because it does not. What incentives has the minister provided in the workers compensation legislation? What incentives will there be for small employers and for employees to improve their health and safety performance? They would all love to have good occupational health and safety practices as part of their day-to-day operations, because it makes good business sense, but small businesses have tight margins. I have absolute faith that if it is brought to their attention, the majority of employers will do something about it. However, under the definition of "gross negligence" employers will not be afforded an opportunity to do anything about that breach of the Act. There are also other contentious issues, apart from the harshness of the gross negligence offence, to do with the size of the penalties and the imprisonment.

I would also like to refer to the PINs - the provisional improvement notices - and the training that will be necessary to ensure that those occupational health and safety representatives are competently trained and assessed to carry out that very important responsible power that is given to them. I would also like to talk about the Occupational Safety and Health Tribunal. I have briefly touched upon it. That tribunal will take away some of the matters that currently go before the safety and health magistrates. The minister said that in the past year 16 matters were heard by the safety and health magistrates, and not one of them has occupational health and safety expertise. If 16 matters were heard by the safety and health magistrates, why on earth is the minister changing the legislation? Why is he putting in place a different system? I would also like to know which of the commissioners at the Western Australian Industrial Relations Commission the minister will put on the safety and health tribunal. That is also critical. If he is laying down such tight criteria for transferring commissioners from the Industrial Relations Commission to this specialist tribunal, he must have a damned good reason. The minister is talking about a breach of an Act - not conciliation - which is legal interpretation. He is not necessarily going to get that with all the commissioners at the tribunal. It is a totally different Act. That is one of the reasons it was separated by the Labor Government when it was first introduced. There were good solid reasons for all the changes.

Yes, it would be nice to have one safety and health magistrate to gather that expertise, but that has not been necessary. Matters have been determined on the basis of the expertise of the WorkSafe Commissioner, in that he or she would know far more than a magistrate would know. I put it to the minister that the commissioners at the Industrial Relations Commission should do exactly the same. They have far less experience than the WorkSafe Commissioner, and they would never have that experience as they do not deal with occupational safety and health on a day-by-day basis. By creating the tribunal, the minister will create a perception among his union mates that he is including safety as an industrial matter. Matters going to the tribunal will not necessarily be industrial issues, apart from determining pay and conditions and where an unfair dismissal has occurred. In that case, hats could be shifted. The perception is important. The minister is bringing occupational health and safety back to the Industrial Relations Commission. The minister is wrong in that regard for a number of reasons. That move will create and further enforce in the minds of workers the perception that unions will look after their safety in the workplace. That is not the case. It will be only the worker and his colleague next door who will help the worker with safety in the workplace. Unions have a role - I do not deny that - if they are on site or are taking up issues on behalf of employees; however, they do not have primary responsibility. The minister, through application to the Industrial Relations Commission, has created that perception of union responsibility as a very strong industrial mechanism to be used by unions. It is wrong. I am concerned that a reduction will occur in the tendency for workers to take responsibility for safe workplaces; they will hand that responsibility over to somebody else. That is why I would like to hear from the minister which education preventive programs he will continue. I refer to programs that have been very successful for Western Australia in the past. These are critical in relation to training everybody about workplace safety.

I also raise the collection of data upon which these amendments are based. Indeed, the minister raised these matters when in opposition. The minister has missed a great opportunity to put the amendments he espoused in opposition into this legislation. He wanted to ensure the legislation was far broader than using only the data collected by WorkCover that is all 18 months old. The minister has done nothing to achieve what he wanted to achieve in opposition now he is in a position of power.

The Opposition will move a number of amendments to this Bill. The amendments have two critical elements. Before dealing with those critical elements, I identify some other significant changes. I have referred to the penalties, especially that of imprisonment. Another provision of the Bill is most strange because I fail to see how it will be an incentive for employers to do the right thing regarding workplace safety; namely, the enforceable undertakings in lieu of penalties for less serious convictions. Does that mean there will be more prosecutions for the less serious offences on the basis that the Government will ask for an undertaking as opposed to a penalty?

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The Bill will also broaden the scope of duty of care owed by principals to contractors and to their employers to situations in which there is a capacity to exercise control rather than actually exercising control. The group apprentice scheme is one example of this situation; labour hire firms are another. The Opposition supports that move. From memory, the responsibility and control of this matter are grey areas. I support that clarification. The Bill also introduces new duties of care with non-standard worker arrangements with a capacity to exercise control. I hope the minister will explain that matter in some depth.

Clarification is also required on the concurrent duty of care for the client and agent in respect of labour hire arrangements, and the powers for employees who are health and safety representatives to issue provisional improvement notices that specify directions on how breaches must be rectified. I refer to the assessment of the competency-based training. One important amendment the Liberal Opposition will move is that the health and safety representative should seek to talk not only to another person about the matter, which is not mandatory, but also to a workplace inspector. That will ensure that the provisional improvement notices can be appropriately completed. The inspectors know exactly what they are doing. That process would save time. I realise that the employer could call the workplace inspector down to investigate the PIN, and that he could appeal to the inspector on the basis of the PIN; therefore, safeguards will be in place in respect of any abuse. The Opposition's amendment will ensure a consistency of PINs issued.

The Bill refers to new duties to notify hazards and to provide information to persons reporting hazards. The minister has missed out in terms of his data collection process. I have referred to the health and safety tribunal.

The other significant matter is the establishment of the Mining Industry Advisory Committee to replace the existing Mines Occupational Safety and Health Advisory Board. This is a key amendment to the Bill that the Liberal Opposition wants to make. A number of amendments will be moved to the Bill. However, the two critical amendments upon which our support for the legislation will hinge include the removal of the provision concerning gross negligence. It is not acceptable in its current form, particularly with the consequences that will arise, such as imprisonment. The other matter is the change proposed to the mining industry. The changes in the Bill are not supported when amendments to the Mines and Safety Inspection Act currently being drafted are not likely to hit this House for several months. I refer members first to the mining industry changes. Workplace health and safety in the mining industry are covered by the Mines Safety and Inspection Act 1974, which is the responsibility of the Minister for State Development and is administered by the Department of State Development, which also provides the inspectorate service. There is also an advisory board which is colloquially known as MOSHAB. The Mines Occupational Safety and Health Advisory Board is tripartite in nature, and mainly consists of representatives from the operators in the industry, the mines inspectorate, and employee inspectors and unions. It has similar functions to the WorkSafe Commission. The Mines Safety and Inspection Act 1994 is almost identical to the Occupational Health and Safety Act in this regard; in fact, its objects are almost word perfect identical. The Mines Safety and Inspection Act was introduced in response to the Kelly report into occupational health and safety in the mining industry. A key recommendation of that report was the establishment of one Act to cover all mining, both metalliferous and coal, in Western Australia. That was obviously achieved in the Mines Safety and Inspection Act 1994. This Bill abolishes the Mines Occupational Safety and Health Advisory Board. Unfortunately, again, the minister's media release does not do him justice. The media release basically says that MOSHAB will be retained under a new format and the mines safety inspectorate will remain with the Department of Industry and Resources. MOSHAB will not be retained under a new format; in fact, it will be replaced with a new body. The new body will be a subcommittee of the Occupational Health and Safety Commission called the Mining Industry Advisory Committee. Although the subcommittee will have a role in advising the minister responsible for that Act, and it will have representation on the commission from an industry representative of the Chamber of Commerce and Industry of Western Australia, it will certainly not be MOSHAB in a new format because its functions will have changed. The concern the sector and the Opposition have is that the minister is now currently redrafting the Mines Safety and Inspection Act. Mr Laing reviewed that Act at the same time he reviewed the Occupational Safety and Health Act. However, as the Bill to amend the Mines Safety and Inspection Act will not come into the House for a few months, there is no way that we will know what changes will flow from the amendments to it and what consistency it may have with the Occupational Safety and Health Act. There must be a link between the two Acts. I am sure attempts are being made to achieve that and to address any major problems. The amendments made by this Bill to the Occupational Safety and Health Act cannot come into existence before the other Bill is introduced because the powers of magistrates under the Mines Safety and Inspection Act derive from the Occupational Safety and Health Act. The Government cannot, therefore, proclaim this Bill until the other Bill has been through this House. It would make a lot of sense to take out those clauses from this Bill, hold them over and bring them into the House at the same time as the other Bill. That will then ensure that all the changes that will affect the mining industry will be considered at the same time, the minister will be able to ensure that the legislation is dealt with as one package and the implementation of this Bill will not be held up pending the

passing of the other Bill in the other place. Unforeseen circumstances may very well occur when we see both Bills and, as such, that would mean further amendments to the Occupational Safety and Health Act; neither I nor the minister know that. Until the other Bill is before us, no-one in the mining industry will have any level of certainty as to the consistency between the two Bills and the establishment of the new committee.

I found a media release of February 2003 relating to the mining industry, which referred to the MOSHAB safety survey report of 2002. That was very pleasing, as it showed that the mining industry has come a long way. MOSHAB and the Mines Safety and Inspection Act are working. Again, the Opposition is not averse to appropriate amendments to the legislation, but we must see the two Bills together. It is pleasing to note that in the past 10 years the industry's main safety indicator has improved by about 90 per cent, and the industry is continuing its commitment to maintaining and improving that record. Although the survey report identified other areas in which the industry could improve, the industry itself has identified areas in which it could improve.

There must be consistency between the two Bills; that is absolutely essential. We will move to remove from the Bill all the clauses dealing with the mining industry changes, in an endeavour to get the minister to bring them back later, and we will look at them in view of the amendments to come forward to the Mines Safety and Inspection Act.

The penalties in the Bill constitute a major difference in the legislation. This is not an argument against strong penalties - far from it. Strong penalties should be used against recalcitrants. People who deliberately ignore and flout the law for commercial reasons ought to be the subject of strong penalties. However, I am saying to the minister that the clause in the Bill relating to negligence is far broader and wider than that. I note that Western Australia is the only State with such a definition in its legislation. It is not hard to believe that it is broader than the minister intends it to be. As such, I believe the problem that has been referred to will run on the definition of "knew". What will be the standard of proof for actual knowledge? The standard of proof in criminal matters is much higher than the civil standard. In criminal matters it is beyond reasonable doubt, whereas in civil matters it is on the balance of probabilities. However, the courts take a much more serious view of a breach of a statute than they do of a burglary or some other criminal offence. As such, the courts are likely to treat this clause much more broadly than I hope the minister intends it to be.

In relation to the definitions in the Bill, *Butterworths Guides - Legal Terms* states that the cognisance of facts or truth may be proved affirmatively or inferred from facts and circumstances and that knowledge may be actual but also may be constructive. The knowledge must be that the contravention would be likely to cause the death of someone, but that a person acted, or failed to act, in disregard of that knowledge and that the contravention did, in fact, cause the death of someone. I think the minister has tried to draft the Bill to limit it to capture those people who deserve to have serious penalties imposed on them. However, the word "knew" takes it far broader than that. *Butterworths Australian Legal Dictionary* says pretty much the same thing. On constructive knowledge, it states that the notice amounting to knowledge is imputed to a person by a court in circumstances in which the presumption of knowledge is so strong it is not allowed to be rebutted. That is very serious. It further states that constructive knowledge may be imputed where a person wilfully shuts his or her eyes to the obvious, but acted or failed to act in disregard of that likelihood. However, on knowledge itself, whether actual or constructive, it states that the knowledge of circumstances would indicate the facts to an honest and reasonable person or the knowledge of circumstances would put an honest and reasonable person on inquiry. To obtain legal advice from a solicitor, I put the example I referred to earlier, which was: what would happen to a person who put something into a workshop 25 years ago? The advice was that the person would be caught by this provision. I beg the minister to recall what he may have put in his back shed 25 years ago. It would be very difficult for any of us to remember that.

There are other interpretations about which I urge the minister to get some urgent legal advice because it is highly critical to the credibility of his legislation if he wants it to achieve what I believe he wants it to achieve. One example is the definition of "gross negligence", which I believe is far broader than what the minister is trying to convey and what he wants to achieve in this legislation.

I turn now to the clauses dealing with government agencies. I believe the minister has a major problem here. I am not saying the Government should not be doing its bit. It should be. However, the Government should be the leader in occupational safety and health. Every time an agency or department is given a provisional improvement notice, it should be required to act on it immediately. However, this afternoon, when the shadow Minister for Health raised with the Minister for Health the issue of improvement notices at the Swan District Hospital mental facility, what we heard was total denial. We were told that budget considerations would hold up the completion of those WorkSafe notices. The shadow Minister for Health, the member for Murdoch, will elaborate further on that matter. What would be the situation if those agencies or departments were to send a

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note to the Treasurer and the minister indicating that due to budget constraints they were unable to comply, and a serious injury or fatality then occurred? How would gross negligence fit in with that?

Mr M.F. Board: Who would be responsible?

Mrs C.L. EDWARDES: Yes. I suggest that the minister would be the one with whom the buck would stop in terms of gross negligence if he did not make the money available immediately to the chief executive officers of those departments or agencies.

The Government is missing a good opportunity in this Bill. In saying that government agencies will be liable, the Government should be setting the scene by making the government sector lead the way in occupational safety and health in Western Australia. If the safety and health representative at the Swan District Hospital mental facility says the alarm does not work or workers cannot hear the alarm, that should be acted upon immediately, rather than wait until such time as a serious injury or fatality has occurred. The Government has a long way to go. Rather than just bring in clauses to make government agencies responsible, the Government is missing a great opportunity to pursue excellence in occupational safety and health. That cannot be achieved by just putting words in a Bill.

What else should the Government do to do its bit? We have raised in this House allegations of stress and bullying associated with the whistleblower legislation. Frankly, the matters the subject of those allegations would breach the duty of care under the Occupational Safety and Health Act. The legislation raises issues that are far broader than what the minister envisaged when the legislation was first drafted. The minister is proposing to change the role and functions of safety and health representatives by giving them the power to issue provisional improvement notices. I am concerned that the Government is again missing a great opportunity to create a group of people with occupational safety and health accreditation. The proposed competency-based training course should not only link in with all of the national standards but also be assessed. That will enable those people to move on to study for higher level certificates and thereby allow us to build up a huge bank of people who are experienced in occupational safety and health. The minister is trying to encourage schoolchildren to fill in the little form that is available on the Internet so that they will have some knowledge of occupational safety and health. The next step is to establish people in the workplace who have gained a great deal of knowledge in occupational safety and health, not just through competency-based training but also by assessment and the ability to move on to gain further certificates. The minister can imagine what a great group of people he could call upon to become inspectors if the occupational safety and health representatives were able to build up their level of training. We will therefore be moving an amendment to provide that the competency-based training be not just an accreditation but be assessed.

The proposed election process is more favourable. I have not heard anyone complain about that. However, some people in some industries are concerned that by putting such a strong emphasis on the safety and health representatives, employees may not take responsibility themselves but may hand that responsibility to the safety and health representatives. That is a factor to keep in mind when talking about the education and preventive programs. I ask the minister to look at the opportunity of building upon the huge experience that is being created with these safety and health representatives. I have spoken to some of the safety and health representatives. They take their role very seriously. They would love to have the opportunity to build upon that experience and study for certificates 2, 3 and 4.

There is always an opportunity for areas of the law to be abused. The issuing of provisional improvement notices is one area that could be abused. I hope that when the minister responds he will outline in some detail the sanctions that will be imposed if occupational safety and health representatives misuse the powers that it is proposed they be given under the Bill. Immediacy is always important when a WorkSafe inspector is required to inspect a workplace. However, until such time as the system is up and running and competently trained people have been established, it would be far better to put in place a strategy whereby the representatives can consult with the WorkSafe inspector. Although the Bill does provide that the safety and health representatives can consult with another person before they issue a PIN, it is not mandatory. Another issue of concern is that although the representative must bring any safety or health concern to the attention of the employer and the employer must investigate and come back to the representative, the representative could bring the concern to the attention of the employer and issue a PIN within half an hour. The Bill does not provide that a PIN can be issued only if the employer has refused to do something about a safety or health concern that has been brought to his attention. We will therefore be moving an amendment to provide that before a PIN can be issued, the employer must have provided advice to the representative that he refuses to do anything about the concern or hazard that has been brought to his attention. That would make sense. Why issue a provisional improvement notice if the employer has agreed to fix a problem that has been brought to his attention? The Government's proposal is absolute nonsense. I would like to hear what sanctions will be imposed on occupational health and safety people who misuse this provision and thereby trivialise the Occupational Safety and Health Act.

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I mentioned the safety and health tribunal. In his response I hope the minister will explain why he has gone down that path. His media release states -

A new Safety and Health Tribunal would be established, under the auspices of WA's Industrial Relations Commission, to hear disputes regarding entitlement to pay and conditions under the issues resolutions provisions.

Unless people read the Bill and understand what "issues resolutions provisions" mean, they will gain the impression that a safety and health tribunal at the Industrial Relations Commission will hear disputes about pay and conditions. The media release does not do the minister justice. It has been badly worded. I do not know whether that is deliberate. We have heard about dodgy bosses and MOSHAB being retained under a new format, when nothing could be further from the truth. Now the minister is proposing that a safety and health tribunal will hear disputes about entitlement to pay and conditions under the issues resolutions provisions. What are they? The minister's press release also goes on to say -

This will improve the accessibility of these dispute processes, which are currently dealt with by special magistrates, and provide a level of expertise in hearing these cases.

Commissioners with suitable knowledge and experience will be appointed to the Safety and Health Tribunal, and will be available to hear OSH matters.

The minister can respond at the end of this debate. Who, under those criteria, has the necessary occupational safety and health expertise to make them eligible for appointment to the tribunal? The criteria are very limited. It is proposed that the task will be taken away from the magistrates: firstly, because only 16 matters have been dealt with by the safety and health magistrates, in which case I wonder why a specialist tribunal is to be established; and, secondly, because the magistrates did not demonstrate the necessary OSH experience. When safety and health magistrates were appointed, the minister was keen for them to develop a level of OSH experience. If only 16 matters are the yardstick, it will not matter, particularly when dealing with breaches of a statutory duty. That point is very important. We are not talking about baked beans; we are talking about something very serious. If we are very serious about occupational safety and health, we should be treating the legislation very seriously. Occupational safety and health issues should not be sent to the Industrial Relations Commission for conciliation. The Government is implying that the parties should be brought together to sort out the issues. That is not what this is all about. If a breach has occurred, it should be treated as such and if a decision by the WorkSafe WA Commissioner is to be reviewed, it should be a legal matter.

The new safety and health tribunal should not be established to deal with discrimination against an occupational safety and health representative. There is no reason that kind of discrimination could not be dealt with by another tribunal, the safety and health magistrates or whatever. The Government is seeking to establish the State Administrative Tribunal. This Bill will create a new process, supposedly on the basis that only 16 matters have been referred to the safety and health magistrates - that makes a mockery of the Government's justification for creating a new tribunal - and because safety and health magistrates do not have sufficient occupational safety and health expertise. I put it to the minister that the level of expertise of industrial relations commissioners is very poor compared with the expertise of the WorkSafe WA Commissioner who makes determinations.

I refer now to statistical data, the minister's favourite subject. I read his words on the weekend with great interest. I think he has missed a great opportunity for implementing the vision he espoused when in opposition. He indicated that ministers responsible for occupational safety and health often refer to statistics; for example, the total rate of improvement has been 38 per cent since the introduction of the Act, the injury rate has fallen by such and such and fatalities have reduced etc. I felt that one point was valid. As his department will tell him, I considered very carefully how we could improve the database rather than use WorkCover data that is 18 months old. Officers of the department and I worked together to make sure the WorkCover and WorkSafe Commissions worked closely together, and it worked very well. I think they are still doing that. The minister is right; we cannot create a relevant picture of what is happening in the industry based on very old information.

When we debate workers compensation, I think the minister will find also that the data collection is skewed because some people who have accidents at work do not claim workers compensation. We know that from various examples. Workers compensation data does not provide a true picture. I do not have time to address all the statistics I have available. However, some studies have been done by Neil Gunningham, the author of many books, on other information that can be included. He points out in the *Journal of Industrial Relations* of June - I will find the year - the following -

It follows that there is a need to explore alternative sources of information -

He is talking about the significant number of workers who are not covered by workers compensation and the many injured workers who, for various reasons, do not claim workers compensation. He continues -

and to establish data bases that provide more accurate profiles of individual firms, hazards and industries. For example, injuries that have resulted in medical treatment . . . might provide a better indicator than workers compensation data . . .

He highlights and suggests a number of other alternative data sources. I have not had the opportunity to explore their validity. He says in a footnote -

- using workers compensation data subject to recognised limitations by developing a database coded to Workers Compensation National Data Set requirements;
- using a random audit programme to collect compliance data that can predict levels of compliance in particular industries or workplaces and decide on targeting priorities;
- monitoring industry, workplaces or work practices that have been identified in external research as likely to put persons at risk of development of injury or disease;
- establishing data collection systems in conjunction with general practitioners, hospitals and other health providers; and
- conducting specific purpose samples.

I understand that when some of those specific purpose samples were used in England, a different picture emerged from that based on the statistical data.

The Opposition will move a number of amendments, among which are two critical amendments, which relate to the mining industry and the definition of gross negligence and the attached penalty of imprisonment. They are critical to the Opposition's support of the legislation. I have raised a number of other concerns, which I will address during consideration in detail. Rather than capture large corporations, the offence of gross negligence will capture mums and dads who run ordinary businesses.

**MR M.F. BOARD** (Murdoch) [5.19 pm]: I rise to add my contribution to the debate on this important legislation, which has come about as a result of a significant and comprehensive review, as outlined by the minister in his second reading speech. In indicating the Liberal Party's support for occupational health and safety, as outlined by the shadow minister, it is important that we recognise that a Liberal Government established further reviews and added its support for occupational health and safety. In this State it is recognised that all workplaces need to be safe. We must make sure that people are protected in their workplace. However, there needs to be a balance in these matters. We must ensure that in providing the best possible occupational health and safety, we do not at the same time restrict the opportunities for people to expand their businesses and be able to afford to conduct business in Western Australia. We must not get to a situation in which the cost of occupational health and safety inhibits production in many instances.

In providing the safest possible work environment, the obligations of employees and their duty of care to themselves and their employer must always be considered. Employees must do everything possible to maintain safety in the workplace. They must act in a responsible way and work safely in the workplace. There have been many instances of people not doing that. They have turned up to the workplace under the influence of alcohol or drugs, and have often caused injury to themselves, which in turn has put pressure on the employer. There is a balance in these matters. In no way do we resile from the fact that employers in this State should maximise every opportunity to provide a safe workplace. However, it is also incumbent on unions and individual employees to make sure that they do everything within their power to minimise any dangers to themselves and, therefore, any dangers for which the employer is responsible in the workplace.

This legislation has been brought about because of the changing nature of workplaces. Many employer-employee relationships are different from what they were when this legislation was first drafted and implemented in Western Australia. The nature of employment has changed. There have been changes in employer and employee relationships under contracting and in self-employment. There are different arrangements in part-time and various other work, which in some ways have resulted in anomalies. Indeed, the minister mentioned in his second reading speech that he would move to try to close the loopholes under which some workplaces have a different set of standards from others, simply because they were never picked up, captured or anticipated in the original legislation.

I will mention one matter before I talk about government responsibility, which will be the major issue dealt with in my speech. For the first time, the minister mentioned residential situations. I put on record that there is an ever-encroaching and ever-moving set of rules for those who contract workers. I mention the residential situation because a large number of people in this State, and in Australia, have various forms of employees in their residential homes, whether they be cleaners, contract gardeners or people brought in on a contract basis, such as electricians and plumbers. A whole range of people go into a person's residential situation. The minister

in his second reading speech indicated clearly that this provision related specifically to a residential situation regarding shearers' quarters and an anomaly that existed. I understand that. However, I put it on record that there is an ever-encroaching set of rules, and I want to make sure that in the minister's responses, particularly in the examination of the Bill in consideration in detail, there is no ambiguity and no lack of clarity about responsibility. Who is responsible in a personal residential situation? Is it covered by public liability insurance? I want to know the differences between someone being hired by a company and someone being hired in a personal sense. I want to know whether there is a difference in liability under this legislation, according to the definition of "workplace". I also want to know what constitutes a workplace, particularly when people go into an individual's home. Those areas need to be made clear, because unless the word "residential" is clarified, a number of people may interpret a workplace as a home in which somebody may be contracted by an individual or a family to perform work. As I understand it, the worker would normally be responsible for that being a safe workplace. Of course, that worker would make sure that no intent of negligence was involved. Those areas need to be clarified, because I foresee a time when individuals may be able to interpret some of the wording, particularly in the minister's second reading speech, in a way that would apply the definition of "workplace" to a residential situation in which an individual or a family would not normally be responsible for a safe workplace. We need to clarify what that constitutes, because we may be bringing in a new set of values and costs associated with personal insurance, in particular, that we may not be aware of.

In the House today we have raised the issue of the Government's commitment to this legislation and how the Government needs to make sure that its own workplaces are an example to the rest of the community. As the shadow minister indicated, the Government should lead by example and show the community that it will live by its own word and promote and protect an environment that is safe for its employees. The minister's second reading speech indicates that this Bill will do a number of things. I will summarise. It states that the changes outlined in the Bill deal with a range of matters, including the expansion of the general duties of care to close gaps; the substantial increases in penalties; the new provisions enabling prosecution action to be taken; more flexible processes for the election of safety and health representatives; the introduction of the right of appropriately trained and accredited safety and health representatives to issue provisional improvement notices; the establishment of the Occupational Safety and Health Tribunal; the establishment of the Mining Industry Advisory Committee, and so forth. They are all reasonable provisions, notwithstanding some very important amendments that the shadow minister will bring forward.

As indicated previously, this is all about the stick approach. It is all about penalties and tougher regimes. It is a semi-adversarial approach to the problem. There are no incentives and there is no carrot in the legislation. There is no reward for exceptionally good workplaces. In this legislation, there does not seem to be support from the insurance industry for those employers who have incredibly safe work environments and corresponding records. It is all about penalising to some degree employers who have done the right thing, and putting a big stick over the head of those who may have been negligent in their approach. There needs to be recognition of the vast number of employers who have, at great expense, endeavoured to look after their employees by making sure that their work environment is exceptionally safe.

The statistics indicate that there has been a decrease in the number of claims, and there might be a number of reasons for that. There might be a number of reasons for people not claiming compensation or not taking their employers to task over small injuries that happen in the workplace. However, the statistics will show that the legislation has been effective, and that is a good thing. In general, we are heading in the right direction, notwithstanding that there are too many deaths, some of which should and could have been avoided. That does not always mean that the employer is at fault. Regardless of who is at fault, these incidents occur and we must absolutely minimise the number of deaths. The minister indicated that, although the Government is symbolically responsible, it is now moving to make its agencies more responsible for the implementation of occupational health and safety provisions, and so they ought to be. If anybody should feel absolutely safe, it should be a government employee. The resources available to government should minimise any potential for risk. The media have raised this issue in a high-profile way and the Government - in this case, the Department of Health - has failed to provide a safe environment for its employees. The Government should move very quickly to rectify that. I want to put on record a matter that is of great concern for all of us; that is, today the Government is introducing this legislation, and it is making a fist of the fact that it wants to protect the worker.

During a high-profile incident at Swan District Hospital in the mental health facility two employees were beaten, one nearly to death, who still remains in a very critical but stable condition. As a result, WorkSafe was called to those premises and a number of recommendations and orders were put in place. Before I go through those orders, I want to read from a memorandum that was sent from the Office of Mental Health to all mental health staff regarding this incident. The memo is quite long and I do not have time to read it all into *Hansard*, but several recommendations were made as a consequence of the review that was put in place following this incident. The second part states -

Senior staff are giving immediate consideration to introduction of:

- Vision panels to both examination room doors.
- Video monitoring in situ within consultation room.
- Viewing panel between the seclusion ante-room and the gun-cabinet room.

They are all fine, but this is the point I raise: consideration will be given to recommendations by WorkSafe. They are not saying they will implement the WorkSafe recommendations; they are saying that consideration will be given. It continues -

- Review of Security on site.
- Initial assessment of unknown patients at a centralised point.

WorkSafe put a number of work orders in place. In fact, there are over 20 of them. Some 20 work orders were issued because the mental health area had failed under regulation 2.4, and it was seen as contravening the Occupational Health and Safety Regulations 1996. It had failed in a range of areas to make that workplace safe. Hence, the Eastern Metropolitan Health Authority and the Swan Adult Mental Health Centre were instructed by those WorkSafe orders to make changes by given dates. The first order was dated 12 March 2004 and was something that one would think would be automatic. In fact WorkSafe was not informed - which contravened the Government's own Act - of the tragedy that had occurred to both the workers at the workplace. The Swan District Hospital, the Department of Health and the Government were in contravention of their Act by not even informing WorkSafe of the tragedy; yet, an order was put in place for it to be informed by 12 March. My understanding is that it still had not been officially informed.

The second order, which was to be complied with by 30 April, states -

I have formed the opinion that in circumstances that make it likely that the contravention will continue or be repeated, you have contravened section 19(1) of the Occupational Safety and Health Act 1984 and the grounds for my opinion are: The current intruder barriers are inappropriately spaced allowing a person to reach through the gap, allows clients to throw items and spit through the barriers at staff. I was able to reach my arm and shoulder through the space without difficulty.

That is from the WorkSafe inspector. An order was brought down for that to be rectified by 30 April. Was it rectified? No, nothing has been done. The staff are up in arms about those issues. Another work order was to be complied with by 2 May 2004. It states -

I have formed the opinion that you are contravening section 19(1) of the Occupational Safety and Health Act 1984 and the grounds for my opinion are: After discussions with employees it was discovered that when a duress alarm is activated, the warning lights that indicate that a duress alarm has been activated upstairs can not be seen by employees.

The duress alarm cannot even be seen.

Placing employees at a risk of injury or harm.

[Leave granted for the member's time to be extended.]

Mr M.F. BOARD: It continues -

You are required to remedy the above by no later than 02 May 2004 at 1200 hours.

Has it been remedied? No. I was there yesterday and it has not been remedied. Today the Government wants to bring down the big stick on employers in Western Australia, it wants to increase penalties and it wants to show that it is in control of the situation, but it has not been prepared to get in and rectify a situation. This is not just a normal situation that may have arisen in any government agency in Western Australia among the 80 000 or so government employees, such as a small issue in a small town that was an oversight - no, this was on the front page of *The West Australian* for weeks. On this issue the minister and the Premier went down to the workplace and made all sorts of promises. WorkSafe came in and tried to do the right thing; it put orders in place saying that things had to be done by set times. It is not rocket science; it will not cost the Government an arm and a leg. No, it cannot be done. Today this Government is preaching about occupational health and safety, but it does not have the commitment to do these things in a high-profile place, which would be a model for Western Australia. This Government has been found wanting. It is not good enough. It is a bit of a sham. This Minister for Health should have been out there talking to those nurses and finding out why those work orders, which are posted on the board within the mental health service, have not been complied with.

I could go through all 20 work orders. I would love to, but there is a small problem, and that is that some of them do not have to be done until 14 May. The next one states -

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You are directed to take the following measures: Ensure that an assessment of all rooms used for consultation is done. In regards to the safety of employees in regards to an aggressive or violent client. Some of the issues that need to be considered are the design of room, means of exit, lay out of room and safe system for use of room.

Ensure that a safe system is developed and implement based on the findings of the assessment.

They have a week to rectify all these rooms and to modify the layout. I wish them luck. The Government had plenty of warning, but nothing has been done to this point at this workplace. As I indicated today, nurses at the Swan Adult Mental Health Centre are considering strike action because of the lack of response, which would severely embarrass not only the Minister for Health but also the Minister for Consumer and Employment Protection. I hope the ministers will take heed of what the Opposition has raised today and rectify the situation. I have been through all the work orders. A huge budget allocation does not appear to be involved. Contrary to the minister's indication in the House today that opposition members were making this up, I sat with the staff yesterday and was told that they had been informed by the Department of Health that it could not meet these safety work orders because it did not have the budget allocation to do so; that is, the department did not have the funds to implement these WorkSafe orders. Who bears responsibility for that situation, minister? Will it be the chief executive officer of the hospital, the Director General of the Department of Health, the CEO of the health service or the minister? Under the new regulations, where will the buck stop when safety work orders are not complied with? Who will pay the fine for a start? Who will follow through in actions against the Government?

The Government should be embarrassed by this issue today and should make an example of this matter. The Government needs to take some control of this environment it has created. The changes in the legislation, including the ability of employees and unions to bring in WorkSafe to independently bring down orders, will change the nature of workplaces and who has responsibility for control. I agree with and accept this change, but it needs to be sorted through. The Government will find that unions in particular will use this change in the public workplace as a means of gaining the conditions and the type of workplace they cannot achieve through salary negotiations; that is, they will use WorkSafe's independent inspectors to that end. That has happened in the case I raise. It has been done independently of government with the employees going directly to WorkSafe, which has acted to try to create a safer environment. The minister needs to think the matter through. This will be the tip of the iceberg concerning employees being able to use the provisions of the Act to create the environment they want. Whether that is right or wrong is another matter, but employees will achieve the environment they want through work orders put in place through WorkSafe.

The case I raise has been a high-profile and tragic situation. I thought the Government would have jumped all over this matter and ensured that a proper allocation was made and that no impediment was allowed to the commitment to carry out all the works required at the workplace. It has not been done. Therefore, staff are very upset. It goes beyond that point. To add evidence to that claim, the Government made a statement that additional staff would be provided at the hospital. Indeed, they were. However, those staff have nearly all left. My information is that of the 30 staff, only six remain. All the others have resigned and moved on in the past week or two because they cannot handle it and because there has been little action. At this moment, the minister should be down there at the hospital speaking to staff about what is needed at the workplace to ensure every provision is made to rectify the situation.

I do not blame anybody for the tragedies. I believe the right protocols were in place, and that things happened as a result of that situation. Looking back at it, it was preventable. Things could have been done to prevent the tragedy. We learn from such situations. We should not shift blame about the accident. However, blame is being shifted because the Government has been too slow to ensure that this workplace is safe, particularly as it involves such a high-profile case. This should be made an example.

In conclusion, I hope that as a result of raising these issues today, the provision of safe conditions in that workplace will be accelerated, particularly in regard to work orders and the dates involved. I hope the Government will start to set an example, and will use that example as a means of moving forward. We do not want to hear the rhetoric; we want to see some action on occupational health and safety issues.

**MR M.W. TRENORDEN** (Avon - Leader of the National Party) [5.46 pm]: My inclination is to suggest that my colleagues oppose this Bill, about which I have serious concerns. I will run through a few of those concerns.

This Bill, as with all things Labor, attempts to put the contest between the employer and employees back into the process. We have been working for a couple of decades to get conflict out of the workplace. Surely if we should be working in any area to ensure that people are working hand in glove as employer and employer, it is with safety issues. This Bill attempts to drive, yet again, a thumping great wedge between employees and employers. The mining industry, for example, has seen substantial improvements in its safety record. When I first became a member of this House, substantial debates took place about the large number of people killed in

the mining industry. The argument then from my left was that the entire safety aspect had to be taken over; that is, safety could not be ensured unless it was totally controlled by the unions with virtually no input from employers. The view was that only workers could have a view about how to deal with safety. That debate took place year after year for a decade. Any reasonable person who considers the very important issue of safety would realise that a raft of industries have dramatically improved their workplace death and injury record. An industry that lagged behind in that process was agriculture. Although there were far too many deaths in agriculture, the prevalence of injuries was more severe. Members could go to any tennis club, hotel or church in a rural area and ask people to put up their hands, and not a lot of people with 10 fingers would be seen. The member for Moore is laughing because he knows it is true. Some serious considerations took place. The conservative groups of people in the farming and other agriculture industries did not want to move on these issues, and they had to be moved over time. People on my left will say that the change occurred because of legislation. I say that that is not the case. The greatest pain when making change does not come from legislation. Change happens when a person's father, wife or child has been hurt. That is the greatest driver. When a death occurs, it is obviously not confined to the family. We need to look upon all Western Australians as part of a family.

Why is the Government introducing a Bill that says that a senior administrator of a company can be imprisoned for an act that has happened under his or her responsibility? What sort of message does that send, minister? In theory, the company could be my family company, Max Trenorden Pty Ltd, with me as the director, the wife I do not have as the other director, and my kids as employees. If one of them were killed I could go to prison. The minister can say that is laughable. However, I could tell him a story about a matter in Pingelly that occurred when his Government was last in power. Most members of this Chamber, hopefully, know that Pingelly is in my electorate. There was a circumstance in Pingelly in which a very popular individual was very seriously hurt while operating a tractor during harvest. While he was standing on the ground, he engaged the hand clutch, not realising - although he was the driver of the tractor - that the tractor, with a field bin, was in reverse gear. He engaged the clutch and was run over by the tractor. For the bulk of the year that individual worked for one of the biggest employers in town whose business sold, serviced and repaired machinery. However, because of the needs of regional areas, when harvest came along and farmers found themselves short of capable individuals to take off their crop, the employer always allowed him to go out and find employment with a farmer. That is something he had been doing for a considerable period. When he was injured, WorkSafe turned up, and what did it do? It went to the employer for whom he worked for 11 months of the year and said that he was guilty and would have to face the music. As I said, the employer ran a dealership that sold, serviced and repaired machinery. The employer asked why he should be held responsible, as the individual was working on a farm over which he had no control. After banging around with the employer for some time, WorkSafe finally agreed that it could not prosecute the employer. WorkSafe then went to the farmer and said that he was responsible because he was employing the person part time. However, over time, the farmer was able to convince WorkSafe that he was not responsible and that the individual himself had the care and control of the work site. WorkSafe then went to prosecute the manufacturer of the tractor - Chamberlain. However, Chamberlain had gone bankrupt. Would any member like to guess who WorkSafe prosecuted? It prosecuted the worker for running over himself! That is what WorkSafe did. Members may say that is a laughable situation, but that is precisely what WorkSafe did.

Mrs C.L. Edwardes: What is the public benefit in that?

Mr M.W. TRENORDEN: This poor bloke was seriously hurt and has never been the same again. It was not a light matter; he was definitely seriously hurt. He must live the rest of his life damaged from a mistake he made and he was also prosecuted by WorkSafe. I agree with the member for Kingsley; that did Western Australia a great deal of good! It helped Western Australia enormously to prosecute a bloke who hurt himself! These are the sorts of circumstances that I am concerned about with this Bill, minister. A person could be elected now in a workplace to be given training and be responsible for safety. If that is not a case of the minister putting his Jaguar in reverse and putting his foot to the floor, I do not know what is. Surely we have progressed further than putting someone like that in control in what is at best an ad hoc arrangement.

Let us look at what the mining industry - its big and small companies - has done. I would like the minister to point out to me - no doubt he can find an example - a miner who is not heavily involved in safety within the structure of his mine. I am not referring to an individual who has been elected to attend a part-time course but, rather, to someone whose job it is to guarantee safety on that mine site. The reason safety in mines has improved out of sight is that people have taken responsibility for it.

The minister said on several occasions in his second reading speech that he wants that amalgamation of activity. However, he is saying to mining companies that they are the mine managers and if an employee does something wrong, they will go to jail. I do not accept that. That immediately does two things: first, it sends a message to

the industries involved that they should not be open in their processes because their chances of being prosecuted will reduce if they close down those processes and make them the least transparent as possible; secondly, it creates a situation that will result in a ramp up in the number of illegal arrangements for the courts to deal with. Unfortunately, we are all involved with courts and lawyers from time to time. We should not pick on all lawyers, should we, member for Kingsley?

Mrs C.L. Edwardes: No, not always.

Mr M.W. TRENORDEN: Nevertheless, we are involved with them. The first advice we get from a lawyer when we face a court is to clam up, shut down and lock it away. Surely that is not the way we want to go. Surely we want to expand the legislation and want these companies to be open. Surely it is better to have a company say that it was not sure about the process and that it might have made a wrong decision about shoring up a wall in the mine, or about operating a piece of equipment on a farm or, as the member for Murdoch said, in a hospital or wherever. The more open we encourage people to be about safety issues, the more likely we will win the argument. This Bill, however, is about slamming doors and locking people out. Why are we going through this process? I say to the minister that this Bill is a step back in time. It is interesting that the minister in his second reading speech regularly mentioned dates such as 1983 and 1984. It is a bit laughable. He referred to a discussion paper from 1983; that is 21 years ago. The minister and government members regularly criticise us for talking about matters that occurred two to three years ago. The minister in his second reading speech talked about a 21-year-old discussion paper. I would argue that we have moved on.

Mr J.C. Kobelke: That was the whole point it was mentioned. It was just to show how far we had come. It does not say we should go back to being like that.

Mr M.W. TRENORDEN: The minister and I are different. He is implying that the legislation has caused that change. I totally disagree with him. Legislation has made some difference but, like all legislation, it has had a small impact. Any change takes place by agreement, by movement, by process and by caring. Until both employers and employees are really concerned about what is happening on the floor, there will be no change. All I am saying to the minister is that the more we say to employers and employees that we will do things with a big hammer, the less likely they will be to get involved, because they will open themselves up to prosecution. Why would they open up their process and the way they go about doing business if they could go to jail? That is a really important matter.

We all read the newspapers. What this Bill is saying to the executives of Australia - although I agree with the bulk of the argument - is that corporate Australia is somewhat out of control on salaries and a range of other issues. We are saying to people that if they sit on boards as executive officers, they will have a whole new raft of responsibilities. I do not agree with all of that. People must be responsible when taking on these jobs. However, where does it end? If someone working for BHP in Karratha is killed, will the Western Australian manager of BHP go to jail? Who will go to jail? Who will decide who will go to jail? Who will decide who will be prosecuted? This Bill will bring a whole new factor - not just a minor matter - into the issue of safety, which is going the wrong way. What we must do is encourage people to be more open and more thoughtful about the way in which they treat safety issues.

*Sitting suspended from 6.00 to 7.00 pm*

Mr M.W. TRENORDEN: Prior to the break, I was going through a range of issues in the Bill that the National Party believes will pose problems. I made the admission before the break that the rural industries, particularly the farming and agricultural industries, are perhaps the worst offenders in the area of safety, but that there has been great improvement. However, the loss of one life is too many. The question is how we go about the process. The National Party believes that the Government is seriously emphasising the negative and ignoring the positive. For example, I refer to the provisional improvement notices and to the individuals who will be trained to issue them. When it comes to the mining industry, will that person be able to argue with an engineer about the location of a mine? Will he or she be able to argue with an electrical engineer about the status of circuits or the like? The answer is no, unless such a person goes to university for a number of years and learns about a range of issues. The Government should be working on a process of safety that starts with precise knowledge and moves down to commonsense. Unfortunately, commonsense is often forgotten. However, in many cases it can be a prevailing factor.

Even though it has nothing to do with the Bill, some of us may be aware that the Darwin Awards were announced this week, as they are every year. For those members who are not aware, the Darwin Awards involve an American publication that refers to people who have been killed. As sad and as strange as it may seem, it refers to those people who have been killed as a good thing, because their genes have been removed from the pool of the world in various stupid ways. Interestingly enough, according to what came out the other day, one man who killed himself had decided to go bungy jumping. He tied a range of hockey straps together and

anchored himself in position. The paper said he leapt something like 70 feet; however, he did not measure how long his hockey straps were and he hit the bottom before they came into power. The point I am trying to make is that some people do dumb things. I will not repeat in this place what happened to the person who won the award, because it is not repeatable. Some people do very dumb things.

[Leave granted for the member's time to be extended.]

Mr M.W. TRENORDEN: For some people, commonsense will go a long way in safety. However, we must all recognise that some safety issues are quite complex and need people with significant knowledge to decide whether particular machinery, a particular circumstance or a particular practice is safe. I do not see how the process will be improved by having an elected individual who has received training. If the minister can convince the National Party why that will be, we will happily support the Bill. In the central wheatbelt where I live, a considerable number of sons and daughters work in the mining and construction industries and in a range of physical industries such as crayfishing. We have a direct interest in those people. Where we come from, there are not many substantial companies. Where I come from, there are no companies with an international base. We are not debating this issue from the perspective of international companies or large Australian companies. We are saying that we do not believe that the regime that the Government is trying to bring in will improve safety. It is as simple as that. We believe that the Government's Bill is faulty in that manner.

I refer to individuals being imprisoned and to action being taken against corporations and companies. The second reading speech on page 2017 of *Hansard* reads -

The Act currently does not provide a separate level of penalties for corporations.

As you know, Mr Acting Speaker, these days it is virtually impossible in some circumstances for a person to become a sole trader. When trying to get public liability and workers compensation, many people are told by insurance companies that they have to become a corporation; they must become incorporated. The legislation, certainly the second reading speech, does not differentiate between multinational and family companies. That concerns us, because we are looking at circumstances in which these individuals could be the contractors to which the second reading speech refers. They could be subcontractors or people who supply a particular service to a particular industry, wherever it may be. The implication in the Bill is that the only way to impact the corporations is to hit them with a sledgehammer. We do not agree with that point of view. We believe that this matter has progressed better over the past decade than over previous decades, because there is a common belief that we need to be highly conscious of safety for the sake of not only the workers but also the visitors to the mines, the people who make deliveries to the mines, and the electrical contractors who may enter a mine site or a farm. The whole second reading speech and the whole Bill emphasise the negative. I should not say that they do so wholly; rather, that the argument is substantially negative.

On page 2018 of *Hansard* it states that, as an alternative to a court, there should be non-monetary penalties in the form of enforceable undertakings. I agree with that process. However, the second reading speech refers to "either" and "or". I agree that it is a good thing for a court to monitor offenders and to go back and look at proceedings. I also argue that it would be better if there were an inspectorate that did not do these things in retrospect after someone has been killed or injured. There should be an audit process in which companies are able to open their operations to an audit so people can see the procedures of not only the company but also the employees. I do not raise this point to be negative. An enduring image I have in my head is of a worker at Wittenoom working away in a cloud of dust with a sign visible over his shoulder saying that masks should be worn at all times. The mask is hanging up on a hook and the worker is breathing in the dust. We know what the consequences are. By all means the Government should make the company responsible. I have no argument with this or about the financial penalties. I also have no argument with the minister's statement in his second reading speech about the court being able to impose certain regulatory processes. However, imprisonment and the more draconian punishments will not make people more open; they will make companies want to close their processes rather than open them. If we want to succeed, we must make the processes open and make everyone visibly accountable, not just accountable after the event. The last thing we want to do is to create a regime that turns up after the event. We must return to the old, cleaner production argument, in which all the activities are up front, and all the emphasis is on doing it properly in the first place, in partnership. I agree with the minister that the process should be a partnership between the employer and the employee, whether that employer is a big mining or construction company or a small contractor. We will not get away from the fact that in the future there will be specialist contractors. Everyone must be responsible. Lines should not be drawn between the circumstances under which the employee is responsible and those under which the employer is responsible. The whole process must be everyone's responsibility. When a person walks onto a site it must be very clear that everyone's safety is paramount. We are not convinced that that has been done with this Bill, even though parts of the Bill have the capacity to produce those results. At the same time we get back to the roles underpinning the process, by which people can go out and say that certain actions must be taken. What sort of training or

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expertise must those people have? That is a very serious pullback from what currently happens in the best operations. I am sure there are still a few cowboys out there, but that is not the direction we should be taking. The National Party will be voting against the second reading of this Bill, and I suspect it will be voting against it at the end of the process.

**DR J.M. WOOLLARD** (Alfred Cove) [7.13 pm]: In the minister's second reading speech he states -

As we move into a new era of occupational safety and health in Western Australia, we are again focusing on the rights, functions and responsibilities of safety and health representatives -

Key elements of the Bill include expansion of general duties of care, increasing penalties and enabling prosecutions. Some of the changes are designed to clarify existing ambiguities. In conclusion, the speech reads -

... this Bill deals with a number of administrative matters that require clarification, extends coverage to accommodate a range of non-traditional working arrangements that are now very much part of the work context and, most importantly, focuses on encouraging occupational safety and health matters to be dealt with where they best belong -

I will now turn the clock back 12 months and remind the minister of the tabling by the then Minister for Health of the Government's response to the review of the regulations on smoking in enclosed public places. A lot of work and input into that review can be attributed to the Department of Health. The number one recommendation from the review was that the Government should ban smoking in clubs, pubs and the casino. It was an excellent review when it came to this House. The minister had that review for several months, but when he gave the Government's response, he said no to the number one recommendation. He did not accept the recommendation that smoking no longer be allowed in enclosed public places. Instead, the Minister for Health at that time - Mr Kucera - said he would direct -

The ACTING SPEAKER (Mr A.D. McRae): The member is not to use that form of address. The correct usage in this Chamber is the former Minister for Health or the member for Yokine.

Dr J.M. WOOLLARD: I accept your guidance, Mr Acting Speaker. The former Minister for Health did not accept the recommendation of the review on which a number of people in the public health area had worked hard. Instead, the former minister said that he would direct WorkSafe to develop a code of conduct. This code of conduct was to be produced within 12 months, and would protect the employees of pubs and clubs from environmental tobacco smoke. Those involved in the public health sector were astonished, to put it mildly. Many were shocked and very disappointed in the Government, because they knew that whatever code of conduct the department came up with, it would be unworkable.

In October 2003, the National Occupational Health and Safety Commission held a meeting at which Western Australia was represented. The meeting used a guidance note on the elimination of environmental tobacco smoke in the workplace. This guidance note stated in part 1 - "Environmental Tobacco Smoke as a Risk to Occupational Health and Safety" -

There is no safe level of exposure to ETS.

I repeat - there is no safe level of exposure to environmental tobacco smoke. The Bill before the House is about occupational safety and health. The guidance note went on to state -

As employers are responsible, as far as is practicable, for the health and safety of workers and other persons who enter the workplace, **smoking should be eliminated from workplaces.**

A Western Australian representative was part of this national body and was sitting there agreeing with these recommendations. On ventilation controls, the guidance note states -

**Mechanical dilution ventilation is not an appropriate method for eliminating exposure to ETS for any given level of smoking.**

What is happening in Western Australia? It is still going on. Under the section titled "Elimination of environmental tobacco smoke in workplaces", the guidance note states -

**Designated smoking areas within internal areas of workplaces are not considered effective controls.**

Western Australia had its representative on the national body. This guidance note was endorsed by the WorkSafe Western Australia Commission. The minister accepted the guidance note that there is no safe level of environmental tobacco smoke. This leaves outstanding the position put to the Parliament by the previous Minister for Health on the code of conduct. It was stated that the code of conduct would be released within 12

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months. Earlier this year the Australian Council on Smoking and Health approached key policy people in WorkSafe WA to find out what was happening with the code of conduct, such as when it would be tabled. ACOSH was informed that WorkSafe WA had made a decision to not develop the code of conduct. The minister accepted that. Twelve months ago the Government refused to accept the advice of senior public health figures who based their recommendations on 30 years of research proving that not only is smoking harmful to people, but also passive smoking and environmental tobacco smoke is unsafe. The Government refused to listen to those recommendations and stop smoking in enclosed public places. The Government stated it would produce a code of conduct but we do not have a code of conduct. This demonstrates the Government's current unworkable position. It begs the question: when will the Government start protecting employees? The Bill on the Table concerns occupational safety and health legislation. We know of 30 to 40 years of research showing the hazards of cigarette smoking and environmental tobacco smoke. What is the Government doing? It is sitting on its hands; it is not doing a thing. Most members of this House would have read in *The West Australian* last week the results of the Cancer Council New South Wales report. It stated that in New South Wales 76 people die annually from environmental tobacco smoke. If 76 people die in New South Wales each year, how many people die annually in Western Australia? Why are we putting this legislation on the Table and not addressing an issue that the whole community knows is killing employees? When will the Government do what it should be doing and protect employees? When will the Government introduce legislation to address that? There is time; this legislation could be amended or left on the Table. The Government can do something now to stop that exposure to environmental tobacco smoke. I will not support this Bill. I am very disappointed that the Government is refusing to look after workers and employees. The Government knows that people are dying but it is doing nothing about it.

**MR W.J. McNEE** (Moore) [7.25 pm]: I will make only a few comments on behalf of some of the "crooked" employers, as members opposite like to refer to them.

Mrs C.L. Edwardes: The "dodgy" bosses!

Mr W.J. McNEE: Yes. The "dodgy" employers. Where can a "dodgy" employer get a "dodgy" employee? I tell members that, thanks to John Howard, the economy of this country is bounding along at great speed and the rabbits opposite try to claim some credit. Things are going so well that there is full employment and employers cannot get an employee for love nor money, much less if a person is a "dodgy" employer. Members opposite like to tell us all the time that we are dodgy and up to something; that they have to pursue us to the nth degree. I do not know any employers who are not concerned about their employees. Of course they are. After having gone through the business of getting someone to work, would an employer put him in a position that would endanger him? Would a person do that? Of course he would not. I do not know how many people members opposite have employed but, if they have, how often have they tried to get their employees to do what they want them to do? How many people has the minister employed? What is his wide experience in employing people? Some employees are very good and capable but they have a mind of their own. An employer will say that he wants things done a certain way but, these days, if a person insists too much on having things done a certain way, an employee will tell his employer what to do with his job. That is a very difficult situation if a person is in the middle of harvesting or seeding or something like that. If members opposite are going to try to allocate blame, they better look at where the blame comes from! I think members opposite are away with the fairies. They are picking on the small fellows. I tell the minister that the corporations have the wherewithal to defend themselves. In some cases the people I mix with would have to go to prison.

Members opposite should look at a shed, be it a manufacturing shed or a shed on a farm - perhaps even the shed behind their house. If a lawnmowing contractor went into such a shed, something that may have been in there for years and not considered dangerous may, all of a sudden, turn a non-dangerous situation into a dangerous one. It may cause serious injury or death. Somebody will be lumbered with that responsibility. I do not think that is fair. The Government is opening up this area to enormous ramifications that will put employers in a very difficult position. The member for Kingsley outlined the Opposition's case very well. The member for Murdoch showed the true colours of this Government because while it is not prepared to do it itself, it is prepared to hang me if I do not do it! The Government shows a clear abomination for the law that members opposite represent but do not want to do themselves. They insist that everyone else do it. I make a plea on behalf of the poor people who are the employers. Unless we do something about this country, it will grind to a halt and will be wrapped in so much red tape that it will not matter. People from WorkSafe float around the area and they come in and do inspections. That is fine. If the police pull up a person for speeding, they like to find something else. They might have a look at the car to see whether there is anything wrong with it. They really want to find something wrong because they have to justify their job, so the simplest thing becomes an issue. I make that point. I am quite happy for people to be protected. I want them to be protected, as do all the employers I know, because I do

not know any dodgy employers. This Government may know them. If it knows them, it should name them, because I cannot name them. They are the people whom I stand for.

As a side issue, I will give an example of how red tape gets people. Probably 20 years ago we introduced a thing called a waybill when selling livestock. Every load of sheep had to have a waybill with it. The police might pull the carrier over and ask him a few questions and ask him for his waybill. Last night while I was in my office, I received in the mail the new system that is in place. It has been costing money for some time, but now it costs considerably more money. The waybill asks for the dopest detail. Members would not believe the questions that can be asked, even including the drivers licence number of the man who is driving the truck that is carrying the sheep. That is red tape at its best, and that is just one example of what is happening.

Today people working on most farms and in many small businesses churn out rubbish reports and fill in endless forms. I suppose some bureaucrat somewhere may get around to looking at them. I do not know what he does with them; God only knows. That is part of the operation. It is a total waste of time. However, it is keeping somebody's backside on a chair and he is getting paid very well for it, but it does not increase the price of my sheep one bit. It is the same with what we are doing now. As I think someone said during the debate, it is over the top. I am happy to support those things that are fair and reasonable. People who talk to me are frightened that something might happen on their farm or at their business that perhaps they did not foresee. We do not all have the wisdom of the people who float around and inspect us from time to time.

I urge the minister to proceed with extreme caution, because the people he is knocking are not what he pretends they are. They are decent, hardworking people who are finding it harder and harder to make their books balance and to show a profit. I realise that his Government does not like the word "profit", because it represents something nasty; it represents an employer ripping off an employee. That is the Government's level. I am sorry that that is the way it is, but I ask the minister to proceed with extreme caution.

**MR J.C. KOBELKE** (Nollamara - Minister for Consumer and Employment Protection) [7.33 pm]: I thank all members who have contributed to the debate. This is an extremely important piece of legislation and therefore I am thankful that members have taken the time to comment on the Bill. I have taken notes on a range of questions and I will seek to comment on or answer the questions that have been raised.

The member for Kingsley covered a range of important points. She asked whether we could go through the recommendations of the Laing report, on which this legislation is based, so that we could see which recommendations are in the legislation and which ones we have moved away from. I have presented her with a document that has all the recommendations from the Laing report. A number of them can be dealt with administratively. The document highlights those that require legislative change and gives a brief explanation on whether we have accepted a recommendation, accepted it in full or will not take it up. We have taken up the vast majority of recommendations for legislative reform.

The member for Kingsley also claimed that the amendments do nothing to encourage employers and employees to address occupational safety and health in the workplace. I think I have correctly reflected her comment. She went on to say that putting emphasis back on employers and employees in the workplace was something it was doing. The fact is that clearly this is about recognising the importance of what happens in the workplace. If we do not have that culture in the workplace, we will not improve safety. Members opposite have overemphasised the increased penalties. That might be because the media highlights that; it might be because of some preposition that people have because they are worried about it. That is only one element. The Leader of the National Party, the member for Avon, said that we would close off people's openness and they would become more secretive because they feared the penalties. That is a concern. However, I think the member for Avon has totally misjudged it. This will not impact on the vast majority of employers who do the right thing. As the member for Moore said, they are absolutely concerned for the safety of their workers. I have said that many, many times because it is true. Most employers respect and care for their employees; often they are friends. Clearly they want to look after their employees. The member for Moore talked about dodgy employers. The term "dodgy employers" was not used in the context of the overwhelming majority of employers who do the right thing and who want to make sure that their workplaces are safe. The term "dodgy employers" was attached to the small minority who do not do that. We did not apply the word "dodgy" to employers in any large number. We used that word to discriminate a very small minority of employers who do not take safety seriously from the vast majority who do. That is when the term "dodgy employer" was used. The member for Kingsley preferred the word "recalcitrants", although using that term got a former Prime Minister into a bit of trouble. It can be how different people perceive a person's language. I have said publicly - it is in my press statements - that the vast majority of employers have nothing to fear from this legislation because they are good employers, they take safety seriously, as they should, and they certainly care about their employees.

Mrs C.L. Edwardes: Have you looked at the issue of gross negligence, which will then impact on that greater majority?

Mr J.C. KOBELKE: I will come to that because that was the next point the member raised; that is, her concern about gross negligence. The standard of proof is beyond reasonable doubt, as it is for criminal matters. Quite a high level of proof is required. It is not the standard of proof that might be required for a civil matter. The provisions in the legislation are modelled on the South Australian provisions. I understand that there has not been a successful prosecution under the South Australian provisions. I also understand that we have tightened up the South Australian provisions, including the definition of what it means to know; that is, an employer knows there is something wrong or untoward and he or she does not address it or does not address it in a reasonable way. Clearly we can look at the precedents that have been set in the courts. I want to put it on the record that, in speaking for the Government, it is my very clear intent that when we talk about knowing something, we are talking about actual knowledge or wilful blindness. We are not talking about some esoteric drawing out of the meaning of the word "know" that might capture people.

Mrs C.L. Edwardes: Maybe you need to define the word "know".

Mr J.C. KOBELKE: That could be considered. The member is a lawyer and she knows that sometimes, when defining words, we can set out to clarify them but that is not always the case. For the purpose of interpreting what we mean by the word "know", I want to put very clearly on the record that we mean actual knowledge or wilful blindness; that is, people can be shown very clear evidence that they should have been aware of something and quite wilfully made sure they were not aware of it.

Mrs C.L. Edwardes: That is not your definition though.

Mr J.C. KOBELKE: No, but it helps to give some understanding of what we mean. It is intended to be quite a tight definition that goes to gross negligence, as it would mean in the normal sense when a person is not just minimally negligent, but grossly negligent. In that case, if a serious injury flows from that, the penalty might be jail.

The next point raised by the member for Kingsley was her concern about the tribunal. The Laing report recommended that we establish such a tribunal, and we have accepted that recommendation. However, as the member correctly reflected, the issue is that the number of cases is quite small, and the concern of the Laing report was that the tribunal needs to be run by someone who understands occupational safety and health. The trouble with industrial magistrates is that we would not know who would be on the bench at any given time and, therefore, we could not expect to have someone with a background in that area. If the commission member who is designated to form the tribunal needs to have some background experience or knowledge in this area - it may not be at a high level - and he takes on all the cases, he will build up that experience. He will build up a track record that ensures that he is dealing with these matters in a way that reflects the whole milieu from which they have arisen. That leads me to another point.

The member for Kingsley suggested that somehow the person did not need this special knowledge because the magistrate or the commissioner of the Western Australian Industrial Relations Commission, not being an expert in the area, would have to defer to the expertise of the WorkSafe Western Australia Commissioner or people with technical expertise in occupational health and safety. I accept that the person who is determining these matters, whether it be an industrial magistrate or an industrial relations commissioner, would not have the degree of technical expertise expected of the WorkSafe WA Commissioner or technical experts. However, if that person understands the whole approach to occupational health and safety, the Robens principles and the nature and extent of the regulatory regime and codes that are to apply, he will be much better suited to properly judge the issues that come before him by listening to the expert technical advice he needs. The suggestion of the Laing report that a specialised tribunal is needed was insightful and worth taking up. The issue then became where to establish such a body in a way that it will be efficient and use people with the appropriate competence; the Western Australian Industrial Relations Commission was clearly the best place to put that body. I understand that the member for Kingsley and many members opposite have this real concern that industrial relations matters can get caught up with occupational safety and health and that that would be a big negative. I accept that a limited number of examples can be given in which that happens. However, they are extremely limited. There are many cases in which we need to make sure that people can deal with matters from both those areas. A case may involve an issue of discrimination against a health and safety representative. Therefore, a judgment would need to be made about whether there was a real basis to claims that may have been made about unsafe practices in the workplace, and, because the person may have been dismissed, also industrial relations matters to decide in relation to a claim for benefits or underpayment of benefits etc. It makes sense to be able to handle the two areas together.

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When we allowed for health and safety matters to be considered in a limited way by the commission under the labour relations reform Act, the accusation was made then - I suspect the member for Kingsley was one of the people who made it - that safety would be used as an industrial matter. The track record over the past 18 months to two years that the legislation has been in place shows no evidence of that whatsoever. I am not aware of a single case in which that has happened.

Mrs C.L. Edwardes: There must be some blindness on your part.

Mr J.C. KOBELKE: Can the member provide me with one case before the commission where that has been mixed up?

Mrs C.L. Edwardes: It's never got to the commission because they are using it as a tool for bargaining in the EBAs. They are using it as a tool to close down worksites. Where have you been?

Mr J.C. KOBELKE: That is where the member is trickily dragging in something with an association that does not go to the point. We are talking about the statute and how it is applied. In a particular workplace people might raise a health and safety matter, but they can do that whether we make the change or not. That sort of pressure could be applied now. The member's accusation does not go to the specific legislative changes.

The member then asked if we were continuing with the preventive programs that were started under the last Government. She was not specific about which programs, but, yes, a range of programs are continuing. From year to year we have priority areas. For the past two to three years one of our priority areas has been small business because of the problems in communicating with small business and helping them to acquire the skills, the understanding and the education needed to improve occupational health and safety in that area. If the member wishes to pursue that matter, we can provide her with more details at another time. However, those programs are continuing.

The member then asked questions well informed about things that I said many years ago on the importance of improving data collection. If we are to target problem areas and to craft and improve programs, then we want to do that on the basis of evidence. If we do not have decent statistics on where the accidents are occurring and the types of accidents, then we shall not be as effective as we would wish in putting in place those programs. In opposition, I clearly said that I was keen on that. When I became minister and met the then head of WorkSafe WA, who is now the director general, I made it very clear that I wanted to improve that collection of data. Unfortunately, it is not something we have been able to do in any massive way in three years. However, we have contributed money to developing a national coronial information system. The process started when the member for Kingsley was the minister. However, we put up the money to kick it along. This Bill widens the head of power for the collection of data. We have not forgotten about it, and an element of this legislation will give us extra powers to improve that collection of data. The main improvement is found in a Bill, which will come into Parliament tomorrow, that will reform the workers compensation system. Our current advice is that there is a clear legal impediment to passing over that information in a more direct way. The changes to the workers compensation Bill will have that as one of the many key elements to improve that flow of information. The member quite rightly targeted an area that needs attention and to which we are giving attention.

The member for Kingsley then asked questions about provisional improvement notices. She suggested that the health and safety representative, should, as a prerequisite to the provisional improvement notice, be additionally required to contact the WorkSafe inspector. That was under consideration in the early drafts. However, it was counter to the whole thrust of what we are trying to do; that is, to have the matters resolved at the workplace level. If that could not be achieved and a WorkSafe inspector had to be involved - we even considered whether it could be done by telephone - it would become an extra encumbrance, or an extra step, when we were trying to focus on solving the matters and addressing the issues at the workplace level. That is why the provisional improvement notice is a very important part of that process. It recognises the very important role of the health and safety representative by giving him those powers.

The member has indicated that the Opposition will not support the legislation if we do not remove the gross negligence provision. The gross negligence provision is adequately tight and it will provide an important aspect to the deterrent nature of the penalties. However, it is limited enough that employers who do the job in a reasonable and proper way will have nothing to fear; it has been crafted sufficiently to give that assurance.

The second matter that the Opposition finds unacceptable is the changes that bring the mining industry under the general tutelage of the WorkSafe WA. This is very much in keeping with the whole Robens philosophy; that is, that one organisation should oversee occupational health and safety across the whole jurisdiction and it should not be subdivided in a range of ways. This will establish WorkSafe WA as the pre-eminent advisory body. It leaves the mines safety inspectorate within the Department of Mineral and Petroleum Resources under whatever name it might have. However, in terms of overall policy, that will stay with WorkSafe WA. Firstly, if that is to

be the case, there must be representation from the mining industry, and that person will be on the board. Secondly, the Mines Occupational Safety and Health Advisory Board must be a clear subcommittee of WorkSafe WA. The WorkSafe Western Australia Commission already has a range of advisory committees. However, they are established under the commission's powers to establish committees as the commission sees fit. Under this legislation, the Government will provide a statutory basis to the advisory committee that covers the mining industry. There is a need to not only improve safety in all industry sectors of this State, but also to do it efficiently. It does not make sense to apply one set of regulations to a piece of equipment when it is on one side of the road but to apply different regulations to the equipment when it is transported to a mine site on the other side of the road to do exactly the same job. That is an added complexity that the industry does not need. If the equipment is transported across the road to a mine site and is used in a different way or performs a different function, different regulations might be needed. The Government looks to the mining industry - whether it is underground mining or another type of operation - for assistance. However, there is no justification for having different sets of regulations for the same equipment simply because the regulations come under a different jurisdiction. A much simpler approach could be adopted that is not so complex and does not include the overlapping of regulations. On that point, the Government has announced that it will proceed with a code of practice for working hours to apply across all industries. This is one example in which it makes sense to have the mining industry as an integral part of the WorkSafe Western Australia Commission.

Mrs C.L. Edwardes: Will you penalise the mining industry with regard to the development of this code if it is not part of a subcommittee of the commission? That is disgraceful! That is an absolute disgrace!

Mr J.C. KOBELKE: Does the member always jump at shadows? We need a spotlight on her wherever she goes. The member for Kingsley goes off like a twopenny bomb without any justification at all. I am saying that the mining industry - and all industries - will be involved in the development of this code. The WorkSafe Western Australia Commission is the organisation that will handle it. Why should the mining industry not be an integral part of the WorkSafe Western Australia Commission? It is a simple example of why these changes are needed.

The member then raised the issue of penalties, of which she was largely supportive. For the first time, the penalties are structured in a way so that people can see the graduated penalties for the graduation of offences. Hopefully that structuring will help guide the determinations of the courts when they award penalties so that a higher level of penalties will apply to serious offences. Mr Robert Laing made it absolutely clear in his report that the penalties that were associated with breaches of the law, such as the taking of abalone out of season or without a licence, were far greater than the penalties that were imposed for seriously injuring or killing a worker. That is something the Government cannot countenance. There is a place for the application of much heavier penalties when serious breaches of occupational safety and health practices result in serious injury or death to a worker. The first part of addressing that matter is to have a clear structure of penalties so that the level of penalties rises with the seriousness of the offence. That is one part of this reform. In doing that, the Government has increased the maximum penalties and brought them into line with the standard in other States of Australia. As part of that process, as I have already indicated, there is the possibility that a jail sentence could be imposed if gross negligence is involved that results in the serious injury of or death to a worker.

I will digress. Earlier, the member for Avon alluded to his concern that the more severe penalties would cause employers to hide the facts and to refuse to be open and accountable and not address safety issues because they would be fearful of the penalties. They have no reason to believe that at all. I hope that members opposite will be honest enough with themselves to read the legislation and not spread a fear campaign that this legislation will somehow target reasonable and fair employers who are trying to do the right thing. That is not the case, and the penalties will not work in that way. I accept what the member for Avon said; that is, if the Government goes over the top with penalties and considers them to be the key thrust of what it is trying to do, there is the potential that safety will be undermined because people will seek to protect themselves and will not deal with the issues. The Government's primary approach to deal with this issue is to have the matters settled, resolved and dealt with at the workplace. That means that a change of culture must occur and people must address their attention to improving safety. The penalties will apply to people who simply do not want to get on board and make safety a priority. If people give the appropriate amount of attention to safety, they will not have anything to fear from these increased and serious penalties. The Government wants to change that culture.

I will refer back to the listing of penalties because the member for Avon said that it was somehow unfair to impose heavier penalties on corporations than on individuals. There is a standard procedure under the Sentencing Act in which the penalties for corporations are five times greater than the penalties for individuals. In this legislation, the corporation penalties are only two and a half times greater than those that apply to individuals. In addition, it is my understanding that when the courts award penalties, they will take into account the ability of a person to pay the penalty. If an international corporation or a small family-run business that is a

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corporation were taken to court, the court would take into account the assets of the corporation and its ability to pay. That would be factored into the penalties that the court would award.

The member for Kingsley raised the issue of coverage of government agencies, which I understand the Opposition supports. However, somehow the Opposition found a negative in this provision. The Opposition suggested that the State should be a leader in this area. The Gallop Government is making the State a leader in this area by applying these principles to government employees. A couple of years ago the Premier made a commitment to do that. A unit within the Department of Consumer and Employment Protection seeks to improve and establish safety standards across all government agencies. The Government has been proactive in trying to lift those standards. This amending Bill makes it absolutely clear that the responsibilities and liabilities that rest on managers and employers in the private sector must apply equally to those in the public sector. That is a burden the Government is willing to carry. It will have problems. At times it will put pressure on finding resources to make sure that matters are dealt with. However, the Government is not ducking the issue. The Government is saying that the responsibilities and liabilities that apply in the private sector must apply equally to those who are employed in the government sector.

Mrs C.L. Edwardes: Are you taking action over the Swan District Hospital mental health service facilities?

Mr J.C. KOBELKE: What we have heard from the Opposition time and again are statements that appear to be fact, but which are false. I will not accept that the member for Murdoch's accusations about improvement notices not being complied with are true until I see a report stating that that is the case. I have asked for a report on the status of what is happening. I take the accusations seriously, but I will not believe them to be true until they have been verified. I take the allegations seriously and will follow through on the matter. To the extent that the allegations are true, action will be taken. However, we must wait and see whether they are true. The member should not jump to the conclusion that when her colleagues say something, it is true, because usually it is not. We know that is the Opposition's track record.

In addition, the functional review implementation task force has recommended putting in place shared services. That measure is clearly targeted at providing more efficient government and making savings and will also pick up a range of areas on which the Government will improve services for people in the public sector. As the Minister assisting the Minister for Public Sector Management, I have made it clear that data will be better collected. The Government will put health and safety officers in the shared services. Many smaller agencies do not have the resources to do that. Through that collection of data, the Government will be able to pick up whether there is a problem with a high turnover of staff or whether more claims for workers compensation are made for stress or bullying. The Government will better target those areas and put in place improvement programs and implement preventive programs to deal with those issues. There will be big improvements in the way employees who come from those shared services in the public sector are looked after. That is something I am committed to making sure the Government implements.

The member for Kingsley went on to talk about the changing role of health and safety representatives and how it will be carried forward. I have been saying right from the start of this process that as part of the guarantee of their standard of work and so that the use of provisional improvement notices will not be abused, there will be an accreditation process. The detail is yet to be worked up. We must get the legislation through the House. We are committed to the education training programs that must go with it.

Mrs C.L. Edwardes: Do you agree that health and safety representatives should be assessed and not merely attend a competency-based training program?

Mr J.C. KOBELKE: I will need advice on that, but there must be a form of accreditation. I will get advice on whether accreditation should be based on a competency test or the effective completion of a course with assessment during the course. I have made it very clear that there must be a form of accreditation so that health and safety representatives are recognised as having the ability to issue PINs.

The member also talked about placing greater emphasis on health and safety representatives and that we should be building on the experience of people we have in those positions. We clearly want to do that, but I think if the member is honest, she will admit that when she was a minister, she let that languish. In the early 1990s a huge effort was put into it, with the 88 changes and implementation of health and safety representatives. I was getting feedback from many workplaces. It was seen as being really positive and people made the commitment. However, during the member's time in government it languished.

Mrs C.L. Edwardes: We put out a major program on it.

Mr J.C. KOBELKE: The previous Government ran an advertising program.

Mrs C.L. Edwardes: It was done in order to encourage people to take it up.

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Mr J.C. KOBELKE: I thought the program was very good, but the previous Government did not follow-through by making sure that elections were really pushed so that more people came on board. It did not push the training of those health and safety representatives.

Mrs C.L. Edwardes: Are you telling me that the numbers of health and safety representatives went down following that education program?

Mr J.C. KOBELKE: I will get the data for the member. The whole thing languished. It did not have the right profile. People said that health and safety representatives used to be really active and that there were training programs. They said it was not happening any more. It happens with all Governments. They put in a big effort, something is got going, and then it languishes a bit because people's attention turns to other things. The whole issue of promoting health and safety representatives and giving them the training and status they need was allowed to languish. With this legislation we are reasserting the importance of health and safety representatives and the part they must play in the local workplace. That will put pressure on us to make sure that we reactivate training programs. With the implementation of provisional improvement notices, it will be crucial. We cannot hand out PINs without making sure that people have gone through proper training processes and have the necessary skills. We are doing that, and it is a key part of this legislation.

The member for Kingsley also expressed some concern about the potential abuse of the use of PINs by health and safety representatives and asked if we could look at sanctions. My understanding is that under section 34 of the Occupational Safety and Health Act a complaint against a health and safety representative's use of PINs can be made by either an employer, a relevant employee or the commissioner. If somebody else went to the commissioner, the commissioner could take up the complaint. The effect of that and the process that a complaint goes through, which I will not outline now, is that the health and safety representative can be disqualified for either a specific period or permanently. That would be the result of effectively taking action if the health and safety representative had abused the powers of issuing PINs.

The member for Murdoch raised issues concerning Swan District Hospital. I indicated that I have asked for information on that, because if his accusations are true, something needs to be done. However, I do not assume that they are true simply because he has said those things. We will see what the truth is. The member for Murdoch also made the point that this legislation has no carrots; it is all about sticks. I think that is because members opposite have not read the legislation properly; they have simply taken the highlighted issues that they might have seen in the media and not taken the trouble to go through the whole Bill. There are non-monetary penalties. One potential application of a non-monetary penalty might occur if an employer had been found to breach the duty of care requirements. There would then be the potential of awarding a monetary penalty. It may be that the employer acknowledges and is remorseful about the fact that it has not done the right thing. The employer might say that it will go back and put in place a health and safety plan, new equipment or fix equipment. A non-monetary penalty might be imposed. For example, to fix the equipment might cost \$10 000, but if the employer could give an undertaking to fix the equipment by making sure that it had the right guards or whatever was required, it could be taken as the penalty. That is how a non-monetary penalty can be used as a carrot to the employer to fix what needs to be done to make sure there is a safer workplace. Therefore, there are carrots. The biggest carrot of all is that the employer will have a more productive and happier workplace if he gives attention to safety and involves the workers by making sure that they are part of the whole program. The employer will gain the benefit of a healthier and happier workplace.

The other issue, which I alluded to earlier, is that the obtaining of lower workers compensation premiums will be picked up in the workers compensation Bill. It is a matter of mechanisms for how we do it. It is not a matter of pushing here and getting a result there. We need to drive it continually so that people get lower premiums as a result of ensuring that they have safer workplaces.

I move on to the comments of the member for Avon. I want to see if I can convince him to get involved in understanding safety a bit better. I believe he is back with the horse and dray. I take him to be a genuine person who has many people in his constituency who have accidents. He knows that. However, the world has moved on. A whole range of people in the farming sector have become champions of safety as a result of accidents or incidents involving family members or friends. They have seen the need to put in place health and safety programs; they have been convinced that it can be done better and that they can move away from the old world of them and us.

I believe that in the past WorkSafe could be blamed for some of that them and us attitude. The member for Avon gave an instance that was a very clear example. A worker was seriously injured when operating a tractor and WorkSafe sued him. To me that makes no sense at all. However, we have seen a real change of approach in the attitude of WorkSafe. WorkSafe inspectors are now undertaking certified training programs. There is a real improvement in professionalism and a whole new culture. WorkSafe is now about education and getting out

there, working with the employers and industries to see how the workplace can be made safer. WorkSafe is not out there nitpicking to try to impose penalties. I am willing to accept that perhaps there was too much of that element in WorkSafe under the last Government.

At the very first meeting I had with inspectors when I became minister, I made it very clear that what we are about is working with industry. There is a big stick in the back pocket, but if we get it out simply to show that we have it, we will have lost industry as a whole. We must work with industry to get industry to see the importance of safety. We must be a partner with industry. I am pleased to see that WorkSafe inspectors are doing that. We do not get it right all the time, and sometimes we miscue a bit, but we are doing it in that way to make sure that industry engages in the process.

I spoke recently at a meeting of key representatives of the agricultural community. I was enthused by the Western Australian Farmers Federation and other groups saying that we must do better with safety and that we want to work together. That has been done by the establishment of an agricultural advisory committee about 18 months ago so that we make sure that the agricultural industries will do it better. We will work together to make sure that we do it better. There is a role for penalties. There will be times when we need to get the stick out, but it is not to deal with the vast majority of people in these industries who simply want advice and help to do it better. That engagement and change of culture is crucial to improving safety in the workplace.

The member for Alfred Cove spoke about environmental tobacco smoke. She overlooked the fact that regulations already provide that smoking is not allowed in workplaces. That has been put in place. There is the issue of continually trying to improve on that, but again, as it comes to other workplaces in which we are dealing with the wider community, it is a matter of cultural change. We must educate people and take them with us. There is a role for penalties for those who do not want to play the game, but it is a matter of changing the culture to ensure that people centre on improving health and safety in the workplace.

This Bill will be going into consideration in detail. The Opposition has suggested some amendments and will have the opportunity then to go into some detail on some of these provisions. This Bill is a major step in improving occupational health and safety in Western Australia. I will take up one thing that the member for Avon said - it cannot be done by legislation. I agree that the culture must be changed, but legislation, if it is done effectively, is the framework - the engine - that can be used to change that culture. The changes made under the last Labor Government, which came into effect in 1988, had a huge effect on improving safety in the workplace. All the statistics collected since then show a vast improvement over that period. However, over the past few years things have levelled out. That rate of improvement has either stalled or slowed right down. This Bill is about taking us back up to a new improved level of health and safety in the workplace. I hope it will receive the support of all members - although they may still have some doubts about some elements - because we cannot continue the current level of loss of life, injury and disease in the workplace. The National Occupational Health and Safety Commission released figures - I think they were for 2001-02 - that showed that, although about 1 700 deaths occurred on the roads across Australia, the estimate for deaths related to the workplace was about 2 000. More people are killed by workplace accidents and disease related to the workplace than are killed on the roads. That is not acceptable. This legislation is the key element in a very wide program with many elements that looks to address that, and give all workers in this State the right and the expectation of coming home from work at the end of the day safe and well and not injured or infected with disease. I commend the Bill to the House.

Question put and a division taken with the following result -

**Extract from *Hansard***  
[ASSEMBLY - Tuesday, 4 May 2004]  
p2176c-2197a

Mrs Cheryl Edwardes; Mr Mike Board; Mr Max Trenorden; Dr Janet Woollard; Acting Speaker; Mr Bill  
McNee; Mr John Kobelke

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Ayes (23)

Mr J.J.M. Bowler	Mr J.N. Hyde	Ms S.M. McHale	Mr E.S. Ripper
Mr C.M. Brown	Mr J.C. Kobelke	Mr A.D. McRae	Mr D.A. Templeman
Mr A.J. Dean	Mr R.C. Kucera	Mr M.P. Murray	Mr P.B. Watson
Mr J.B. D'Orazio	Mr F.M. Logan	Mr A.P. O'Gorman	Mr M.P. Whitely
Dr J.M. Edwards	Mr J.A. McGinty	Mr J.R. Quigley	Ms M.M. Quirk ( <i>Teller</i> )
Mrs D.J. Guise	Mr M. McGowan	Ms J.A. Radisich	

Noes (16)

Mr C.J. Barnett	Mr J.H.D. Day	Mr W.J. McNee	Mr T.K. Waldron
Mr D.F. Barron-Sullivan	Mrs C.L. Edwardes	Mr P.D. Omodei	Ms S.E. Walker
Mr M.F. Board	Mr J.P.D. Edwards	Mr P.G. Pendal	Dr J.M. Woollard
Dr E. Constable	Ms K. Hodson-Thomas	Mr R.N. Sweetman	Mr J.L. Bradshaw ( <i>Teller</i> )

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Pairs

Mr S.R. Hill	Mr M.J. Birney
Mr A.J. Carpenter	Mr A.D. Marshall
Dr G.I. Gallop	Mr M.G. House
Mr N.R. Marlborough	Mr B.J. Grylls
Mrs M.H. Roberts	Mr R.A. Ainsworth

Question thus passed.

Bill read a second time.