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Mr Peter Katsambanis; Mr Bill Marmion; Dr David Honey; Mr Simon Millman; Dr Mike Nahan; Mr Kyran O'Donnell; Mr John Carey; Mr Zak Kirkup; Mrs Liza Harvey; Mr Stephen Price; Mr Sean L'Estrange; Mrs Alyssa Hayden; Ms Cassandra Rowe; Mr Peter Rundle; Mr Vincent Catania; Mr Terry Redman; Dr Tony Buti; Ms Janine Freeman; Ms Margaret Quirk; Mr Bill Johnston

WORK HEALTH AND SAFETY BILL 2019
SAFETY LEVIES AMENDMENT BILL 2019

Cognate Debate

Leave granted for the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019 to be considered cognately, and for the Work Health and Safety Bill 2019 to be declared the principal bill.

Second Reading — Cognate Debate

Resumed from 27 November 2019.

MR P.A. KATSAMBANIS (Hillarys) [3.40 pm]: I rise as the lead speaker for Liberal Party on the Work Health and Safety Bill 2019 and to highlight that in the division of tasks in our party, the lead speaker for the Safety Levies Amendment Bill 2019 will be my colleague and friend the member for Nedlands.

Mr W.R. Marmion: Sorry; am I the lead speaker?

Mr P.A. KATSAMBANIS: You are for the Safety Levies Amendment Bill.

On the Work Health and Safety Bill, clearly, I, personally, and the Liberal Party, 100 per cent support the concept that someone, anyone, should leave home in the morning, or at any time that they leave home, to go to work with the expectation that they will complete their day or evening's work, leave the workplace and return home safe and sound—absolutely. I think everyone across our community supports that. It is axiomatic to us as a society that we have workplaces that are as safe as possible, and that everybody going to work knows that they will be able to return home to their families and loved ones. It is also axiomatic that if someone is responsible through their recklessness, their negligence or heaven forbid through a deliberate act for causing harm to someone at a workplace, they ought to be prosecuted and punished. That is absolutely axiomatic.

Over a number of decades in workplace safety we have seen that as a society and as a community we have made major steps forward in improving workplace safety. We have not reached the goal of zero deaths and zero injuries, but we are a lot closer than we were 10 years ago, 20 years ago, 30 years ago or 40 years ago, and that has not happened by accident. We have debated other bills in this place during this term of Parliament, especially in 2017. I have spoken about the changing culture and attitudes that have driven those safety improvements. It has been a move away from the "us and them" culture to a more cooperative culture, in which everyone in a workplace—employers, employees, and any contractors on that site—come together to create the safest possible workplace that there can be. That has continued to evolve over time. The last time we discussed this legislation, we were passing changes to the existing law. I spoke of the good work that everyone has done in that space. Employers, trade unions and workplace health and safety officials have been leaders in that space. When we look at a snapshot of what it was like 20 or 30 years ago compared with where we are today, we see that everyone involved deserves a major pat on the back. Some of that change has been driven by legislation and some by the fear, if you like, of penalties, but I would suggest that the majority of the improvement has taken place because of changes in culture and attitude, and a strong view that everyone in a workplace is in it together and that they are working together to effect improvements that will lead to safer and better outcomes—and, yes, I think it is an appropriate to work towards the goal of zero workplace deaths and zero injuries. "Zero Heroes" should be celebrated, and we, the Liberal, Labor and National Parties, do celebrate them. It is not a big-p political issue, and it has not been for many generations, and that is a great thing.

That brings me to the legislation before us. At the heart of it, this bill introduces the principle of a harmonised work health and safety legislative environment across all Australian states. That was the genesis of this bill. More than a decade ago, the Council of Australian Governments national reform program led to the Workplace Relations Ministers' Council agreeing to harmonise occupational health and safety laws across Australia. That was in 2009. After that, there was consultation on a model act. Eventually, in 2011, the initial version of the model act was finalised. A lot has happened since then. Every state and territory in Australia apart from Victoria and Western Australia has moved to adopt the model act or a version of the model act. Interestingly, New Zealand has also introduced legislation based on both the principles and the provisions of the model act. Given our strong economic ties with New Zealand—closer economic relations and all the other work that is done between the two nations—that is a good thing. Also, it should be noted that especially in the last decade we have seen a strong movement of workers between New Zealand and particularly Western Australia. The harmonisation of laws makes sure that everyone is working on the same page and cognisant of the legislative environment as well as the cultural environment built up around workplace safety. That is all a good thing.

Until now, Western Australia was one of only two states that has not moved to that model act. Again, interestingly, in the lead-up to the 2017 election, although a green bill was floating around, no commitment was made by the then opposition, the now government, to introduce a harmonised work health and safety model. It was not an election commitment. The minister can correct me if I am wrong, but I am certain that it was not. The spokesperson at the time, who is now the President of the Legislative Council, had indicated that there did not appear to be a driving need to move down the path of harmonisation and that our laws as they stood, and as they stand amended now, were sufficient for what we required in Western Australia. Irrespective of that, after the election, in July 2017, the Premier announced that work would commence to develop modernised work health and safety laws for WA, and that the basis of those laws was to be the model act.

A ministerial advisory panel was formed to advise on how to harmonise the existing laws with the model act and to take into account the specific requirements that we have in Western Australia due to our workplace health and safety laws interacting with other acts and our very well developed safety regime in the mining industry, in which we are a world leader. All that was done. After that ministerial advisory panel's work, we have ended up with this bill, and I will come to that in a minute.

This bill includes certain things that were not part of the model act at all. They are, specifically, clauses 30A and 30B of the bill before us, which relate to industrial manslaughter. That was not part of the workplace relations ministerial council agreement, the model act, any agreement at the Council of Australian Governments, or anything of that nature. Importantly, it was not an election commitment of the current government. Again, the shadow minister at the time, who is now the President of the upper house, indicated in many forums that she did not believe that there was any need for specific industrial manslaughter laws and thought that our existing laws covered off on that area. Interestingly, when the current minister became minister and introduced amendments to our existing occupational health and safety laws, he also indicated that he thought those laws, as they were being amended, would be adequate and that there was no reason for Western Australia to move to introduce industrial manslaughter. However, industrial manslaughter provisions, in the form of clauses 30A and 30B, are included in this legislation. In my contribution today I intend to deal with the harmonisation issues, except for clauses 30A and 30B. I will deal with those clauses separately.

There has always been debate in Western Australia about whether we need to go down the path of harmonisation of work health and safety laws or carve out our own path. That has not been limited to one side or the other of politics. As I said, in the lead-up to the last election, the then shadow minister indicated that she did not think that there was any need to go down the path of harmonisation and had done so at a number of forums. Interestingly, the then opposition and now government did not include harmonisation in its election commitments. It is very fond of always saying that it is bringing in legislation to give rise to its election commitments, but this was not an election commitment. Irrespective of that, there is a lot of debate about whether we go down our path or the path of the harmonised model. My personal view is that we should always maintain some sovereignty and independence. When it comes to an issue as important as work health and safety, we ought to recognise that it is a national goal and a national issue. We should follow the agreement that was made at the Council of Australian Governments through the national reform process. As long as the model act can be moulded in a way that meets our requirements and does not unnecessarily fetter our corporations and businesses—in particular, our important industries, including the mining industry—there is no reason that we should not proceed down the path of harmonised laws. After all, if New Zealand thought it was good enough for it, and it is not part of our commonwealth, it is likely to be a good idea for us. So far so good.

Once the decision has been made to go down that path, whether we go down the path of a green bill, as the Barnett government did, or a ministerial advisory panel, as this government did, it is important to create a process to make sure that the laws will work for us. As far as that is concerned, I give the minister a tick for bringing together the ministerial advisory panel to bring forward a process to look at the model act, use it as a starting point, and convert it to the purposes of Western Australia. Unfortunately, the recommendations and—I use this term loosely—the draft bill that came out of the ministerial advisory panel and the bill that has been tabled by the government are not the same. Between the time that the ministerial advisory panel made its recommendations and finished up its work and the time the legislation arrived in Parliament, we have seen a number of significant changes. There was public consultation about how we go about introducing, effectively, national scheme legislation into Western Australia and taking into account all our requirements. There was consultation, a process and a finalisation of that process, but the government took away the product of that process, came up with a series of new ideas—including some that were not considered at all by the ministerial advisory panel—and introduced them into the bill before it tabled it in this place.

We now have a bill that departs from the national model law in a number of key areas, aside from the area of industrial manslaughter. Those key areas were not raised in the public consultation process. Importantly, the departures from the model and the departures from what the ministerial advisory panel considered have not been identified in the explanatory memorandum or in any other way. They can be identified only if the participants in the process go through the bill line by line. Therefore, there is a big gap in the explanatory memorandum because it does not address the intended operation of this bill—in particular, those provisions that vary. We have a bill that varies significantly from the product of the process that has not had any assessment of the regulatory impact of its provisions. In fact, I think the government is relying now on the 2009 regulatory impact assessment that was done by the commonwealth government for the original model law, which has changed since that assessment was undertaken. Even before we consider industrial manslaughter, which is a separate component that I will deal with in a minute, this bill has a lot of question marks over it. It is incumbent on the minister to explain where the departures were, and not with flippant throwaway lines. I expected the explanatory memorandum to outline the departures—firstly, from the model law; and, secondly, from the consultation process by the ministerial advisory panel. Given that is not in the explanatory memorandum, perhaps the minister will give consideration to tabling a list of those departures—that is, first, how the model law differs from the bill that we are considering today; and, second, how what was considered at the ministerial advisory panel differs from what has now been included in the bill. The public deserves to know that. The people who will rely on this legislation, both employers and employees, deserve to know that. The participants in the panel process also deserve to know why their work was altered without any further consultation with them.

During consideration in detail, I will deal with some of the issues that arise out of the process of coming up with a bill that is completely different from the bill that was considered by the ministerial advisory panel. There are some major differences that should be commented on. For instance, clause 72 requires employers to ensure that their elected health and safety representatives are given appropriate training to enable them to do their job. That is a very simple and well accepted requirement. It has been happening for decades. We need approved courses, of course. We also need to ensure that employers meet the cost of sending representatives to those courses, because, after all, those representatives are elected to represent the employees at their workplace. That is all well and good. The model law requires that the health and safety representatives attend a training course chosen by those health and safety representatives, "in consultation with the person conducting the business or undertaking". Those words are very simple. That is what went to the ministerial advisory panel. Those words are in the model law, which has been adopted in every single jurisdiction that has passed these laws. Everyone looked at those words and walked away from the process and thought that is logical and sensible. We elect health and safety representatives. They play an important role. They need training, not just initial training but ongoing training. There needs be a framework within which that training will be conducted. The courses need to be approved, of course. It is a workplace. It is a cooperative culture. The employer has to pay for this training course. Therefore, there needs to be consultation with the employer—the person conducting the business or undertaking—to ensure that they have chosen the right course. There also needs to be consultation to ensure there is consistency. There might be more than one health and safety representative at the workplace. It would be good if they could go to consistent courses rather than different courses. The consultation might be simply a discussion about where and when the course would be undertaken et cetera. That is all well and good. However, in the bill that has been tabled in this place, the words "in consultation with the person conducting the business or undertaking" have disappeared. They have vanished into thin air. There is nothing in the explanatory memorandum about why that has happened. I am not an overly conspiratorial person —

A member interjected.

Mr P.A. KATSAMBANIS: The member for Armadale interjects, even though he is not in his seat. As a Collingwood supporter, my goodness, I carry many scars of many grand finals and umpiring decisions and balls that have been knocked back into play from the front bar of the Hilton Hotel and all of that.

Mr W.J. Johnston interjected.

Mr P.A. KATSAMBANIS: I can tell the minister that does unite us! He knows that. If I went down the path of conspiracies, given the cross that I bear as a Collingwood supporter, my goodness, I would be weighed down by all sorts of conspiracies.

When I look at the disappearance of the words "in consultation with the person conducting the business or undertaking", I ask: why? Training is conducted by lots and lots of organisations. If the training is chosen by the health and safety representative, with no consultation with the person conducting the business or undertaking, they could go on any training course they want. The question that arises, even for people like me who are not overly conspiratorial, is: who might have got into the ear of the minister between the end of the ministerial advisory panel

process and the tabling of the bill for those words to disappear; and what was behind that? Is it some attempt to funnel training to particular organisations or causes? Is it an attempt to funnel training to bodies that might be close to the minister or close to the Labor Party? I do not know, but it looks and smells to me like a very thinly veiled attempt to create some sort of union preference. There was zero consultation. It was not on the table at the ministerial advisory panel. It is not in any of the bills that have been passed in the other jurisdictions. It is clearly a deviation from the model law. I do not really care what was behind it. It might not be necessarily an attempt to favour union training or union preferences. It might just have slipped out. I do not know. The important thing is that it breaks the element of trust that is necessary to create the best possible and safest workplace culture. As we continue to say again and again and again, the best workplace safety outcomes are when people work together in consultation with each other, not at cross purposes with each other. This is another sneaky and tricky little change that moves us away from that. It moves us back to the old "us and them" approach that did not serve us very well. I do not think that in practice many health and safety representatives would thumb their nose at their employer and say, "I don't care what you think; this is where I'm going." However, legislative procedures were put in place to avoid these sorts of things.

Mr W.J. Johnston: Can I ask a question? What is the current situation?

Mr P.A. KATSAMBANIS: The model law included those words for a reason. If the minister thought there was a better alternative, whether current or future, it would have been incumbent upon him to discuss that with the ministerial advisory panel and put it on the table, and be open and transparent—all those things the Premier told us when in opposition that his government would be. However, the government did not do that. It just snuck that in.

That is one example. Other things have crept into this bill that were not part of the model law and certainly were not part of the consideration by the ministerial advisory panel. One of those is the prohibition against insuring for penalties under the act. I know that this arose out of a Safe Work Australia review into the operation of the harmonised law, which has come to be known as the Boland review, in which the principle of prohibiting insurance for fines in this context was discussed. I also know that the New South Wales government has flagged that it is looking at that.

Mr W.J. JOHNSTON: And the commonwealth.

Mr P.A. KATSAMBANIS: But as far as I am aware, they have not legislated and neither has the commonwealth. Following the Boland review, a regulation impact statement was issued by Safe Work Australia for comment, on which it received a lot of comment. But the government decided to plough on outside the ministerial advisory panel process, before the commonwealth looked into this and before there was agreement at a COAG or a workplace ministers' level. I am not sure what the acronym for that body is today because it keeps changing, but I am sure the minister attends those meetings. The acronyms seem to change all the time; I am not sure whether it is the workplace relations ministerial council or something else.

Mr W.J. Johnston: There is no COAG on IR.

Mr P.A. KATSAMBANIS: There is no process. Irrespective, I would have thought that Safe Work Australia would take the lead and jurisdictions would introduce similar or identical provisions in the same space.

I have had correspondence recently from the Australian Institute of Company Directors, an organisation we would expect to be vitally interested in this space. It represents company directors—people impacted by this sort of legislation. It spelt out —

> While the AICD supports strong penalties for directors and officers who fail to exercise their duties under WHS laws, we do not support the proposed blanket prohibition on insurance for fines in a WHS context.

It continues —

> The common law already adopts a carefully balanced approach to cases involving an insured seeking to claim under an insurance policy with respect to any alleged criminal liability, where the general rule is that a contract of insurance is not enforceable in respect of criminal acts. We understand that insurance cover is available for WHS fines but is not available if the fine (i) is uninsurable at law; or (ii) arises from wilful, intentional or deliberate acts or omissions, or acts or omissions of gross negligence or recklessness.
>
> In effect, the common law prohibits insurance for intentional criminal acts, but recognises that there are occasions where an honest person may unintentionally commit a criminal offence in the course of their professional duties.
>
> The Corporations Act 2001 (Cth) … attempts to balance these considerations, prohibiting some types of recovery while enabling insurance to be obtained for other activities, such as civil penalty provisions. …

> the Corporations Act imposes targeted prohibitions … for individuals in sections 199A(2) and (3) and section 199B(1).

It says how the law over time has struck a careful balance in this area and points out, in particular, its fear that —

> … access to insurance generally is an important issue for directors. Prohibiting insurance for directors for monetary penalties may have the unintended consequence of deterring skilled and experienced individuals from taking on directorships. It is fundamental that sufficient insurance is available for directors, especially for those offences which are of a strict liability nature.

The Australian Institute of Company Directors is not saying not to do it; it is saying to take a carefully balanced approach and to do what the commonwealth has done in the Corporations Act and to do what the common law does—have a good think about that. I am not necessarily saying that the Australian Institute of Company Directors is right, but this is what happens when there is no consultation on a proposal. Although the government has come up with something that is well intentioned and has arisen of the Boland review, it should not forget that the recommendations of the Boland review have not yet been implemented into law; they have been put out for public consultation, which I believe is ongoing. I think submissions to the consultation regulation impact statement have closed and they have not been finalised by Safe Work Australia. The minister may have more recent information than that, but I think that is where the process is at. The Australian Institute of Company Directors is saying, "If you had told us about it, we would have told you that there might be some unintended consequences. We are not quite sure. We do not want to deter people from being company directors and, in particular, we do not want to deter the right people from being company directors."

At the same time, the general principle that a person should not be able to enter into a contract of insurance to protect themselves from criminal liability—monetary liability under the criminal law—is also a good principle. That is what the Australian Institute of Company Directors is talking about when it talks about a balancing act. That could have been done had the minister reconvened the ministerial advisory panel or put out a consultation paper or a regulatory impact statement. Instead, he weighed right into it and came up with his own unique laws that are not part of the model law—it was a principle espoused in a review and not legislative drafting espoused in a review. It is a principle that has now gone out for further comment. Here, again, the body that represents company directors in Australia has said, "Oops! Minister, I think you have got this one wrong. You haven't properly weighed up the pros and cons and you haven't taken a carefully balanced approach. You have jumped straight into the deep end without understanding or even caring about the consequences." That is not what I say; I am paraphrasing the Australian Institute of Company Directors. That area that needs to be very, very carefully looked at before we plough into it, especially when the body that represents company directors is saying that there are plenty of examples of this being well balanced in other areas of the law. There are two aspects of the primary part of the bill, the harmonisation part of the bill, that has clearly moved well away from just harmonisation. It has moved away from the model law but, importantly, it has moved away from the model law without adequate consultation—in fact, in some cases, without any consultation, particularly with affected parties. Company directors were not consulted in the case of the insurance provisions and employer representatives were not consulted in relation to issues around health and safety training courses.

Alarm bells are ringing. It is a great idea and a great principle, but it is in the hands of this government and in the hands of this minister. Why are we moving away from the model law and why are we moving away from consulting on changes to the model law? At the end of it all, the real harm and the real risk—the real fear of harm—is that we will be moving away from that consultative process; we are moving away from the approach of working together to get better safety outcomes and we are going to go back to the old "us and them" approach that we know has failed and that we want to avoid.

I now come to the other provisions that have come in that are not part of the model law and, in fact, have been brought in by this government in this bill—that is, the provisions that colloquially have been grouped into the category of industrial manslaughter, clauses 30A and 30B in the bill that is before us. I repeat what I said at the start: it is absolutely fundamental to the functioning of our society that every family has an expectation that their loved one who goes off to work will come home safe and sound when they finish their work; sometimes it is in the morning and sometimes it is in the evening. Irrespective of when they come home from work, those families expect that their loved one will come home safe and sound every single day. That is an absolutely fundamental principle. If people are responsible, through their negligence or recklessness or, even in those extraordinarily rare circumstances, through any deliberate act for the death or serious injury of a person, they should be punished. There is no issue around that. We can debate how we do that up hill and down dale. Just over two years ago in this place, we debated legislation that came into effect in October 2018 that increased both the monetary penalties and jail terms for people who have been found to have caused death or serious injury in workplaces. We did that. The government in its wisdom decided

to introduce more serious penalties. Let us look at these penalties, these two provisions, and see whether they pass the test of being well calibrated and fair, and will achieve the outcome that we all desire: improved work safety outcomes that will eventually lead to zero deaths and zero injuries in workplaces right across Western Australia.

Prior to the election, the then spokesperson for the government said, "No, there's no reason to introduce industrial manslaughter laws; our laws are working adequately." When we debated the amendments to the existing laws, this minister again indicated no intention to introduce industrial manslaughter. The Premier announced that he would introduce modernised work, health and safety laws in July 2017, but there was no mention of industrial manslaughter—none at all. This minister convened a ministerial advisory panel to give effect to the consultation process. As I said, it could have been a green bill or a regulatory impact statement. He chose a ministerial advisory panel. At least he put something together to give him advice on how best to do that. There was no mention at all of industrial manslaughter laws—none at all. Fast forward to the afternoon of August 2019, and the Premier announced that his government would introduce new legislation that included industrial manslaughter. What happened on the morning that that announcement was made? There was the Western Australian Labor Party state conference, and all the comrades got together. I think they retreated back to their student politics days when its factions would split into smithereens, into hundreds and hundreds of little pieces, and there was a mass walkout of, what has been colloquially been described—I am not an expert in Labor Party internal affairs—as the industrial unions. I do not think that the minister walked out, but several members of this place and the other place who are loosely aligned to that group of people who walked out walked out with them. Obviously, they went back into the smoky rooms with negotiations to bring members back into the conference, and, lo and behold, in the midst of all these mass walkouts and splits between the left, the right, the inside right, the outside right, the left right in, the left right out—all over the place—the Premier came out and gave a press conference. He said, "Guess what? We are introducing industrial manslaughter laws."

The member for Armadale is away on urgent parliamentary business. Again, I am not an overly conspiratorial person, but when I start lining things up, to me this seems more like a political fix to deal with an extremely messy state conference that spilled out into the public sphere than a genuine attempt to effect improvements in workplace safety in Western Australian workplaces. That is what it smells like; that is what it looks like. We can do that sometimes and still come up with a good outcome by engaging in consultation and working through the processes. But, no, this government chose to insert clauses 30A and clause 30B into this legislation. They are two clauses that have absolutely nothing to do with the model law, and that is why they have been given the capital A and B. Otherwise, we want our law to reflect the provisions of the model law. He introduced them without any consultation with industry or the affected stakeholders and with no clarity until the bill was tabled in this place. People were scurrying around wondering what the legislation was going to look like. Importantly, it was not given as an election commitment by this government. In fact, the then spokesperson, the current President of the Legislative Council, had indicated no need for these laws prior to the election. There was no commitment. There were public statements by this minister that there was no need to go down this path, because our laws are adequate and we were firming them up, as we did, with the laws that came into effect in October 2018 with tougher penalties. But all of a sudden, the government introduced this with almost no consultation—no public consultation, anyway—and no visibility on what it was planning until the legislation was tabled in this place. That is not a very good process to introduce any legislation, but in particular legislation that introduces a maximum term of imprisonment of 20 years in the case of clause 30A, and a maximum term of imprisonment of 10 years in the case of clause 30B. These clauses may have some merit and I have absolutely no doubt that families impacted by workplace deaths and serious workplace injuries—we all know families that have been impacted by these sorts of events—are thinking, "It's sensible; it's logical. If someone is responsible for a death, they should be appropriately punished." There is no doubt. I have absolutely no doubt. There are no qualms from me and no qualms from the Liberal Party, but it is how we do it in practice. It is about what sort of provisions are brought in, how we consult on those provisions and how we assess the unintended consequences—and on all those counts, this government fails.

Clause 30A looks like an attempt to re-word the law of manslaughter that exists in our Criminal Code and to make allowances for the fact that it would work in a workplace context. I get that. It also introduces a maximum penalty of 20 years' imprisonment. New South Wales has flagged that it is going to do something similar but different. New South Wales flagged that it will introduce a very similar offence, with a maximum penalty of 25 years' imprisonment, but it will incorporate that offence where criminal offences are usually included. I think it is the Crimes Act, New South Wales' version of the Criminal Code. The minister has chosen to move this into work, health and safety legislation. It is perhaps an esoteric argument, but, importantly, it is about what protections are there that is really important. To be fair, the protections incorporated in clause 30A include the fact that the Director of Public Prosecutions will bring the charge, there will be no change to the rules of evidence or the burden of proof, and that, effectively, the prosecution will have to prove beyond reasonable doubt that a person is guilty of this offence. These are all good protections. There is a question mark about why it is in the District Court's

jurisdiction, given that, traditionally, manslaughter is considered in the Supreme Court. The expertise on assessing the elements of manslaughter, both the evidentiary requirements and all the precedence around proving up the case, lie in the justices of the Supreme Court, but I think that the fact it is in a superior court is a good protection. Why is it in the District Court rather than the Supreme Court? Maybe the minister can answer that. Perhaps that should have been considered in a public consultation process, but it was not. There are still question marks, but a range of protections are included that at least give us comfort that people will get due process. They will be given procedural fairness and they will have to be found to be guilty beyond reasonable doubt before they face a term of imprisonment of up to 20 years.

Clause 30B is described by the minister, and the bill, as the "simple offence" of industrial manslaughter. There is nothing simple about an offence that carries a maximum jail term of 10 years. Even less simple are the elements that lie underneath this provision; the matter is heard in the Magistrates Court. The penalty is a term of imprisonment of 10 years and it is heard in the Magistrates Court. We have the Attorney General here. In how many other matters can the Magistrates Court deliver a term of imprisonment of up to 10 years in our jurisdiction of Western Australia?

Mr P.J. Rundle: Good question!

Mr P.A. KATSAMBANIS: Silence. Are there any other matters? It is a good question. Here it is; it will be heard in the Magistrates Court. Who brings the prosecutions? The Director of Public Prosecutions does not and nor does an independent prosecutor receive the brief of evidence, assess it and then decide whether to prosecute. WorkSafe Western Australia, the investigatory authority, will bring the prosecution. The government can argue about Chinese walls all it likes, but this is a serious offence that carries a penalty of up to 10 years' imprisonment. The appropriate body to run that sort of prosecution at the outset, before any public consultation or discussion, would seem to be the Director of Public Prosecutions, and we would imagine it would be in a superior court—at the very least the District Court—if the penalty is 10 years' imprisonment. The elements of the offence are not described as a crime, but it has a maximum penalty of 10 years' imprisonment and $2.5 million fine for individuals or $5 million fine for body corporates. It is a crime in any other way; it is a small-c crime.

For the elements of the offence, the prosecution would simply need to prove that the person failed to comply with a health and safety duty, which caused the death of an individual. There is no need to prove any negligence. There is no need to prove any recklessness. It is essentially a strict liability offence. If a person fails to comply with a health and safety duty and they cause the death of an individual, they will be liable for up to 10 years' imprisonment. Fair enough! Give people the opportunity to defend themselves in court. But, like many other provisions in this legislation, including the category 1 offences, the evidential burden has been shifted from the prosecution to the accused person. The accused person would have to prove that they had a reasonable excuse. The prosecution is not incumbent on proving beyond reasonable doubt that this person was guilty of an offence before they would be subject to a penalty of up to 10 years' imprisonment—not at all. All the prosecution has to prove is that the person failed to comply with a health and safety duty and that a death was caused. The accused person would then have to prove—I do not know on what standard of proof—that they had a reasonable excuse. Would they have to prove it on the balance of probabilities? Would they have to prove it beyond a reasonable doubt?

We have a strict liability offence with a reversal of the onus of proof, carrying a maximum jail term of 10 years, being heard in the Magistrates Court. There has been zero consultation and certainly no consultation with employers—the people who are likely to face this sort of charge. The offence will apply to not only company directors or people who are ubiquitously described throughout this model law as "PCBUs"—persons conducting a business or undertaking—but also officers of a PCBU, who are a broader range of people as defined in the commonwealth Corporations Act. Question marks arise about how far down the chain people will be responsible for such a strict liability offence, with a reversal of the onus of proof and with the potential to go to jail for up to 10 years, to be heard in the Magistrates Court, with the prosecution authority to be the investigation authority.

There are a lot of question marks about these two provisions. One question mark that arises is that essentially the provisions apply only to the employer side of the relationship rather than the employee. We are not sure how far down the chain of employees the provisions go. With the inclusion of these offences, what happens if an employee's gross negligence or deliberate act causes the death of another worker? Will they be subject to the provisions of the Criminal Code, or are they extinguished? Will they be subject to only a lower level of offence, even though it can be established that it was gross negligence or a deliberate act?

Many other questions arise. A number of organisations have raised questions about it with me. How will these proposed laws impact on small and medium business? How will they impact on the agricultural sector? What impact will they have? What impact will the proposed laws have on the transport industry? How will they apply to group training schemes operating under the proposed laws, given that these schemes act as an employer, sending out apprentices to different businesses? Importantly, what sort of resources will the government commit to

assisting those small and medium businesses, firstly, to understand their new obligations and, secondly, to comply with them? None of that has been thought through. None of that has been provided. How will the proposed laws impact on liability to members of the public who may come into or near a workplace? Will clauses 30A and 30B apply in those circumstances? In the not-too-distant past, we saw the horrible fatality that occurred at a building site on the outskirts of the Melbourne CBD where part of a wall collapsed on passers-by. How will those clauses apply? Importantly, the minister said that the industrial manslaughter offences came out of the Boland review. Yes, they did, but not a two-tiered industrial manslaughter provision. It does not exist in any other state. The Queensland laws do not include a two-tiered provision. The Victorian laws do not include a two-tiered provision. The ACT laws do not include a two-tiered provision. The Boland review did not recommend a head offence and a simple offence. This is novel. This is radical and this is different.

The Australian Institute of Company Directors says —

> In our view, a *single* 'industrial manslaughter–crime offence', requiring a fault element of 'recklessness' —

Or disregard —

> … would adequately increase deterrence and result in improved safety outcomes.
>
> Moreover, the introduction of a *single* industrial manslaughter offence would be consistent with other States and Territories that either have, or in the process of, legislating industrial manslaughter offences …

That is the same as in the regulatory impact statement for the Boland review that Safe Work Australia put out. All these things need to be determined. We are not opposing this legislation, but we definitely believe that it needs to be looked at again. We need a public and open consultation process around industrial manslaughter, because there has not been any public consultation process to look at the unintended consequences—who will be affected and what process can be put into place to assist those people rather than wallop them with 10 or 20-year jail terms. We think it needs to be looked at.

The rest of the legislation also needs to be looked at, because the government has not been open and transparent. It has not showed us where the changes are different from the model law.

MR W.R. MARMION (Nedlands — Deputy Leader of the Opposition) [4.40 pm]: I rise to also speak on the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019. I congratulate the member for Hillarys, who summarised very well the position of the opposition on this bill and some of the issues that we will bring up in consideration in detail. I am sure the Minister for Industrial Relations will be able to address those concerns to our satisfaction. My contribution to the debate will be mainly from a mining and petroleum aspect. Also, I am the lead opposition speaker to the Safety Levies Amendment Bill, so I will touch on that for at least a minute.

This is a very important bill, and, as the minister knows, it has taken many years to bring this legislation to fruition. One issue that has been going backwards and forwards, certainly in my time as Minister for Mines and Petroleum, is whether to combine the general industrial safety bill with the mining bill. There were debates on either side. I was a strong believer that the safety regime overseen by the then Department of Mines and Petroleum was functioning very well, and I am pleased to be advised—the minister will be able to confirm this in his closing address—that the regimes under the mines and petroleum areas are going to basically continue. They are well run and they will continue to be run in the same way, with a continuing importance of recording all different safety aspects, including near misses. I think that near misses are important aspects to pick up so that we can adjust the safety regime around any incident. A near miss could have been a fatality, and if there is an opportunity to address the situation that caused it, which is what it is all about, then we need to do that. That is an important aspect. I have to say, in my times as Minister for Mines and Petroleum and Minister for Housing, I noticed a difference. I know that a construction site is more of a confined site, but in my judgemental view, the mining industry had a much safer regime than the construction industry. I think that is borne out by the statistics of fatalities and injuries. That was a concern and one of the reasons for the debate: we did not want to water down the strong regime in the mining industry. My understanding is that that has not happened.

In my time as Minister for Mines and Petroleum, I attended the opening of the Tropicana Gold Mine by AngloGold Ashanti Australia. I was chatting to one of the board members of AngloGold, who had incidentally worked with Nelson Mandela. We both held the first gold bar that was pulled—ceremonially, anyway. He commented on the difference between —

Mr W.J. Johnston: At Gruyere, of course, they let you run outside with it. You couldn't get away!

Mr W.R. MARMION: Yes, they are more secure at Tropicana, I can tell members! An interesting bit of feedback from one of the board members who had travelled all the way from South Africa was that the difference between

Western Australian and African mine sites was just chalk and cheese. In our discussion, he was complimenting the Tropicana mine manager. He told me that he wanted the mine manager from Tropicana to spend six months on a particular mine site he had in his head that needed its safety improved. Whether that transpired, I am not sure, but that is certainly what he would have liked to have done. He said that even if the Tropicana mine manager was there, he did not expect him to be able to raise it to the standards that we had in Western Australia.

Mr W.J. Johnston: The contribution from South Africa is falling; the Western Australian contribution is rising.

Mr W.R. MARMION: Yes. I just point that out. The Department of Mines and Petroleum produces a report each year.

Mr W.J. Johnston: Not anymore.

Mr W.R. MARMION: This is the last one I could get.

Mr W.J. Johnston: What does it say?

Mr W.R. MARMION: It is 2017–18.

Mr W.J. Johnston: What department?

Mr W.R. MARMION: Oh, yes—this is the Department of Mines, Industry Regulation and Safety, government of Western Australia.

Mr W.J. Johnston: There's no such thing as the Department of Mines and Petroleum.

Mr W.R. MARMION: No, but for the purpose of this exercise, this report shows the trends, which is what I am highlighting.

Mr W.J. Johnston: Yes, but it is from the larger agency, not the smaller agency.

Mr W.R. MARMION: Sure, I know. I am just sticking to my theme of mining being not bad. Compared with performances worldwide, we have a pretty good record. Indeed, the information that was collected has been quite useful. When this report was written, there was a total of 115 000 employees right across the sector; about 103 000 were in surface mining, about 9 000 were underground and nearly 3 000 were doing exploration. That is the sort of sample size of this data. The introduction to the report was written by State Mining Engineer, Andrew Chaplyn, whom members know quite well. The department has a hazards register, as we know, and it can use the data it collects to work out areas of risk. One statistic that I remember from my time as Minister for Mines and Petroleum is that the most likely time for someone to have an accident—the most dangerous time—is when they first get on the job. The first 12 to 18 months is very important. That is the danger period, and that is borne out by the data collected by the department at the time on its hazard register. It is a figure that has stuck in my head. The supervisor has to make sure that the new employee is well trained and that someone is looking after them and keeping a good eye on them in their first period of work.

The Minister for Industrial Relations will be right across the issue of fatalities and probably follows the same regime that I followed when I was minister. If there was a fatality on a mine site, obviously, there was a statement made in the house of the importance of it and condolences to the family, but we also made sure that the company came in and explained the situation to show that we as the government of the time treated the fatality as important and were doing something serious to make sure that it did not happen again. I am sure that the current minister and government do the same. When I was the Minister for Mines and Petroleum, I was reminded almost every day, I think, by the former Minister for Mines and Petroleum that in 2012–13, there were no fatalities at any mine site in Western Australia. It is a bit random; we can have a good year. The idea is that we should be aiming for no fatalities at all in the mining industry.

Mr W.J. Johnston: Zero.

Mr W.R. MARMION: Correct.

It is possible, borne out by the fact that we got that figure in that year. The trendline in the report shows fatalities with a slight trend downwards, which is a good sign. An interesting thing it picks out—there is a lot of data here—is that the mineral industry that has the most fatalities per 1 000 employees is the coal industry, which surprised me.

Mr W.J. Johnston: It is a small number.

Mr W.R. MARMION: Yes, it is because of the small number, so if there is a fatality, it makes it worse. Coal is the commodity with the highest fatality index. After that is exploration; again, there is a small number of people in exploration so if there is one fatality, it comes up with a high index. Of course, another important statistic is the type of accident. The number one accident that leads to a fatality—this is no surprise—is a person being struck by an object, such as a falling object. The member for Cottesloe, who worked in an industrial area, would be well across these. Others are being caught between two objects, falling from heights and a rockfall. They are the primary causes

of fatalities. The mineral industries with the most lost-time injuries are, again, coal, followed by bauxite and alumina, member for Cottesloe. They are the top areas in which lost-time injuries occur in Western Australia, or certainly that was the case in 2017–18. The three-year rolling average for fatalities in Western Australia was trending downwards. The incident rate for mining and exploration injuries of a duration of one week or more per 1 000 employees was trending downwards and the number of injuries relating to muscular, skeletal or bone injuries was also trending down. The statistics from the Western Australia mining industry are well recorded and the department, which is no longer called the Department of Mines and Petroleum, has a good register of what is going in. As I said in my opening statements, because the number of fatalities is so small, it is important that the government addresses the near misses. All the near misses could have been fatalities; they are so crucial to having a good regime.

Back to the legislation, the member for Hillarys outlined the opposition's two main areas of concern, clauses 30B and 72(1)(d). We need a bit more information on how they will work and why the government put those provisions in the legislation, because we understand that they were not recommendations of the ministerial advisory panel. Why will the health and safety rep choose the training course, because that could be a cost imposition on the employee?

Mr W.J. Johnston: What is the current arrangement for health and safety reps?

Mr W.R. MARMION: I do not know the current arrangement, which is why I will be interested in the minister's response about why that has been included. The minister might have a legitimate reason. It may be what currently happens. But I must say that when I worked as an engineer at Main Roads and I wanted to go on a course, I had to get the Commissioner of Main Roads' signature to authorise me to go on those courses, except for one union course that I went on as a professional engineer as a member of the Association of Professional Engineers.

As the shadow Minister for Mines and Petroleum, I met with both the Chamber of Minerals and Energy of Western Australia and the Association of Mining and Exploration Companies. They raised concerns about the impact of clause 30B, so I have raised those concerns with the minister. Perhaps he will be able to alleviate those concerns during his second reading reply, but obviously it will be raised during the consideration in detail stage. The member for Hillarys outlined a more legalistic problem with clause 30B, which is a little beyond my knowledge of how the legal system works.

In his second reading speech, the minister stated that if something is foreseeable, it is preventable. Sometimes things are foreseeable after the event. One could argue that it was foreseeable, but someone did not see it at the time. That is the problem with that sentence in the minister's second reading speech. I will give members an example. One of the risky areas on an iron ore site and in an alumina operation is a conveyer belt. Lots of ore is conveyed on a conveyer belt. There are lots of moving parts and people may get a part of their body or clothing trapped either by looking at it or doing some maintenance from a distance, which I know is sometimes done on some of the pulleys. There have even been fatalities. One could argue that that could be engineered out. I think we can just about engineer anything out. I was thinking about this the other night. There could be a cover on the conveyer belt to make sure that anyone who is walking alongside the conveyer belt cannot get caught. The member for Cockburn would be quite across this. An infra-red ray could be set up so that if anything goes past the beam, the belt would automatically turn off. All sorts of things could be done. They are just two things I have thought of. There are probably 100 different things that could be done, but it is a case of, "What's the cost of that?" There is an element of cost and one could say, "What's the cost of a life?" We cannot put a cost on a life, particularly when we consider the family that loses someone in a fatal accident. It is a terrible outcome. There is an issue in how far we go and if a case goes to court under clause 30B, someone has make the call about whether the employer went far enough.

[Member's time extended.]

Mr W.R. MARMION: That issue will be raised. I will touch on my experience of incidents in the areas in which I have worked. The more significant ones, which probably would not happen today, were when I was an engineering student.

Mrs M.H. Roberts: That's really going back in time!

Mr W.R. MARMION: It is a long way, member!

These examples highlight what the member for Hillarys said in that times have changed. I can demonstrate that with real-life examples to prove that what the member for Hillarys said is true. I worked on the Bunbury power station as a young engineer. It was so long ago that the Bunbury power station no longer exists; it has been pulled down. It had a cooling system. Obviously, lots of air would go through the cooling system. We could get into the cooling system. Before the cooling system was closed off, the supervisor had to go through with a torch to make sure that no-one was sleeping in the many different spots where people could sleep. During maintenance of the cooling system, people could hide in the vents all day. Apparently, before my time, they closed off the vents and

started up the power station and someone was trapped in the vents. The vents got too hot and he died. We are talking about 1973. There was a particularly nasty job that was in a confined space. The coal would come into the power station and be put into the coal crushers. The crushers would wear out and have to be replaced. They were quite narrow and I was quite skinny when I was at uni —

Mrs M.H. Roberts: You still are.

Mr W.R. MARMION: I do not know whether I would get in now. They would take the cover off and lower me down by my legs —

Mrs M.H. Roberts: Why did they choose you?

Mr W.R. MARMION: That is how they chose to take them off. I was so scared. They had a safety system because if someone turned on the power, I would be dead; I would be mincemeat. I was thinking about that each time I changed one of the blades. They had a system whereby they had a red tag and they turned off the power. Only the supervisor could take off that red tag. To me, it was not a lot of comfort.

Mrs M.H. Roberts: I'm sorry I came in here for this gruesome speech.

Mr W.R. MARMION: I must say, I was not very comforted by it, member. That I actually did that still haunts me today. But the good news is that I got an extra 80¢ an hour because it was a confined space. We are going back to the dark ages, members. So that is what it was like.

I remember an incident on another site at around the same time. Three years later, in 1975, at the port expansion, we were cutting fibre sheets. We could get a mask from the safety officer to keep out the fibres, but only one person got a mask. The culture was such that people commented and did not say very nice things—words you could not use in this chamber—to describe this person who bothered to have a safety mask on while he was cutting the fibre sheets. On that same site, part of a brick fell on someone's helmet. Sounds like a really good site this one, does it not? It smashed through his helmet but he was protected and the brick did not get through to his head. The culture at the site was such that he wanted to continue wearing the helmet. He had to be told that once the hat had been hit, he had to get a new helmet. The culture was such that he was quite proud that he had a helmet on; he would have been dead if had not. Thank goodness those days are gone and we do not have situations like that.

Even today, before workers go out on site everyone is included in a toolbox meeting to discuss the possible risks that might come up during the day. There are risks on any site and it is important that that is recognised and addressed. I sometimes wonder whether when we try to take out all the risks, we are actually making it riskier for the individual. I remember going to one site—I will not mention the name—this example probably relates to when one is first on a site. Some sites have painted-out paths where it is safe to walk. If a person thinks that it is safe to walk on the path and they walk along following the lines on the pavement without being alert to what could still go wrong, it may not be that safe. There might be a new person on the job who has not been told not to drive the loader over those lines or that they need to do so in a certain way, and they might accidentally run over someone because they had not been trained properly. But if it was a normal person walking on site, they would be looking out for that. There are things we have to consider about safety.

I have lots of other examples and I will just pick out a couple in the time I have left before I go on to another issue. I have been involved in two fatalities in my time as an employee. One that comes to mind was probably a car accident. It was on the Thiess Mining contract in 1980. It was about five o'clock and one of the employees—he was approaching his twenty-first birthday—was picking up all the signs on Great Northern Highway. He was in a Land Rover. I am not sure how it happened but he rolled the Land Rover and somehow went through the window. He did not have a seatbelt on and unfortunately he ruptured his back and over time he passed away. We have to reflect on who would be responsible for that accident in terms of this bill. Was it a safe place? Great Northern Highway then was not sealed and it was corrugated. Did Main Roads contribute to that incident because it did not grade the road? At that time, I think that part of the road may have been part of the Thiess worksite although cars would come along Great Northern Highway. Was it the driver's fault for not having a seatbelt on? Was it the supervisor's fault for not making sure that he wore a seatbelt? Was the Land Rover roadworthy? Was he speeding? We have to look at all these incidents and how clause 30B might be applied in each case. When the minister does his summing up, I would be very interested to hear for him some examples of particular types of incidents that might activate clause 30B and an explanation of the lines of responsibility and who it is who might be taken to court. I am concerned about that and I think we need to be given a particular example so we can clarify how that clause might be used when enacted.

I want to close off on something that is not really good news but impacted on me a lot when I was Minister for Mines and Petroleum—that is, the opening of the Eastern Goldfields Miners Memorial. I had the privilege to open

the memorial in Kalgoorlie. It was quite a moving function. They had managed to get the names of all those miners who had died between 1892 and 2014. It required a lot of research. All the miners' names sequentially through the years were on the wall. There are probably more now but there were over 1 480 on the wall at the time. I could see the really bad years. In one particular year there were 28 deaths. Now, we might have zero, one, two or three. It was terrible in, I recall, the 1920s. I remember talking to one family member, a man whose father had died, who had flown in from Victoria. It was quite moving and he appreciated that his father was being recognised. Since my time as minister, they have developed the Western Australian Virtual Miners Memorial. The minister might know more about it than me and he can talk more about it. The problem with the Eastern Goldfields Miners Memorial is that it does not capture all the miners who died in Western Australia or pick up miner's lung, or dusted miners as they are called. The virtual memorial picks up those people. That was pointed out by historian and researcher Dr Criena Fitzgerald. Some members may know her; she has written a lot about mining dust and the conditions at mining operations in Western Australia. The virtual miners memorial has more than 2 000 names now and it is growing.

In closing, safety is paramount. If someone goes to work, it is expected that they will go home. That is what the prior legislation has been about. This legislation tries to modernise it all. We noted in the briefing that a section has been totally removed; part 7 has been taken out, which I think has been appreciated by most people. The opposition's concern is over two clauses—that is clause 30B and clause 72(1)(c), which I think other members might also touch on. We certainly look forward to consideration in detail.

DR D.J. HONEY (Cottesloe) [5.10 pm]: As was indicated by our lead speaker on the Work Health and Safety Bill 2019 and Safety Levies Amendment Bill 2019, we, and I, will support this legislation. However, I believe that some aspects need to be reviewed with a view to improvement. There is potential to review that here, but perhaps the other place is the place to do that. I doubt that any members have an issue with the overall intent of this legislation. I will go through a little of the minister's second reading speech. He states —

> It meets Western Australia's obligations under the Inter-governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety. Most importantly, it seeks to improve health and safety outcomes for Western Australian workers by the introduction of additional reforms.
>
> …
>
> The community has high expectations that every worker has the right to come home safely after each shift. Having a strong deterrence in this legislation completely accords with these expectations.

I have some concern about that last sentence. I am not sure where the evidence comes from to suggest that an industrial manslaughter offence itself will make a significant difference; in particular, the second-tier charge that has been introduced by this government. We heard our lead speaker, the member for Hillarys, on this matter. The minister stated that it meets our obligations. It appears clear from going through the bill and from representations from industry bodies that the bill as presented in some parts goes some way beyond that intergovernmental agreement for consistency across our acts.

I have had the good fortune to work in the mining industry for 24 years. I think I detected a bit of scepticism from the Minister for Mines and Petroleum when a comment was made about me working at a mine site, but the member for Forrestfield would know that all managers at my previous employer's locations —

Mr W.J. Johnston: It was not me. It was the member for Cockburn. What he was suggesting was that even if you were employed, you were not working.

Dr D.J. HONEY: There you go! Can I just say that that is very unkind.

In my first line manager role at the Pinjarra refinery, we were outside an enterprise bargaining agreement and we had some especially active shop stewards who liked to take walks out the gate. On those occasions, being a continuous operation, we had to operate all the equipment. I will expand on this just a little. Can I say how much things have changed. Even at the time, which was not very long ago, managers were given a safe work instruction, led out to a bit of equipment and told that they were operating it. That does not happen these days. All staff go through an extensive training program on how to operate the equipment. I told the guys every time they did it that it made life harder for them because when I knew what they did, I realised exactly what was required and what was not required to do the task, so it did not necessarily help their industrial cause.

I will get back to serious matters. Every person in this place thinks that we should do what we can to improve safety in the workplace, and that is something that is being driven towards. When I first started working in the mining industry just on 25 years ago, my first employer had a target of no more than either four or six fatalities

a year. It would disturb members to know that that target generally was not exceeded, but it was, sort of, met. It was to the great credit of the general manager, Hugh Morgan, that when he came in and took over the company, Western Mining, he said that was unacceptable. The lesson I took away from that early in my career was that when a general manager said that it was not acceptable to ever think that people should come to work and be at risk of experiencing a fatality, within a couple of years, in effect, fatalities disappeared from those sites. That was an important lesson for me; that is, leadership and leadership expectations play a critical role in workplace safety at every level. It was interesting that when I came into that workplace, a lot of underground mining was carried out. The attitude of the miners was that there was an expectation that they may be killed at work. To a degree there was a sense of bravado around that and that they did a tough and dirty job, were paid very well, and their superannuation had really good life insurance so if something terrible happened their family would be okay. Obviously, that ignores the enormous anguish and mental harm that comes from all that. It is very pleasing to see that safety has continued to improve substantially. I will not go through them in detail, but looking at the numbers of all workplace fatalities since 2000, we can see there has been an almost 50 per cent reduction. Disturbingly, and I am sure that this is at the front of the minister's mind, there are still a very large number of unacceptable fatalities. We know that all those fatalities are preventable in some way or other. There has been a step change in the attitude towards workplace safety in every workplace that I have been associated with. There is an issue with smaller employers, and farmers, for example, are very much over-represented in fatalities, as are people who work in small contracting firms.

On penalties, much of the debate is focusing on the industrial manslaughter provisions. I was a little disturbed by the explanatory memorandum. Page 2 introduces the topic of industrial manslaughter. It states —

> The McGowan Government has decided to introduce offences of industrial manslaughter to ensure that deaths at the workplace, caused by the conduct of PCBUs and officers of PCBUs, are met with substantial penalties.

I would have thought that the focus would always be on reducing workplace fatalities and not simply wanting to punish people. I saw that the minister took some notes earlier. It would inform me to hear that penalties of this nature have had a meaningful impact on reducing fatalities across similar jurisdictions. As I said, we have seen a continued reduction in fatalities in both Australia and Western Australia. Most of the focus of this debate will be on industrial manslaughter. It should be recognised that the bill covers much more than that. It covers all areas of safety. An aspect of safety is that people are properly trained so they know what they are expected to do and the outcomes. It is important that people have safe tools to carry out that work. We apply the hierarchy of needs so when we can we eliminate a task, otherwise we engineer out any hazards in that task and, if hazards still exist, we ensure that people have the correct protective equipment so that they will not be exposed to any unnecessary hazard. Those are obviously not there as a primary defence. The member for Nedlands has explained some very unsavoury practices that occurred when he worked in the mining industry as a young person. Protective equipment is absolutely the last line of defence.

The next issue is the importance of health and safety committees. I have said to members on my own side and also to members on the other side at different times that I have enormous respect for the role that unions have played in improving safety in workplaces. My father used to say to me as a boy—my dad was very much a swinging voter—that if it were not for unions, children might still be crawling on their hands and knees in coalmines. Perhaps that is a colourful way of putting it. The truth is that unions play a critical role of improving safety. I think that is the most important role that unions play in the workplace. I have always had great respect for the member for Forrestfield, who I knew in my previous life in his role as a union convenor and a person who is passionate about safety; equally, I have always had the greatest respect for the union delegates on site. I can honestly say I never had a union delegate come to me about a safety issue when there was not a safety issue. That did not mean that sometimes other people did not try to use safety as an industrial tool, if you like, but those senior representatives of the union took their roles very seriously and did a good job in helping to improve workplace safety. I recognise that this bill covers those aspects I have mentioned and the important role that workforce representatives can play. I have no contention with that. My contribution today is focusing on the couple of areas about which I have some concerns.

I turn now to clause 30A of the Work Health and Safety Bill, "Industrial manslaughter—crime". That is the most serious offence. I want to go through that in a bit of detail. It is very clear that this deals with serious misconduct, essentially deliberate neglect on the part of the employer of the worker's safety. We have all heard terrible stories about different workplace incidents. One that is very relevant to this bill is the horrendous death of Mr Wesley Ballantine. I have not met his mother, Mrs Regan Ballantine, but I have read the articles and stories about that death, and members of my party who have met Mrs Ballantine have relayed her stories to me. She has clearly been a very strong advocate for some changes. She was bitterly disappointed that the consequences for the terrible death of her son did not represent the neglect, if you like, of the employer in that case. Minister, is that

matter still before the court? I will not pass any great comment on it if is a matter before the court. However, I understand that the uncontested facts are that a young person was working at height, some 12 metres, with an obvious falls risk. He had no safety harness, no scaffold and no form of protection. It has been stated that the employer was aware of those inadequacies and that person was carrying out a practice that was commonly carried out. Regardless of that particular case, those circumstances are disgraceful. Any employer who does that should suffer a serious penalty. I absolutely agree with Mrs Ballantine that in the circumstances that have been described, that deserves a serious penalty. That will need to be tested, because obviously every case is different.

Clause 30A(1) states —

> A person commits a crime if —
>
> …
>
> (b) the person engages in conduct that causes the death of an individual; and
>
> (c) the conduct constitutes a failure to comply with the person's health and safety duty; and —

Importantly—the next paragraph is critical —

> (d) the person engages in the conduct —
>
> (i) knowing that the conduct is likely to cause the death of an individual; and
>
> (ii) in disregard of that likelihood.

I cannot imagine that any person in Western Australian would disagree with the necessity for that event to incur a very serious penalty, and indeed it does. The proposed penalty is imprisonment for 20 years and a fine of $5 million for an individual, and a fine of $10 million for a body corporate. That is a very serious penalty.

I understand that particular offence will be tested in the District Court of WA. The member for Hillarys went through that. The brief for the prosecution will be prepared by the Director of Public Prosecutions, so very experienced legal officers will determine whether an offence meets that threshold. It will then go to a superior court that is experienced in similar matters and can apply the appropriate penalty. We on this side have made it clear that we have no particular issue with that clause as it is written. I understand that there may be a difference of opinion among some industry associations. Certainly some industry associations have said that they recognise that that very high level of penalty, with the tests that will be applied, is a reasonable response by the minister and the government.

Clause 30A(3) states, in part —

> An officer of a person (the ***PCBU***) commits a crime if —
>
> …
>
> (b) the PCBU engages in conduct that causes the death of an individual;

That continues to impose a very high hurdle for that particular offence. The same theme is found in paragraphs (a) to (d). It then states —

> (e) the officer engages in the officer's conduct referred to in paragraph (d)(i) or (ii) …

That makes it very clear that a person in a responsible position who knows that a hazard exists, knows that people are taking risks, knows that people do not have adequate training and knows that people are engaging in an activity that has a high probability of leading to a person's death, and consciously chooses to do nothing about it—it is a deliberate act on their part—will incur a very severe penalty. I certainly recognise that there must be a consequence for that type of behaviour.

[Member's time extended.]

Dr D.J. HONEY: If a person or an organisation simply does not care, we need to use a big stick. The two previous speakers have mentioned clause 30B, which is headed "Industrial manslaughter—simple offence". I have some questions about that. To call it a "simple offence" implies that the consequences for that offence will be relatively minor. In fact, the consequences for that so-called simple offence are at a very high level. They are the sorts of consequences that we would expect for a person who has taken the deliberate act of, for example, driving their car into another vehicle on the road because they want to commit suicide, without any regard for the other person. The penalty under 30B for that very serious, high-level offence is imprisonment for 10 years and a fine of $2.5 million for an individual, and a fine of $5 million for a body corporate. Clause 30B(1) states —

> A person commits an offence if —

(a) the person has a health and safety duty as a person conducting a business or undertaking; and

(b) the person fails to comply with that duty; and

(c) the failure causes the death of an individual.

What has been removed is the word "knowing"—namely, knowing that the conduct is likely to cause the death of an individual. This is not about a person who has a cavalier attitude towards the safety of their workers and simply does not care. In effect, if we read through this provision—I do not intend to read every subclause that is related to this—we see that it removes "knowing". It removes that strict causal relationship found in clause 30A and creates a much lower threshold. Under this particular charge, one reasonably could suspect that were a person to die at a worksite, someone would go to jail and potentially receive an enormous fine. That fine might not mean much for a manager of one of our larger corporations in Perth, but for a farmer or sole operator, it would not just penalise them, it could also bankrupt their entire family. A penalty of potentially 10 years' jail and a $2.5 million fine—it is a $5 million fine for a body corporate—is very serious. We are told this is a symbol. The defence that a person who conducts a business or undertaking must have a strong idea that an act or omission is likely to cause death is being removed, and the charge will be prosecuted in the Magistrates Court, with WorkSafe preparing the brief. As the member for Hillarys said, it would have been helpful if the Attorney General or the minister had shown us comparable cases in the Magistrates Court, but I suspect that few to no cases prepared by WorkSafe that have severe penalties of 10 year's jail and several million dollars' worth of fines are heard in the Magistrates Court.

What is pretty clear is that this charge could be used all the time. We know that in other jurisdictions very few charges have come forward on the more serious offence because a high standard of proof is required. However, in this case, WorkSafe can launch a significant number of proceedings, and it is likely that this will, in fact, be the only charge. If the legislation is passed as it is written, I doubt we will see any of the more serious charges, purely for the pragmatic reason of the resources that are available to the department. Why would it tie up resources for a more serious charge when it could have a much higher probability of achieving a prosecution under this charge? It is because in this case, for such a serious outcome, those penalties will normally relate to a serious criminal act with intent to harm or kill. In this case, we are completely reversing the burden of proof and asking the person to prove they did not do it. The person, whether it is an organisation or individual, will have to go to court and prove that they did not do it. I know that there are a number of lawyers in this chamber and people who are otherwise experienced in the law. They know that for a large organisation, going to court is just an incidental expense. We know that in the UK, about 97 per cent of prosecutions are in fact against sole operators or small businesses. We know that overwhelming the people who are charged with these offences—it is likely to be the case here—are families, family companies, or partnerships of two people or two tradies who have got together and so on. They do not have the means to go to court and prove that they have not done something. That is a far lower standard that what is applied to other serious criminal matters. In other serious criminal matters, the state must prove beyond a reasonable doubt that the person carried out the offence; for civil matters, obviously, it is on the balance of probabilities. But in this case, the person, as defined in this act, must prove that they did not commit the offence. I think that is unfair. I think the more serious offence as it is defined in the bill is very clear, but this minor offence will be heard in a lower court. Nowhere near enough resources will go into preparing the charge, and then a person will have to defend themselves against the charge.

I have had discussions with some smaller operators and their first impression of this clause is that if a person has a small family business and they are charged, the simplest thing they could do would be to plead guilty, whether they think they are guilty or not, because on top of any fine, they would simply not have the financial capacity to defend themselves. If they do defend themselves, they will bankrupt themselves trying to prove that they did not do it. In effect, the outcome—that financial penalty—will be no different. Therefore, I am sympathetic to the intent of the bill, but I will listen with interest to the minister's response and when we go through the consideration in detail stage.

I have alluded to this a little, but I am not sure that everyone is aware of just how far this legislation applies. I think some people have it in their minds that corporate groups are cavalier and that they do not care about their workers, to the extent that they are prepared to let them die. Everyone thinks that is a terrible thing, but this legislation will apply to everyone. There are very few to whom this legislation will not apply, outside of volunteer organisations. The Minister for Police can correct me, but the legislation specifically includes the Commissioner of Police as an officer. My assumption is that this legislation will apply to the police force. I will take members through one example. If a police officer is called out to a domestic dispute, in many cases police officers go by themselves —

Mrs M.H. Roberts: They don't.

Dr D.J. HONEY: Even if they go in a pair, let us assume that one police officer is stabbed and killed. Could that have been prevented? If that police officer had worn a full Kevlar outfit, as the bomb squad does, that police officer

would not have been killed—they could not have been stabbed. Would the police commissioner have been negligent for not protecting that police officer from that particular event, or should four or five police officers have been present so that it was guaranteed that the person could be restrained if they became violent and tried to kill a police officer? I know that I am talking about less-likely events, but let me take the situation of farmers.

Mrs M.H. Roberts: You have to do what is reasonable, not unreasonable.

Dr D.J. HONEY: That is not what the bill says, minister. That is the trouble.

Mrs M.H. Roberts interjected.

Dr D.J. HONEY: I only have a few minutes, so I have to move on. Can I have your protection, please, Mr Acting Speaker?

Mrs M.H. Roberts interjected.

The ACTING SPEAKER (Mr R.S. Love): Minister!

Dr D.J. HONEY: Thank you, Mr Acting Speaker. We can talk about a farming partnership, because this will apply to partnerships. If those partners know that a particular piece of equipment does not have a safety guard on it and one of those farmers is killed, the other farmer could be charged under this legislation and, in fact, could be found guilty of negligence in relation to the death of the other person. This bill will apply to sole operators. If someone employs a carer in their home, this act applies to that carer employed in their home as well. This bill is not simply about larger businesses, well-organised businesses or businesses with large resources; this bill goes down to every level. I appreciate why the minister has done that, but I think it highlights the need to make sure that there is a reasonable test of deliberate intent when applying very serious penalties of jail time and multimillion-dollar fines.

I will wrap up here. There is concern about this bill, as outlined by the member for Hillarys. It looks as though there was a very good consultation process in the early stages that involved both unions and employer representatives in the discussion on this bill. I know employer groups are extremely disappointed that they did not see the final bill and that additional clauses were put in the bill that were outside the terms of reference, or at least outside the matters that were considered by the Ministerial Advisory Panel on Work Health and Safety Reform. That is one thing that has caused a lot of consternation. A lot of the concerns that we are expressing could have been avoided if the process had been gone through, which has been gone through with other bills, and that is that the government releases a green bill, so that there is an opportunity to review the entire bill, and then that bill comes back. I will finish on this: overall, the bills cover a whole range of safety issues to improve safety in the workplace, which I think is well worth supporting; however, I have significant concerns that clause 30B is onerous and will not achieve the objectives that the government desires.

MR S.A. MILLMAN (Mount Lawley) [5.40 pm]: I rise to make a short contribution to the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019. Like most kids, I did not really know what I wanted to be when I grew up. One thing I knew, watching the nightly news with my family and seeing the battles that law firm Slater and Gordon won for tradies like my dad, I wanted to see more fairness and justice for workers. That is why, when I became a lawyer, the choice about what kind of law I would practice was an easy one: it would be for workers. It is also why, when I decided to become an active participant in our democratic process, the choice about where I would put my efforts was equally easy: it would be for workers. It takes a Labor government to protect the interests of working Western Australians. It was a Labor government that first introduced these laws decades ago and it takes another Labor government to make sure these laws are relevant today. In August last year, I asked the Premier about extra resources for WorkSafe inspectors. He responded by saying that for the last 120 years, the Western Australian branch of the Australian Labor Party has fought to ensure that workers in our community have the safest environment possible in which to work and that they are able to go home safely at the end of each and every day. That is a very important principle that we hold. Over the term of the last government, WorkSafe was starved of funding. Despite racking up enormous debt, the last Liberal–National government managed to cut funding for WorkSafe, and the number of WorkSafe inspectors was cut by 10. That meant 10 fewer WorkSafe inspectors were inspecting our workplaces across the state. As we know, we live in a state with a lot of heavy industry, with mine sites and major industrial sites, so it is very sad that the last government did that. In March 2019, the McGowan government announced that we would put in place an additional six WorkSafe inspectors. I announced on Saturday that we would employ an additional 21 WorkSafe inspectors on top of that six. That is an investment in the resources required to make sure that our workplaces are safe. The next thing we do is bring forward this legislation.

This legislation does three things that ought to be supported unanimously by this chamber. Firstly, it harmonises our legislation with other states. That cuts compliance costs for business and makes it easier for large corporations

operating across borders to know exactly what the occupational health and safety regime is going to be. As the member for Hillarys said, it even operates in New Zealand. Secondly, it modernises our occupational health and safety legislation, an incredibly important initiative that brings it up to date. When the Labor government first introduced occupational health and safety legislation 40 years ago, it was world leading. People in this chamber should celebrate Western Australia being champions of the world. We were the champions of the world in occupational health and safety 40 years ago. We have the opportunity to now take the lead and the initiative, and introduce legislation that does exactly that. Thirdly, something that all members in this chamber should support, it provides the right balance to ensure that workers get home safe at the end of the day.

I quote a member of this place. When talking in early 2018 about changes to the workers' compensation legislation, this member said —

> I would like us to reflect on those figures as they are entirely heartbreaking and thoroughly unacceptable. Of course, they are more than just figures; they are lives lost. They are fathers who will never see their kids' lives unfold. They are boys who, through no fault of their own, will never reach their full potential. They are young women who have been robbed of any future. Importantly, they are someone's loved ones. When a worker is killed on the job there is a grieving family whose whole world has been ripped apart. Every worker should go to work and come home again at the end of the day. No-one should ever die at work. It is as simple as that! Any death at work is one death too many. That should never be forgotten.

That contribution, members, was made by the member for Hillarys. Therefore, I am so sad to stand here and reflect on the contribution that he made this afternoon to this debate, which was far and away the worst contribution that I have ever heard him make.

Several members interjected.

Mr S.A. MILLMAN: Acting Speaker, I made zero interjections during the entire course of the opposition's contributions, and I would seek your protection from interjections. This is incredibly important legislation that goes to protecting the safety of workers and saving lives. There is no time for scurrilous debate from the opposition. Opposition speakers will have their chance, and I would prefer not to be interrupted as I make my contribution.

Far and away, it was the worst contribution. The member for Hillarys was completely wrong in his analysis.

Several members interjected.

The ACTING SPEAKER (Mr R.S. Love): Members, let the member make his contribution.

Mr S.A. MILLMAN: Thank you for your protection, Acting Speaker.

The member for Hillarys was completely wrong in his analysis of the consultation process that this legislation has gone through. I want to recite for every member in this chamber the germination of this bill, so that they know it precisely. I have done this before, and it is disappointing that I have to do it again, but there we have it. Members from the other side have not learnt the lessons of the past; they have not seen the history that I have already recited when I made my grievance to the Minister for Industrial Relations in November last year. In 2008, the Council of Australian Governments Workplace Relations Ministers' Council resolved that there should be model work, health and safety legislation. In 2013, a federal Labor government introduced the model legislation and most jurisdictions picked up that model legislation. The exception was Victoria, because the model legislation was based in large part on the Victorian legislation, so there was no need for them to harmonise. In 2016, the federal Liberal government amended the legislation. It did not repeal the legislation, but saw areas for potential improvement in the model act and made the changes. Then, in 2018, the federal Liberal government appointed Marie Boland, CEO of SafeWork South Australia, to conduct an inquiry into the operation of the work, health and safety laws. In 2017, this minister had already established the ministerial advisory panel. It was a very, very simple process. We have the commonwealth model act, we have the unique industrial and environmental circumstances in Western Australia, and we gather together a team of experts to look at how and the way in which the Western Australian context needs to be reflected in idiosyncrasies in the model act. This minister chose to do that in the most transparent way possible and with all stakeholders engaged, including stakeholders from the Chamber of Minerals and Energy, the Chamber of Commerce and Industry WA, UnionsWA, and from the department, and I was fortunate or privileged enough to serve on that ministerial advisory panel as well. That ministerial advisory panel looked at the model legislation. That model legislation had no provisions for industrial manslaughter during the ministerial advisory panel process.

The ACTING SPEAKER: Members down there, could you just keep your voices down, it is getting a bit distracting.

Mr S.A. MILLMAN: However, in December 2018, Marie Bolton handed down her report "Review of the Model Work Health and Safety Laws". I am obliged to the advisers for providing me with a spare copy. Recommendation 23b states —

> Amend the model WHS Act to provide for a new offence of industrial manslaughter. The offence should provide for gross negligence causing death and include the following —

Then there are a number of bullet points. It continues —

> Safe Work Australia should work with legal experts to draft the offence and include consideration of recommendations to increase penalty levels … and develop sentencing guidelines …

Subsequent to that, we brought on for debate in this chamber the increase in occupational health and safety penalties in the regulations of the Occupational Safety and Health Act. They sailed through the Legislative Assembly with the support of the opposition and numerous speeches telling us how important they were. When I heard the member for Hillarys' contribution to the changes to the Workers' Compensation and Injury Management Act, and the member for Nedlands' contribution to the increased penalties for occupational health and safety legislation, I hoped against hope that the Liberal Party would be consistent. That is why I am so disappointed to have heard the contribution from the member for Hillarys. The member for Nedlands gave a much better contribution. It was a very didactic and discursive contribution—I will accept—but not anyway near as pugilistic and conspiratorial as the contribution from the member for Hillarys. In November 2017, the member for Nedlands had this to say about workplace culture. He said —

> Workplace safety is extremely important.

Hear, hear, Liberal Party! It continues —

> The previous member who spoke in the debate mentioned culture. She has pretty well hit the nail on the head —

That is a very nice compliment that the member for Nedlands paid to the member for Morley —

> … having a culture in that workplace that promotes safety.

The member for Cottesloe made exactly the same contribution this afternoon —

> Culture is essential to workplace safety. That starts from the top, in terms of the values of the organisation, and goes right through to the chief executive officer and all the staff, right down to the newest person to the organisation.

I accept that that proposition is right. It continues —

> … we want to make sure that workplaces are safe. It is often said that after going to work, a worker has the right to go home. We do not want workplaces where people do not have that possibility—where it is that dangerous, there is no attention to detail and there are hazards. We do not want those workplaces to exist. It is important that there are incentives and disincentives —

The member for Cottesloe wanted to understand why we would put penalties on people. Obviously, we want to encourage a culture of workplace safety. If a person does the right thing, they get the carrot; if they do the wrong thing, they get the stick. It is a very sensible and well-established philosophical basis to proceed in terms of implementing policy. The member for Nedlands continues —

> It is important that there are incentives and disincentives to make sure that workplaces are safe, and this bill goes some way towards that.

Once again, it is disappointing to hear members of the Liberal Party abandoning their position in support of workplace health and safety.

I have not yet talked about clause 72 and the scurrilous accusations made by the member for Hillarys, which were well and truly beneath his dignity and experience. As a lawyer, I would have thought that he would have a much greater grasp of the reasons why clause 72 had been drafted in the way that it has been drafted. I draw to that member's attention the decision of Commissioner Newell of the New South Wales' Industrial Relations Commission on the Sydney Trains v Safework NSW [2017] NSWIRComm 1009. Paragraph 11 states —

> It can fairly be said that neither s.72 nor Part 12 of the Act are shining examples of the parliamentary draughtsman's art.

That is because those sections lead to confusion and uncertainty. This government's response to that was entirely correct in that it took the case law, which was adjudicated on these provisions in the model legislation, and made sure that our brand-new Western Australian legislation—the most contemporary legislation in the commonwealth—did not contain the same problems. It is not some factional conspiracy that the member for Hillarys is trying to peddle to undermine the credibility and validity of the legislation that we are bringing forward. It is actual, sensible policy making and parliamentary drafting. Paragraph 42 of the same decision states —

> On any proper construction of s.72(1)(c), the HSR's have this statutory right: to choose a course in consultation with the employer. That right cannot be pulled apart into component parts. It is a right as a whole.

The members for Hillarys, Cottesloe and Nedlands were asked, by way of interjection, during their contributions, "Please tell us what the current state of the law is." The member for Nedlands, quite rightly, confessed ignorance and said, "Look, I don't know. It's not my area. Hopefully, the minister can illuminate us during the second reading reply." The member for Hillarys ignored the question and pirouetted to the model act, which has absolutely nothing to do with the current state of the law in Western Australia, which is the Occupational Health and Safety Act. That act provides that a health and safety representative is entitled, at their discretion, to choose the course they wish to undertake. Nothing is changing. There is no secret agenda afoot. There is no scurrilous approach here by the minister. I was astounded that the Liberal opposition could have the temerity to criticise this minister, after all the consultation and stakeholder engagement that he and his department have done, and have the audacity to suggest that he has done anything other than what is entirely appropriate.

My next point is this: the member for Hillarys said, "You know what we should do? If we're going to have an industrial manslaughter provision, we should put it in the Criminal Code." That just exposes the ignorance of the proposition advanced by the member for Hillarys.

Mr P.A. Katsambanis interjected.

Mr S.A. MILLMAN: Mr Acting Speaker, please.

The ACTING SPEAKER (Mr R.S. Love): Members, the member for Mount Lawley is giving his speech. I would suggest to the member for Mount Lawley that if he does not want to be interjected on, he does not directly challenge the member for Hillarys.

Mr S.A. MILLMAN: Very well, Mr Acting Speaker.

To the extent that it has been suggested by anybody that the Criminal Code is a better place to put industrial manslaughter provisions —

Mr P.A. Katsambanis: Oh, what a pirouette that was!

Mr S.A. MILLMAN: Thank you.

I quote from the submission to the Senate inquiry that was referenced in the minister's second reading speech. It reads —

> The ACT Government recognises that the industrial manslaughter provisions drafted in 2004 may not be the most contemporary legislative model for dealing with industrial manslaughter.
>
> **The ACT Government therefore supports the inclusion of an industrial manslaughter provision in model work health and safety (WHS) laws that are based on Queensland legislation. The Territory has advocated this position in the review of the model work health and safety legislation which is currently underway.**

That is the Boland review, which I have already mentioned. The ACT was the only jurisdiction to put industrial manslaughter in the Criminal Code. It said, "We did that in 2004; we did the wrong thing. What we in fact ought to have done is put it in work health and safety legislation." To what Queensland and Victoria have done, and what Western Australia is proposing to do in this legislation, the ACT government said, "That's the right thing to do. We should do that." Therefore, to the extent that anyone would suggest that we should locate the industrial manslaughter laws in the Criminal Code, please take the time to do the research and find out exactly what the ACT government says about that.

I will have a time extension, if I may, Mr Acting Speaker. I am going to try to get us through to six o'clock.

[Member's time extended.]

Several members interjected.

The ACTING SPEAKER: Members!

Several members interjected.

Point of Order

Mr W.J. JOHNSTON: It is unnecessary for the manager of opposition business to interject himself into a debate in this way, and I ask for him to be called to attention.

The ACTING SPEAKER: I am quite capable of doing that. Please, let the member for Mount Lawley make his contribution.

Debate Resumed

Mr F.M. Logan: You're a dickhead, mate!

Withdrawal of Remark

Mr Z.R.F. KIRKUP: The Minister for Emergency Services just called me a dickhead. I ask him to withdraw.

The ACTING SPEAKER (Mr R.S. Love): Minister?

Mr F.M. LOGAN: That is a very, very difficult request, but I will concede.

Members: Just withdraw.

Mr F.M. Logan: I just did.

The ACTING SPEAKER: Have you withdrawn your remark, unreservedly?

Mr F.M. Logan: Yes.

Mr P.A. Katsambanis: Stand up and do it!

Mr S.A. MILLMAN: Mr Acting Speaker, I will just proceed if I can.

Several members interjected.

The ACTING SPEAKER: It is now two minutes to 6.00 pm. Could we just proceed for the next two minutes without interruption?

Debate Resumed

Mr S.A. MILLMAN: My next point is going to be one that the Acting Speaker, as a member representing the agricultural region, will be interested in. One of the fundamental problems that we have in Western Australia is just how many workers are dying in the agricultural region. When making her contribution on 7 November 2017 to the Occupational Health and Safety Amendment Bill, the member for Morley quoted an article from *The West Australian* of 26 October titled "Is my job killing me?". It states —

> According to WorkSafe WA's data on work-related traumatic injury fatalities, the agriculture, forestry and fishing industry ranked worst over the past decade for fatalities, with the deaths of 45 workers.

I would urge country members, regional members, members of the Nationals WA and members of the Liberal Party who represent regional areas—I know that we are the largest party in Parliament representing the regions, and our members are going to support it—to give serious consideration to just how many workers are dying in the agricultural and fishery industries. Heed the recommendations from all the experts who have thoroughly done the work, research and analysis into these matters. This legislation is specifically designed to try to alleviate the tragic incidents of workplace deaths in the agricultural, forestry and fishery areas.

In the time that I have left, I want to conclude by saying that there have unquestionably been a number of landmark achievements from the McGowan government. Following the Royal Commission into Institutional Responses to Child Sexual Abuse, the work of this government in passing legislation, in accordance with the recommendations of the royal commission, to lift the statute of limitations so that victims could access —

The ACTING SPEAKER: Thank you, member. Members, given the time, I will now leave the chair until the ringing of the bells.

Sitting suspended from 6.00 to 7.00 pm

Mr S.A. MILLMAN: I will conclude my comments. Mr Acting Speaker, so surprised was I by the contribution from the member for Hillarys, which was so inconsistent with his earlier statements, that unfortunately I have got nowhere near those matters that I wanted to address. However, I am heartened, because I know that we on the government benches have a number of speakers lined up who will be able to traverse a number of the important matters in these bills. We have experienced former union officials, occupational health and safety advocates, and lawyers. I know that my friend the member for Perth will share the personal tragic story of Wes Ballantine, as Regan Ballantine is a constituent of his, so I look forward to his contribution.

Suffice to say, I have called on members of this chamber to pass this legislation as it will provide the proper foundation for an effective functioning work health and safety system. It will provide a system that is properly resourced and harmonised. It will be the most advanced system in the commonwealth. What a great position for

Western Australia to return to on occupational health and safety—to have the most progressive and up-to-date statutory regime; to take the recommendations from the most recent thorough investigations, the Senate inquiry that has already been referred to and the Boland inquiry, and to legislate them to make sure that those changes are incorporated into our statutes, so that not only will Western Australian workers have access to the best legislation, but also Western Australian businesses will have access to a harmonised work health and safety system. Rather than be as the Liberals were—to wait and wait and wait, exactly as they did during the last term of the Barnett–Harvey government, not do anything and sit on their hands—we are taking recommendations that are fresh, up to date and supported by evidence, and we are incorporating them into the legislation.

I finish by saying that the process undertaken by the Minister for Industrial Relations that I was very grateful to be able to participate in was an incredible process. The ministerial advisory panel that made recommendations to the minister was made up of representatives from the Chamber of Commerce and Industry of Western Australia, the Chamber of Minerals and Energy of Western Australian and UnionsWA. This was an excellent example of this government's unique ability, unparalleled and absent from the previous government, to foster tripartite collaboration and dialogue. I would say this to those members opposite who are not full throated in their support of this legislation. Time and again since the commencement of the fortieth Parliament, members opposite have told us that they would do whatever is necessary to ensure that the number of workplace fatalities is reduced. The member for Nedlands said it and the member for Hillarys said it. The victims of workplace fatalities have already had to deal with broken hearts and broken lives. Members opposite, do not let them have to deal also with broken promises.

DR M.D. NAHAN (Riverton) [7.04 pm]: I would like to make a contribution to debate on the Work Health and Safety Bill 2019, which is in cognate debate with the Safety Levies Amendment Bill 2019. Let us be honest—this process to reform and set our workplace laws has been going on for 40 years. It started back about 40 years ago, essentially in Britain, when the principles were laid down to codify common law. Essentially, it was to ensure that there was a duty of care imposed on those who have control over the workplace, backed by detailed regulations and code of practice; further, it involved the principles of the Occupational Safety and Health Act that codifies duty of care, or, as I said, under the common law. The duty is imposed on employers, self-employed people, owners and owner–occupiers, and workers also have an obligation not to put others at risk and to obey reasonable instructions from their employers. It has evolved in the United Kingdom, Canada, New Zealand, and, of course, across the Australian states and federally over that time. At the same time, in most industries, at least, we have quite rightly adopted a great deal of commitment to zero harm in the workplace. We see that particularly when we visit mine sites. From the top to the bottom, there is a commitment to worker safety. We can go to Barrow Island and see that. Even though I have been involved in that just tangentially, we can see the development. I accept that this needs to be spread more widely than some of the old traditional industries. As a young man, I worked in agriculture, forestry and fisheries. No-one is arguing about the essential nature of the process, the directions it is going, its importance or its need to continue to progress. We have done a great deal of work and more work is to be done.

These bills have their genesis back in 2008, when, at the commonwealth or Council of Australian Governments level, there was an attempt to harmonise health and safety regulations across the states. A number of processes were put in place, including a report in 2008 and another in 2013. Of course, more recent reports have followed, by Boland, and, of course, the Senate committee. This builds on what the government inherited from us plus those national committees and puts them into legislation. Fair enough—not too much of a disagreement on that. Perhaps the member for Hillarys has some quibbles here and there and needs some information. It is not a radical piece of legislation generally—there is one aspect I want to focus on—but the process and detail is reasonable. I think it is very sensible to harmonise national legislation on occupational health and safety. It makes a lot of sense. We are an integrated world and an integrated nation. Of course, one of the issues for us is that our mining industries had essentially a parallel but different regulatory process from other industries. I think the minister has gone about preserving that in an appropriate manner. No problem.

One of the issues for the last 20 years has been the union movement pushing for industrial manslaughter. That started again in New South Wales back in about 2000 or 2001 and went into Victoria. Now this has come and gone; been thrown out by the High Court; been legislated on in certain other states; altered, particularly in Victoria; and is now coming back in a different form. I think that the member for Mount Lawley is right: the Boland review—the process led by Ms Boland—has recommended in some form or fashion that industrial manslaughter be treated as part of the common code. This bill goes further than that. Yes, this bill has clause 30A, which will take the issue out of the Criminal Code and put it in the occupational safety legislation. I am not a lawyer, so I am not going to argue about whether that is the appropriate place to put it. The federal processes for developing a common code show that it should be in work health and safety laws, and I accept that. I have no problem with clause 30A. If an individual boss or otherwise acts recklessly and vindictively and causes a death, they should meet the full force of the law, whether it is occupational health and safety law or the Criminal Code or both. There is no disagreement there.

The real issue is not only the processes under which clause 30B has been drafted, but also the details. The reality is that that was not considered or proposed in the various review processes under which the national code is being developed; nor was it a commitment by the government when it agreed to create new work health and safety laws; and nor was it discussed during the ministerial advisory process. It was grafted on, as the member for Hillarys pointed out, after, let us say, an excited Australian Labor Party conference last August and September. The union movement obviously complained and disrupted and got its long-term campaign for a widening of industrial manslaughter laws put in this bill. That is its genesis. This is not the first time we have seen it. As I said, it was introduced in New South Wales and Victoria.

I want to highlight some of the problems, particularly with some of the words used in clause 30B. I have no problem with clause 30A and I am not going to quibble about the rest of the legislation. It is a commonly accepted stepping stone in the evolution of workplace safety around the nation, and I agree that we in Western Australia should adopt it. However, clause 30B is the odd one out. No other state, except perhaps the Australian Capital Territory, which is not a state and has had no prosecutions, has something this drastic. Clause 30B relates to simple offences. We are dealing with death. That is not a simple offence; it is a serious issue. The problem is manyfold. This relates to what happened in New South Wales and Victoria and I will get to that. I will give some case studies that arose there that show that this type of legislation will probably undermine the commitment to safety in the workplace, not help it.

First, this provision will obviously apply when there is a death in the workplace but there is no evidence of gross recklessness, negligence or gross negligence; in other words, it is not clear-cut that a person in the workplace caused the death. Clause 30A covers that. It also reverses the burden of proof in that if there is a death, the accused person will have to prove it not to the Supreme Court, High Court or District Court, but to a magistrate. The process of accusation will not be covered by the police or the Director of Public Prosecutions, who are experts in this, but by the WorkSafe bureaucracy, which has no expertise in this area whatsoever.

Let me go to New South Wales where this was essentially put in place in 2000 and, by the way, thrown out as unconstitutional by the High Court. I will go through some of the issues. A part-time farmer in New South Wales named Graeme Kirk was working in the paddocks on a tractor with his best mate and neighbour. An accident happened. His best mate and neighbour died in a tractor accident. It was a tragedy. Those in the farming community know that their neighbour is their mate and that he is out there helping them, so a death is always bad, but a death in those circumstances is tragic. Mr Kirk was convicted under the New South Wales industrial manslaughter act because the tractor was his and the farm on which it was being operated was his. He was convicted of industrial manslaughter. Luckily, people pulled together and raised a lot of money and the case was eventually taken to the High Court. It cost Mr Kirk and others—by the way, he was supported by his neighbour's family; his neighbours did not support this action against him—$1.2 million to take the action to the High Court. All of us who have worked on farms know that farming is very dangerous, especially those bloody tractors. I will read what the High Court said. First of all, it threw out the case. The High Court warned all Australian tribunals and quasi-courts against thinking that they could turn themselves into unappealable fiefdoms of power. The High Court has not created new laws but, rather, has enforced rights guaranteed under the Australian Constitution. These include the principle that prosecutors must prove an accused person's guilt and that convicted persons must be able to appeal the decisions. In reaching the conclusion, the High Court said that there was a line of judicial authority guaranteed under the Constitution that ensures that every person has a right to have a decision against them reviewed by superior courts—that is, in the Supreme Courts in the states, the Federal Court at the commonwealth level and, ultimately, the High Court. This bill will not allow that to be done. The High Court said that a government or quasi-tribunal should not think it can create statute or legal argument that can prevent a review, and it threw out this case in New South Wales. There was a difference. The prosecuting authority in New South Wales was the New South Wales Industrial Relations Commission, not the workplace safety bureaucracy. That is the difference and perhaps the minister can explain that.

There was another case in New South Wales at the time. Again, it involved a farmer. I would like to emphasise that this is a common phenomenon. At Rockdale Beef in the Riverina district, a truck came onto the paddocks to deliver goods or maybe to pick up cattle. The driver of the truck was a contractor delivering goods to Rockdale Beef farm. The driver made a mistake; whether he did not take the truck out of gear or did not turn off the engine, he got run over by his own truck. The person from Rockdale Beef farm was sued and issued with a fine of $200 000 and incurred SafeWork NSW costs of $320 000. In other words, that farm was hit with costs of $500 000. Again, just like in the Kirk instance, the processes by which the Rockdale Beef farm could have prevented this accident could not be identified, although it did take place. In other words, there is a tendency to think that people are guilty because they are the boss and that is it.

These are very difficult circumstances. What is the response? If something cannot be fixed or identified, how are actions such as those proposed for industrial manslaughter in clause 30B supposed to be helpful? How will it fix anything? What it does do is tell people not to go on the farm and set up mechanisms to eliminate any type of risk whether or not that risk is identified. I will give members another example from New South Wales in which the Salvation Army was fined and sued under this type of provision. This example shows that it applies to not-for-profits. I will go through this example because the processes and accusations set up in the bill are very similar. These case studies show the flaws in the jurisdiction of other states and why they have walked away from their legislation.

In this case in New South Wales, a Salvation Army nursing assistant was bathing a comatose patient when the mixing valve on the hot water system failed and the patient suffered first and second degree burns to between 30 per cent and 40 per cent of their body and died a few days later of related causes. It was a tragedy. WorkCover charged the employer, the Salvation Army, for failing to ensure the safety of non-employees; in other words, the nurse was a contractor. It said that a formal maintenance system would have detected problems in the water system. A coronial inquiry found that the problem would have taken some time to develop; that is, they could not have identified whether the mixing valves worked. An earlier coronial inquiry into thermoscopic units suggested that they should have been working. No warnings were given by the New South Wales Department of Health or the department of public works and safety. The New South Wales Department of Health issued circulars under the Public Health Act and, at all times, the Salvation Army complied with them. They tested these things regularly. Partridge Plumbing, the contractor that installed the valves, was also prosecuted and fined $30 000. During the prosecution it emerged via a WorkCover expert that the only way the failure of the valve could have been detected was by a metallurgical engineer using a stereomicroscopic magnification.

[Member’s time extended.]

Dr M.D. NAHAN: When it was examined by such a person, it was determined to be intact and undamaged. A code of conduct was in place and its provisions had been thoroughly met. In other words, because there was an unfortunate death and obviously things went wrong, the employer in this case, the Salvation Army, was guilty because it was the employer. I put to members: how does that help? How does it help progress what we all agree is the steady march to improving occupational health and safety and encouraging all participants in a workplace to be committed to absolute safety and adopting absolute safety in anything and everything that they do? I admit that the employer, of course, has a higher level of responsibility than do workers—they are, after all, not only the employer, but also set the culture of the place and set up the system. Workplaces only work and are only safe when workers and employers work together in joint commitment. If a new system is shoe-horned in in response to the union movement at the ALP conference in August or September last year—one that has been tried and tested and failed in the eastern states—it will undermine workplaces in Western Australia. That is where this is going. There is no need and no justification for this provision. The various processes of reviewing health and safety intrastate, the Boland inquiry and the Senate inquiry do not suggest this type of thing and they do not recommend it. It is not in the code that is being developed. It is an issue of the government’s creation and it was not debated widely in the business community or otherwise. It has been grafted on by issues in the Labor Party and it will harm workplace safety in our state if it is progressed. I look forward to the minister explaining how it will not. It is completely and utterly unnecessary.

We have a whole range of processes in parallel with occupational health and safety that look at deaths in the workplace. The coroner looks at every incident and makes recommendations about processes at work. WorkSafe examines any issues, not just deaths but injuries, and recommends improvements in workplaces. Part of this bill involves expanding the education and training of people, which is admirable. There is a whole range of other institutions in workplaces in which we have committees and discussion processes to have continued improvement in work safety. But a provision such as clause 30B, which picks out employers and defines them as the cause of workplace accidents and takes them out of the normal judicial process is just wrong. I am really puzzled; I never could understand why the union movement has pushed for this for 20 years. The union movement has had, as the member for Cottesloe indicated, an excellent track record around the nation in developing, arguing for and enforcing improvements in work safety. It has been one of the great success. It has lost touch perhaps with other aspects of representing people in the workplace, but that is one area in which it has done well. This time it has pushed it too far. It appears to be a throwback to the them-and-us mentality that existed in workplaces way back in the 1970s, which we hopefully have moved away from.

The bill has a lot of merit. It has had a very long gestation period. Some aspects of the national code are still being developed in parallel with the bill. Clause 30A has not been picked up by other states or the code, at least by Ms Boland’s recommendations. There is no problem there. But clause 30B is a graft on that is unique to Western Australia, a throwback that existed in New South Wales 20 years ago and was thrown out by the High Court 25 years ago. A large number of case studies show that it will jeopardise work safety and undermine the culture and treat

particularly small businessmen as victims in that it will pick on them. It will drive them into bankruptcy. In Britain, 97 per cent of actions under its industrial manslaughter, which is different from ours, involve small businesses. Small business will be the target of this. Therefore, I simply support all aspects of the bill except clause 30B. I cannot accept that the government, for its own political internal reasons, has grafted on an aspect such as this that will undermine 40 years of progress in occupational safety and victimise small business owners and businesses when they suffer a death in the workplace because they will be treated as the cause and will not be able to access the accepted processes of natural justice. Nothing justifies that, let alone a bit of support within the Labor Party caucus for certain aspects of the union movement. Our workers and employers need better. This is completely unnecessary and it will do great harm to our workforce and our economy and to occupational health and safety in this state.

MR K.M. O'DONNELL (Kalgoorlie) [7.29 pm]: Greetings, Mr Acting Speaker. Thank you very much. I, too, would like to talk about the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019. From the outset, I am not opposed to this. I have read the explanatory memorandum, and it says that this bill is to improve consistency with the rest of Australia. I thoroughly accept and agree with that. Some objects of harmonising work health and safety laws are to protect the health and safety of workers and to improve safety outcomes in workplaces. That is good for workers in Coles stacking shelves, furniture removalists, office workers and police. It is to help protect workers.

I am sorry I keep referring to the police, but a lot of these laws and bills reflect what I have done in the police department. Going back a few years to the 1980s, I remember one night we had a bomb threat at the airport in Kalgoorlie. Four of us drove out in two vans to the airport. The sergeant said, "Righto; we have to go and search the plane." They started looking at each other. They were looking at the regimental numbers on our shirts. At the time I did not realise what they are doing, but they were trying to work out who the junior officer was. I had been in the force for only two years.

Mr M.J. Folkard interjected.

Mr K.M. O'DONNELL: As a former police officer, the member for Burns Beach can relate to this.

Mr M.J. Folkard: It still has not changed.

Mr K.M. O'DONNELL: No. My number was the highest. The higher the number, the more junior you are. The sergeant said, "In you go, Constable." I said to him, "What do I do? I've never been trained in bomb detection. What if I see a bomb—what do I do?" He said that I should let them know. His comment was that it was so they could get as far away from the aeroplane as possible. We did not have training. What I am getting to is that nowadays a lot of people get trained in their occupations, but, even with training, accidents and various things continue to occur.

The explanatory memorandum states —

- a primary duty of care requiring persons conducting a business or undertaking (PCBUs) to, so far as is reasonably practicable, ensure the health and safety of workers and others who may be affected by the carrying out of work;

An example of this was when I was relieving in Laverton in 1984. We could be 50 metres from the police station and call on the radio for backup, but the Laverton Police Station would not hear a thing. Members would be surprised to hear that Broome, Halls Creek or Kununurra police stations would receive the radio signal. That is how bad radio communications were back in the 1980s. We had to tell them to get more coppers there quickly. Broome would have to ring, but it would take minutes, and when police officers need backup, minutes are a lifetime. Things have improved out of sight with the police department.

I would also like to talk about the industrial manslaughter penalties. At the moment, the plan is to have a penalty of 20 years' imprisonment and a fine of $5 million for an individual or a fine of $10 million for a body corporate. I would love to see minimum penalties come into this so that we really set the mark: we are not putting up with this. I know we need to let the courts work things out, but I think we should also be looking at minimum penalties. I have reservations about the industrial manslaughter simple offence going before a Magistrates Court. Magistrates are quite competent, but when talking manslaughter, I do not think it should be heard by anyone lower than a judge in the District Court. That is just my opinion. For the simple offence, the penalties—the jail times and money—are halved. It looks like an easier prosecution case. That is just my reading of it.

The member for Mount Lawley said that the member for Perth would talk about the Wesley Ballantine incident. In no way do I want to pre-empt him, but in my opinion that was a shocking incident. I printed off an article to go over things. It says that he was only 17 years old. It states —

> A site supervisor for Valmont WA, the main contractor for the final stage of the project, had seen Wesley and his manager not wearing safety harnesses and with no other suitable safety measures in place.
>
> When the pair were called down and told to use them, there was no adequate fall prevention system …

I do not know whether he fell after the supervisor saw them and called them down, but that is a very ordinary situation—completely and utterly. When I saw that the penalty was $38 000, I thought it was disgraceful. I do not think anybody could say otherwise. I agree with his mother, who said the same thing. She talked about having a minimum penalty. A penalty of $38 000 for a life is not good at all. The article continues —

> "Under these new penalty levels, it is arguable that the fine imposed could have been around $285 000,"

That is attributed to Minister Johnston. In itself, that would be much better. As I said before, Mrs Ballantine wants the government to consider introducing minimum penalties. I agree with Mrs Ballantine and hopefully that will come to fruition—if not with this bill, then it can possibly be amended later. The Road Traffic Act has the offence of dangerous driving causing death. I would love to see an offence of dangerous workplace causing death.

I remember when some Aboriginals out at Kanowna borrowed somebody's car and drove the car into Kalgoorlie. On the way back, they had an accident and a passenger in the vehicle died in that traffic accident. I am not belittling it, but in Aboriginal culture their approach to industrial manslaughter is that somebody has to pay for a death. When I was finding out about all this going on, I thought they would go after the driver of the vehicle. No. They went after the owner because they thought the owner should never have let them have the car and that the driver would not have killed the person if the owner had not let them have it. The owner got speared. If their culture had a financial position, someone might have offered to pay or give food or something so that the owner would not have been speared, but they do not have that.

In the explanatory memorandum, point 24 states —

> The phrase 'business or undertaking' is intended to be read broadly and covers businesses or undertakings conducted by persons including employers, principal contractors, head contractors, franchisors and the Crown.

It is good to see that it goes right to the top, but I dare say that would hopefully make the Crown take notice of their workplaces. As an example, I refer to police and prisons. Many a time in the media we have heard over the years that there are not enough police out there and not enough prison guards. I dare say that once this bill passes, there will probably have to be a shakeup to ensure that police and prison officers have adequate equipment to carry out their work. I applaud governments over the last few years for improving the weapons that police use, along with Kevlar vests and stab-proof vests. The weaponry has changed. I remember we had only .223 rifles and a shotgun beside the pistols, the Smith and Wessons, which were cowboy guns.

Mr M.J. Folkard interjected.

Mr K.M. O'DONNELL: Yes, and they were very heavy, those cowboy guns. Then we went to the Glocks. The next minute we ended up with the semiautomatic firearms.

Mr M.J. Folkard: And the Sigma before that.

Mr K.M. O'DONNELL: The Sigma came before the Glock. Smith and Wesson was naughty because it took somebody's patent.

The police department is getting more and more tools. In my opinion, the government of the day is going to have to ensure that when police staff go into situations, they have the necessary manpower. When I joined the police department, lone patrols were common. In Kalgoorlie, it was common for one sergeant and two police to be on duty on the night shift. The sergeant manned the front counter, answered the phones and the radio and was in charge of the lock-up, but those days are gone. We do not have one person doing all of that; we have three or four. I think we need a minimum amount of manpower at police stations during different shifts. Minimum manpower was introduced in Kalgoorlie Police Station in 1989 when the new station was built. There was talk about 10 staff for the afternoon shift, nine for the night shift and 10 for the day shift. That was maintained until it had to be pulled back because it was cost prohibitive to maintain those numbers. More police are there nowadays. If a police officer is going out and does not have support because of funding, holy cow—if someone was killed and it got to the industrial manslaughter stage, it would be huge. The supervisor would be the first cab of the rank—I assume that is how it would work—or whoever was in charge.

We do not do lone patrols today, but I was sent to Coonana about 200 kilometres out of Kalgoorlie, when an Aboriginal stole a car from a bikie and the bikie's wife jumped on the bonnet of the car. The offender reversed down the street with her on the car but she fell off and was killed. Rumour had it that the following week all the bikies were going to Coonana for payback. We were short-staffed and the sergeant asked me to drive to Coonana and

see if there was any trouble. He said the police would head out there if I told them there was trouble. No-one can travel very quickly along 170 kilometres of back roads. Back then, we did whatever we were told. We did the job. Nowadays there is no way in the world anyone would be sent out on a single patrol for something like that, and I agree with that. I do not mean to be a broken record, but I think this legislation will change the dynamics of some government departments. They will have to ensure they are not a victim of industrial manslaughter because of a workplace accident. They must cross their t's and dot their i's. As humans all we can do is train them up.

The bill lists the kinds of persons who are not intended to be PCBUs, such as individuals who carry out domestic work in and around their home. I would have thought it would be better if the legislation stated the persons who are "excluded" from being PCBUs rather than "not intended". I dare say that if something really bad happened, they could be. I wonder whether farmers and nannies can come under this provision. My question to the minister—I do not necessarily want an answer tonight—is: if someone gets a babysitter regularly to mind the kids for a couple of hours once a week or a couple of times a week, would the employer of the babysitter fall under this legislation? One-off events might include individual householders who organise a dinner party or a garage sale. We have seen cases when someone holds a party on the second or third floor of an apartment and 25 or 30 people cram onto the balcony to watch the fireworks and it collapses. That might be a one-off event. Would the householder be exempt from that provision or, because the bill says they are not intended to be PCBUs, can they still be liable? It is a far-fetched question but sometimes some things come out of the blue.

I want to talk about workplace training. I will not be too much longer on this. Clause 72 is "Obligation to train health and safety representatives". Clause 72(1) states —

> The person conducting a business or undertaking must, if requested by a health and safety representative for a work group for that business or undertaking, allow the health and safety representative to attend a course of training in work health and safety that is —
>
> …
>
> (c) chosen by the health and safety representative.

I am assuming that the person has thought that that provision would help in that person's job and would go to the employer and say, "I need to see this."

[Members time extended.]

Mr K.M. O'DONNELL: I would have thought the employer would choose the course. From my reading of this, the health and safety representative knows what course should be done. The bill goes on to state that if an agreement cannot be reached and the employer—the PCBU—does not agree with the health and safety person, the regulator is to appoint an inspector to decide the matter. Clause 156 lists the various people who can be an inspector, and I have no problem with that. However, clause 72 states —

> (6) The inspector may decide the matter in accordance with this section.
>
> (7) The person conducting the business or undertaking must then —
>
> (a) allow the health and safety representative to attend the course of training at the time decided by the inspector;

I would have thought subclause (7) should read, "If the inspector approves the health and safety representative to attend the course, then the person conducting the business must then allow him." The bill assumes the inspector will approve it straightaway. That is how I read and interpret that provision. The bill states that the inspector may decide the matter and the person conducting the business must then allow the health and safety representative to attend the course of training at the time decided by the inspector. I think that should change.

That is it, basically. I hope this goes through and we get certainty on worksites.

MR J.N. CAREY (Perth — Parliamentary Secretary) [7.48 pm]: It is an honour to speak to the Work Health and Safety Bill 2019, which we know from the Minister for Industrial Relations is the biggest reform to WA's workplace health and safety laws since the introduction of the Occupational Safety and Health Act 1984. We made a very clear commitment and we are now bringing forward that commitment that will bring work and health safety in all workplaces in Western Australia under a single act. We have heard from members, many of whom talked about theoretical examples. I want to acknowledge in particular the member for Mount Lawley for providing a historical oversight of how these laws came about.

I want to take a different approach tonight to speak to these laws. I want to tell the personal story of just one of many people who have lost their lives on worksites. This is why it is so important, because it is important to members of communities and their families—to our constituents. I want to talk about the story of Wes. Wes was a beautiful young man. He was just six weeks from celebrating his eighteenth birthday. Like every 18-year-old, Wes had the world at his feet. I am told he was a very talented guitarist. He was the epicentre of his group of friends. He was a true friend. He was loved by many. He had just opened another door on an exciting part of his future—a door that I think we all know and remember at that age. There were new experiences in growing up and learning—all that excitement in finding ourselves. Like many Western Australians, in January 2017, Wes went to work. He was a trade assistant working at the old General Post Office adjacent to Forrest Place. He was installing the building fit-out for the H&M store. I have walked through those doors and shopped there; we all have. He was on a night shift at the time of the accident. This shift was part of working around the clock to get the renovations done. He was working on the installation of an atrium roof. That involved fitting a steel and glass atrium roof between two floors. He was assisting to install that glass ceiling when he fell through that large void. He fell 12 metres onto the floor of the post office. He was rushed to Royal Perth Hospital, but later died of his injuries. I think we would all agree that there are no words to describe the utter loss in this case—the waste of a young life and the devastation for family and friends. I am a single man with no children, so I do not know how it feels to lose a child, but anyone with an ounce of empathy would understand that it must be one of the most inhumane fates to befall any person. It is devastating and shocking to be in the unnatural position to bury a child. It is traumatic and life-changing. There is always a cleaving before and after; it becomes a defining moment.

Wes was the only child of Regan Ballantine. Regan is here tonight and I acknowledge her incredible work and advocacy for these laws. I will never be able to describe Regan's pain, but I do want to give my friend—she has become a friend over this time—a voice in this Parliament. Regan said to me —

> He was the father of my future grandchildren, my future carer when I get old. He was my only child, who I shaped my entire life around. In an instant, in one breath, one heartbeat, he was gone, and I was left to pick up the pieces of a life which was completely shattered, to rebuild myself, my life and everything that I had ever known. And to somehow be expected to live with the fact that his death was utterly preventable and that there are no consequences for failing to prevent it. A person could never feel more cheated.

Let us be crystal clear: nothing—no penalty or financial impost—will restore what has been lost for Wes and Regan, yet the fact remains that the current penalties offer so little a deterrent that again and again we see lax safety on construction sites and in other workplaces. We often hear of a death on a worksite but nothing seems to change. Many young workers fall victim to industry cowboys, who, regardless of the rules and regulations in place, try to seek the quick fix, the cheapest way out, and trade workers' safety for it. As we know, we can never place a price on human life, but the company that was responsible for failing to keep Wes safe and alive was fined just $38 000 following his death. This shows that the current laws are not right. There was no justice for Wes and there is no significant deterrent to protect workers from harm. Valmont WA, the head contractor in Wes's case, was charged under state work health and safety law with failing to ensure that persons who were not its employees were not exposed to hazards. As I said, the WA Magistrates Court imposed a fine of $38 000 after the company pleaded guilty. WorkSafe Western Australia Commissioner, Darren Kavanagh, stated that the company had failed in its duty to ensure that its subcontractors observed its obligations to ensure work was performed safely. The court heard that a Valmont site supervisor had seen Wes and his manager not wearing safety harnesses on the atrium before the tragedy. This is a quote —

> They were called down and told to wear their safety harnesses and personal protective equipment but there was no adequate fall injury prevention system for them to connect their harnesses to.

Be very clear: no anchor points were installed to connect a harness to. There were no safety barriers and no covered holes. Mr Kavanagh said the site supervisor did not follow his own company's procedures and the company deserved to be prosecuted over its failure to protect workers. The maximum penalty for that offence was $200 000, yet Wes's life was deemed worth only $38 000.

Anthony Forsyth, who is a professor of workplace law at RMIT University, noted in the prosecution summary that there were several open voids in the structure of the atrium steel framework. There was also no adequate fall protection system in place. No induction presentation was carried out highlighting the high-risk atrium area or the hazard risks register. There was no safe method for performing duties such as standing on top of steel beams to install glass in the atrium. Contrary to Valmont's policy, no regular safety inspections of the high-risk work were carried out. In his column, Anthony rightly asks whether it is right that a guilty plea for failing to provide a safe work environment that resulted in a teenager's death did not at least justify the imposition of the maximum penalty for the part that Valmont played in the death.

It is time we had laws that reflect the seriousness of workplace deaths and their devastating impact on families. Regan Ballantine, who is now an advocate, puts it well —

> If you are convicted of a high level of negligence causing death in a workplace you are fined, which your insurer pays out on, and you can just continue on operating your business and being responsible for employees.
>
> How is that equitable or just?
>
> It is grossly unfair and grossly inadequate and this is why there needs to be reforms to place equal value on the life of every human no matter where they are killed.
>
> It's time that we level the playing field and treat every life with the same respect and value.

In terms of her own son's terrible tragedy, Regan said —

> We are talking about a situation where the head contractor knew there was an 'obvious and high-risk hazard' on the site but did nothing about it. But why would they?
>
> There are no consequences.
>
> What kind of message does that send industry and how much of an insult is that on my son's life?

I absolutely agree with that assessment. We need the possibility of serious criminal consequences, including jail time for individuals, as it is the only way to ensure that work safety breaches are not simply treated as a price of doing business. We need the cowboy contractors and companies to understand this: there are serious consequences if they do not provide a safe workplace. I am saddened to say and hear that the unions believe that the poor work practices of Valmont continue. It has continued to use unsafe work practices even in the last few months.

I went to end on this: I admire Regan. She does not want to see any other parent go through this trauma. Regan will carry this pain for the rest of her life. These laws will never bring Wes back, but they may, they just may, provide some justice to families who lose their loved ones, and, most critically, prevent further lives being lost. I commend the bill.

MR Z.R.F. KIRKUP (Dawesville) [8.00 pm]: I rise to speak to the cognate debate on the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019 as part of the contribution of the Liberal Party this evening. At the outset, I would like to recognise that as part of this legislation we are dealing with a very serious and concerning issue. All of us in this place would agree that anyone responsible for any negligence resulting in industrial manslaughter and the death of a worker, which means that that person meets a terrible fate, particularly on a construction site, should be treated harshly. There is no doubt about that at all. A number of members in this place have said that this legislation is one of the most historic legislative reforms in workplace safety, and I think that is a fair characterisation, with the short knowledge that I have of the history of this type of legislation.

I have done a bit of reading on this issue as a result of representations made by a family in my district who lost their father, partner and grandfather, Robert Cunico, whom I will speak about later as part of my contribution. I have gone through the reading and now understand that there is in the realm of 200 industrial deaths each year in Australia. That is an exceptionally large number of deaths, and I was surprised to see such a figure. It concerns me a great deal that a large number of those deaths happen in Western Australia, particularly when we have very active construction sites and the like. In my own experience, I have worked for BGC. I have made reference a number of times in this place about the fact that I spent a very brief stint on construction sites as a concrete form worker in Rivervale and then Perth on two apartment construction projects. It was not a job I was particularly well suited to, having spent more than a decade in an office environment and then having to go on a construction site. There were a lot of safety briefings and inductions such as going through the white card, medical tests and all the rest of it. There was a very real commitment to safety on those sites. I appreciate that as humans we are all imperfect and accidents still happen, but we see efforts being made by companies to make sure that they can as best as possible protect the welfare of the workers. It does not mean that things did not happen. I have spoken in this place a number of times about what happened to me, and I will not articulate that again, but the point stands that construction sites are dangerous places, and we need legislation that protects workers as best as it can. It was not until I worked on a construction site that I realised just how dangerous they are.

As such, I applaud the work of survivors who have brought these cases to the government through their advocacy. They have been very vocal in their representations to the media and to the Senate inquiry into industrial deaths in Australia. Regan, I appreciate your continued advocacy on behalf of your son to this place, the media and the Senate inquiry. It is admirable that you continue to advocate so strongly that you want to see this through. The Leader of the Opposition spoke to me and a number of our colleagues about being a mother. I do not have children myself,

but it was very powerful to imagine what it would be like. I am sure all of us here appreciate your contribution, which was highlighted by the member for Perth. Thank you for your work. I think it is very important.

I would also like to reflect on the advocacy of Debby and Ashlea Cunico, who are from Halls Head in my district. As I said, they lost Robert Cunico, who was aged 60, on a Water Corporation site. I will read in a submission that his daughter, Ashlea, made to the Senate inquiry when it was putting together its report into industrial deaths, which is called "They Never Came Home—The Framework Surrounding the Prevention, Investigation and Prosecution of Industrial Deaths in Australia". This is a quote from the report about Robert Cunico, who was killed at work in 2018 at the age of 60. This is provided by his daughter, Ashlea. This quote is slightly lengthy, but I think it is important to respect what occurred, and I want to make sure that the contributions people in my district have made in their representations are reflected in this place. I quote —

> My dad lived for almost an hour in the most horrific of conditions while being cradled in the arms of a work colleague before succumbing to his injuries. Despite the efforts made by the first responders and emergency services, his injuries were so catastrophic that he was never going to survive. My father should never have sustained even a paper cut whilst he was on the job, let alone injuries so severe that his life was ended.
>
> My dad was a son, a brother, a husband, a father, a grandfather, an uncle and a friend to many. He leaves behind a wife of 35 years, three children and five grandchildren—the youngest only being one month old when he died. After the incident that morning, it took almost four hours for our family to be notified of my dad's death when two police officers turned up at my parents' home. My mother was then faced with the unthinkable task of having to ring her three children to tell us of our beloved father's death—one of whom was in Thailand at the time.
>
> Receiving that call was absolutely soul-destroying and unfathomable to say the least…How do you explain to a 12-year-old that his grandfather and best friend is never coming home? What do you say to a five-year-old who says he doesn't want to live anymore, if his Pa can't …
>
> From that moment on, our lives were shattered. You do not ever have a choice to survive grief...
>
> …
>
> We will never come to terms with the fact that my dad is gone. An entire future full of dreams and aspirations has been wiped from our lives. We are now forced to travel these journeys without him. This has been made harder to process by the fact that he deserved the right to come home that day. Every Australian deserves the right to come home safe and sound to their loved ones.

I have met with Ashlea and Debby Cunico, I think, three times so far in my office in my district, and every time I appreciated how hard it must be, and the strength of Ashlea and Debby, just like Mrs Ballantine at the back of the chamber. I appreciate the strength of survivors to be able to continue to advocate the cause of their now passed loved ones. It is very, very admirable, and a strength that I do not think I would have capacity to muster in such a circumstance. I think it is important that we honour the survivors with this legislation, which is why this party and I absolutely stand in support of it. Of course, I think it is important that we treat this legislation on such a serious issue and gravity with the dignity it deserves. With that, I will finish my contribution wanting to recognise those people who have made the representations to me, as well as circumstances that were very close to me and the district I represent.

Rewinding to the time when I was on a construction site, there was an incident at an East Perth construction site that was being operated by Jaxon. Three tonnes of concrete fell off the side of a truck and killed two Irish workers, I think, at the time. That was on the site that we were working on. I was in Rivervale at the time, so some suburbs away, but I have to say that this had a profound impact on the people on my site. I am not from a construction background. My family is from a trades background, but I am not. The impact the incident had on the site was amazing to me in the sense that there was a real comradeship across those sites amongst construction workers. This incident did not happen on our site, but I can still markedly remember the energy of that day. There was absolutely a more concerned tone. Everyone was reminded about safety on our site and everyone was reminded of the impact of that incident happening. That energy, that sense of disbelief and shock, lasted for a number of days at the site I was on. The members of the concrete team I was on did not know these individuals who had been impacted, but they still felt it. Hearing the story of Ashlea and Debby Cunico, reading about the terrible death of a young man, Wes Ballantine, on the H&M site or hearing about what happened on the Jaxon site impacts all of us. It goes beyond what we read in the newspaper and hear about. It matters a great deal because these are people,

to quote Ashlea Cunico, who "absolutely deserved to come home". With that, I continue to support this legislation and look forward to its passage through this house.

I will just make this point: I am incredibly disappointed with the actions of the Minister for Emergency Services before. The Liberal Party continues to treat this legislation with the discipline and dignity that it deserves, and in a respectful manner. For the Minister for Emergency Services, through interjection, to yell profanities at me —

Mr W.J. Johnston: You yelled at him first.

Mr Z.R.F. KIRKUP: Sure.

Mr W.J. Johnston: You made accusations about his behaviour before he said anything to you.

Mr Z.R.F. KIRKUP: If I could just finish, minister.

Mr W.J. Johnston: Well, tell the truth.

Mr Z.R.F. KIRKUP: I am telling the truth. Did he not yell profanities at me, that he then had to withdraw? I am suggesting that that is conduct wholly unbecoming of this chamber for such an important issue.

Mr W.J. Johnston interjected.

The ACTING SPEAKER: Thank you, minister.

Mr Z.R.F. KIRKUP: I realise that the minister has since withdrawn it, but I want to highlight the point that all of us take this very seriously, and that we could do without those types of distractions from people. I do not know what the point of yelling that across at me was—I do not get it—but I think this place and this issue deserve far more respect than the treatment the Minister for Emergency Services gave it.

MRS L.M. HARVEY (Scarborough — Leader of the Opposition) [8.10 pm]: I, too, rise to make some remarks with regard to the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019. As members on this side of the house have put on the record, the Liberal opposition does not oppose this legislation; in fact, many of our members have spoken up, as I will, in support of the very important intent and purpose of this legislation.

I have to say, as a member of Parliament, one of the most difficult meetings I have ever had was the meeting with Regan Ballantine, and I thank her for her advocacy and for participating in telling her story to me. In saying that, I acknowledge to the house that I had the very great joy and privilege of enjoying my son's eighteenth birthday on Sunday, and I do, in a very heartfelt way, acknowledge how dreadful it would be to have faced Sunday morning waking up knowing that I would never get to celebrate an occasion like that with one of my children. It is absolutely horrendous. When Regan was talking to me and my advisers in my office about the impact the death of Wesley had on his mum, his extended family and work colleagues, it was very, very hard to retain composure, I can assure members. Even though our child is 17 years old and working in a grown-up workplace, they are still our child, and every single parent expects that when their child goes to work, they will be looked after by people in that workplace. We expect that they will be provided with safety briefings and protections. We expect that responsible adults in that workplace will be looking after our apprentices, looking over their shoulder and making sure they are safe, because the paramount priority of every workplace should be that everybody gets to clock off at the end of a shift, and they get to go home and spend time with their families or friends. That is the expectation in Western Australia in 2020, and, sadly, as the member for Dawesville pointed out, around 200 families a year have to face that dreadful realisation that their loved one has not been able to clock off from work at the end of their shift but has ended that shift in an ambulance, a hospital or wherever it might be, as a result of a workplace injury, the majority of which—in fact, all of them—could be preventable. That is the purpose of this legislation. The purpose of this legislation is not only to ensure that there is a just and appropriate punishment for people who fail in that duty of care in the workplace, that people are safe on that worksite and are not permanently injured and do not lose their lives, but also about changing the culture and ensuring that the culture at that workplace at the start of each day is that everybody looks after each other and the purpose of that workplace is to have everybody get to the end of that shift, healthy, happy and in a fit state to go home and enjoy the evening with their families, or indeed the morning, depending on what sort of environment it might be.

The other appalling component of that conversation with Regan Ballantine, with regard to the loss of her son, Wesley, was the appalling penalties that have been imposed by the court. It is just a sickening feeling to think that someone's son died in the most terrible of circumstances. How any individual could be allowed to be balancing on a beam 12 metres above the ground, with no safety harness attached to a fixture and no scaffolding underneath them at a worksite, beggars belief that that occurs, but I know it does. To have imposed upon the people who allowed that worksite to be managed in that way only a $38 000 penalty by the court adds insult to injury. It re-traumatises the remaining family members, because they are left standing outside a courtroom wondering: "What just happened?

How on earth could my son's life be worth $38 000?" The courts are very clear in saying that that is not how they impose the penalty—it is not based on the value of a human life—but when someone has lost a loved one in those circumstances, that is how it feels, I am sure. In fact, Regan Ballantine assured me that that is how it feels.

I remember another terrible workplace death a few years ago. I do not like to call these things accidents, because they are avoidable, and indeed we find out when we look at the circumstances around some of these workplace deaths that they are indeed avoidable and preventable. There was a young man—I am not going to mention his name because I have not spoken to his parents about mentioning his case—who was an apprentice electrician. I think he had only just started that apprenticeship. He was crawling around in the roof space upstairs and he managed to touch a live wire and was electrocuted and killed on site. He had only been in the job a very short time. The magistrate, Dianne Scaddan, at the time of this young man's death, who was also only 18 years old, the same age as my son, said —

> "Assumptions made about the home led to the fatality," she said.
>
> "Isolating the mains power before entering the roof instead of the single circuit that was being worked on was a simple step which would have reduced the risk to the employees.

The company —

> failed to provide a work environment where employees were safe by not ensuring employees turned off the mains power before entering a roof space.
>
> "This appears to be a case where —

The company —

> was not intentionally risky but complacent to follow an industry standard practice which has been identified as not-sufficient."

That company also only received a $38 000 fine for the death of that young man. The WorkSafe WA Commissioner at the time said —

> … the case was a stark reminder of the dangers of working with electricity.
>
> "This tragic incident should serve as a reminder of the extreme importance of checking and re-checking that the circuits being worked on are indeed not live," Mr McCulloch said.
>
> "When working with or around electrical circuits, any assumption could be a fatal one.
>
> "The case also sends a clear message to employers that electrical work should not under any circumstances be performed by assistants or anyone not qualified to undertake the work safely."

The maximum penalty that could have been handed to the company was $200 000. The amount awarded by the court was $38 000 in a case in which an individual was crawling around in a roof space and starting to perform electrical work when the mains power had not been turned off. There are advertisements on television about these sorts of things. It is astonishing that qualified electricians who are supervising 18-year-old apprentices are not taking those basic steps to ensure the safety of people working in that environment. That is where we come to the need for this legislation. The legislation does not just cover off on increased penalties or, indeed, penalties for industrial manslaughter from the Criminal Code; it covers off on a whole range of model laws that every state and territory in Australia has agreed to adopt around workplace safety.

There is a lot more to this legislation than just the industrial manslaughter penalties' component. However, that is far and away the issue that has captured the hearts and minds of the families of victims of workplace accidents in Western Australia, and they expect this Parliament to ensure that this legislation delivers the outcomes they have been promised. The opposition will still spend some time examining this legislation and its clauses in detail. Our job as an opposition party in this Parliament is to ensure that the intent of this legislation will be achieved and that there are no unintended consequences from the way in which the legislation has been constructed. Not every state in Australia has taken this approach on industrial manslaughter. Other states have made a start. Some states have adopted industrial manslaughter laws that have been found wanting by the High Court. As a Parliament, we do not want to create an outcome that results in the families of those who have died in the workplace having the shocking and dreadful experience of attending multiple court proceedings involving an officer of a company, for example, who has a penalty imposed as a consequence of allowing a death to occur. We do not want families to be put through further gruelling court processes—for example, if a challenge were made to the High Court of the penalty imposed—that would subject families to the trauma of an additional court hearing over what could be a prolonged time. Our job in this place as legislators is to make sure that we do not create that kind of scenario. That is one area that the opposition will look into. We will interrogate this legislation and look into that, and not because we do not agree

with the intent of this legislation in any way, shape or form. The intent of this bill is to create safer workplaces and ensure that there are appropriate consequences for people who allow an unsafe workplace to exist in such a way that it leads to the death of one of our people. That is the intent, which I support 100 per cent.

I hope I never have to meet another mother who has lost their child in such awful circumstances. My son is 18. I do not want to humiliate him, but I still resist the urge of tucking him up in bed at night. That is not appropriate anymore, but that is how we feel about them all the way through their lives. We have just celebrated his eighteenth birthday. I spent that day thinking a lot about Wesley and about you, Regan, and I am very, very grateful for the fact that I had my son to hold in my arms on his eighteenth birthday.

With that, I commend this legislation to the house. I would like to put on the record my appreciation of the contributions that members have made. I understand that many members have met families who have lost loved ones in tragic circumstances in a workplace. Obviously, as legislators, human beings and members of Parliament representing our communities, that is a circumstance we all find untenable and which we hope legislation like this will serve to correct.

MR S.J. PRICE (Forrestfield) [8.24 pm]: I rise to contribute to the cognate debate on the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019. It gives me great pleasure to be able to contribute to the debate on this very historic piece of reform legislation. I will start by acknowledging the great work of the minister, Bill Johnston, MLA, Minister for Mines and Petroleum; Energy; Industrial Relations, and his department, and also the members of the ministerial advisory panel. The panel was made up of some very experienced and well-informed people: Stephanie Mayman as the chairperson; the member for Mount Lawley, Simon Millman; the minister's senior adviser at the time, Penny Bond; Nicole Roocke, who was with the Chamber of Minerals and Energy of Western Australia; Owen Whittle, assistant secretary of UnionsWA; Simon Ridge, executive director of resources safety at the Department of Mines, Industry Regulation and Safety; Lex McCulloch, deputy director general of safety at DMIRS; Rachael Lincoln from the Chamber of Commerce and Industry of Western Australia; Adi LaBombard from CME; Keith Black from CCIWA; and Andrew Chaplyn, director, mines safety from DMIRS. I have previously worked with many of these people and know the experience they have when it comes to safety in workplaces across Western Australia.

Worker health and safety is very dear to my heart. Prior to coming into this place I worked in mining, originally as a fly in, fly out goldminer for five years in the early 1990s. That was probably a similar time to when the member for Cottesloe started his mining career—I think we went in opposite directions! I then moved to an alumina refinery down south, where I worked as an advanced rigger and crane driver on a maintenance crew for about 12 years. I then headed off to the Australian Workers' Union, where I was a union official and branch secretary for 10 years. So I have had significant exposure to the practical application of our current occupational health and safety laws. My exposure has been to both the Mines Safety and Inspection Act 1994 and the Occupational Safety and Health Act 1984. One of the challenges we had was that two pieces of legislation applied to different industries across Western Australia. As we have seen in the past, there has been a lot of transition, with workers coming from construction sites and general worksites to the mining industry, which is covered by separate legislation and separate safety requirements. Through my role in the AWU, I dealt with a wide variety of worksites, different occupations and a diverse range of employers, from some of the major mining companies, large agricultural businesses and multinationals involved in the offshore and onshore oil and gas industry, to many, many small to medium-sized enterprises, and across a very wide range of industries as well. I appreciate the complexities and diversities within our unique Western Australian geography and economy. Occupational health and safety within a worksite is actually one of those complexities.

Any worker has the right to a fair day's pay for a fair day's work. They also have the right to return home at the end of their day in the same condition that they started work. This bill goes a long way to improve the workplace safety of many workers in my electorate of Forrestfield and right across Western Australia. An injury to one worker is one injury too many. The death of a worker is one death too many. Unfortunately, we continue to hurt workers and we continue to kill them. In the minister's second reading speech he touched on workplace injuries and deaths and mentioned how they are caused by choices. He is absolutely right. A lot of people make choices that they wish, in hindsight, they had never made, but I have never met anyone who went to work with the deliberate intent to either hurt themselves or die at work. We have to put in place processes and procedures to protect people as well. Unfortunately, if humans are involved in the workplace, we run the risk of human error. In 2017–18, 14 work-related traumatic injury fatalities were notified to WorkSafe, according to its work-related traumatic injury fatalities overview.

In July 2017, the McGowan government announced the formation of the Ministerial Advisory Panel on Work Health and Safety Reform that I mentioned earlier, to consider how best to adapt the national model Work Health and

Safety Act for use in Western Australia. In 2018, public consultation was conducted on the 43 ministerial advisory panel recommendations and additional recommendations from the government. Sixty-six submissions were made by workplace participants, work health and safety professionals, businesses, unions and groups representing employers. This bill is the result of those submissions on how best to adapt the Model Work Health and Safety Bill to meet our unique requirements in Western Australian workplaces. It is the result of the great work undertaken by the MAP and brings the Mines Safety and Inspection Act and the Occupational Safety and Health Act together for the first time.

I now turn to some of the key provisions within the bill that I think will improve worker health and safety on the job. Unfortunately, there are far too many to discuss, so I will touch on some of the ones that I know, through my experience, will help alleviate some of the issues at workplaces and allow for better workplace safety. Subdivision 2 of division 3 of part 1 provides updated definitions of a number of key foundations of the legislation. "PCBU" is a new term introduced into the OHS legislation. It means a person conducting a business or undertaking and is intended to be read broadly. It covers businesses or undertakings conducted by persons including employers, principal contractors, head contractors, franchisors and the Crown. There is a new definition of "worker". The bill adopts a broad definition of "worker" instead of employee, which I think is very significant, to recognise the changing nature of work relationships and to ensure that health and safety is extended to all types of workers. The list in the definition of "worker" in the bill is not completely exhaustive, but it gives some clear direction about who is covered and whom the PCBU is responsible for. It refers to an employee, a contractor or subcontractor, a labour hire company, people who are working on site, an outworker, an apprentice, a student, and, in some cases, volunteers. It gives a clear understanding of whom the PCBU is responsible for. That will clear up a lot of the previously grey area, especially with labour hire people who are employed on worksites, as there was a disconnect in who was responsible for them.

Clause 8 defines "workplace". Once again, this is a new term that will deal with a lot of issues. It states —

> (1) A workplace is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.
>
> (2) In this section —
>
> ***place*** includes —
>
> (a) a vehicle, vessel, aircraft or other mobile structure; and
>
> (b) any waters and any installation on land, on the bed of any waters or floating on any waters.

This definition is key to defining the scope of rights, duties and obligations under this bill. Importantly, this will also extend to employer-provided accommodation such as fly in, fly out camps. In 2015, the Education and Health Standing Committee conducted an inquiry into the impact of FIFO work practices on mental health and the report was tabled on 18 June 2015. The report refers to the needs for legislative change and states —

> FIFO accommodation facilities are not currently covered by the occupational safety and health provisions for individuals who are off-shift and residing in the facility. This should be changed to ensure that occupational safety and health provisions apply to FIFO workers off-shift in a residential facility. Changes to the law should ensure that a FIFO worker occupying or residing in FIFO accommodation is not exposed to risks to health and safety, including risks to mental health.

On page 19 of the bill, in division 2, "Primary duty of care", clause 19(4) states —

> If —
>
> (a) a worker occupies accommodation that is owned by or under the management or control of the person conducting the business or undertaking; and
>
> (b) the occupancy is necessary for the purposes of the worker's engagement because other accommodation is not reasonably available, …

Including camps in the Work Health and Safety Bill is a major step forward for a significant number of Western Australian employees who work within the FIFO arrangement. It is a tough gig. I did it for five years as a single person. There is a reason they used to call the accommodation single men's quarters—it was pretty rough at the time. It is an opportunity for a lot of people these days, but it is a very difficult lifestyle, so the least we can do is ensure that they have good accommodation standards when they are on site. We have seen a significant improvement in camps. The standard of accommodation at Roy Hill, Gorgon, Wheatstone and any of the other major resources projects these days is pretty good.

Another issue that has always needed to be looked at is the representation of a union member in work health and safety matters on site. I would like to take this opportunity to acknowledge and thank the unions for the great work

they do in representing their members in workplace issues, especially those relating to occupational health and safety. The member for Riverton said that the union movement has an excellent track record in safety at worksites. He is absolutely correct. The union movement has always progressed worker safety. Some of the claims it has made have been belittled and run down but over time they have come into legislation—it is a bit like some of the stuff we are talking about today—and history has demonstrated that they were the right things to do. This bill will allow a worker to be represented by their union if they so choose. Subdivision 1 of division 3, "Interpretation", states —

> ***representative***, in relation to a worker, means —
>
> (a) the health and safety representative for the worker; or
>
> (b) union representing the worker; or
>
> (c) any other person the worker authorises to represent the worker;

We are ensuring that union members working on worksites across Western Australia know that they can be represented by their union if they so choose. It will also allow the union representing a worker to stand in disputes. Whether a union can represent a person on site has always been a contentious issue, but this bill will give the worker the choice.

Another area that will be cleared up is the right of entry onto a worksite for investigation of work health and safety breaches to make the approach consistent across the different pieces of legislation in Western Australia. The right-of-entry provision goes back to section 49I, "Entry to investigate certain breaches", of the Industrial Relations Act 1979. Those breaches include breaches of the Occupational Safety and Health Act and the Mines Safety and Inspection Act. Instead of having separate right-of-entry requirements under the OHS legislation, it will be standard across all the legislation.

Consultation and workforce participation in OHS matters within the workplace is another issue that has needed to be looked at. Part of the debate we have had has been about the training of a health and safety representative. Currently, legislation essentially provides that a health and safety rep has to be trained within the first 12 months of them being appointed to that position. Unfortunately, a lot of companies wait until the last period of those 12 months to provide that training. The bill provides that once the HSR is elected under the process outlined and he requests to be trained, he is to have that training opportunity within three months of making the request. The debate about which course the HSR should go on is an interesting one. Having been on quite a number of HSR courses, both company-preferred ones and union-preferred ones, I have to admit that there is a difference. The parts of legislation that explain the rights and roles of a HSR are varied. Depending on which course the HSR goes to, different sections can be highlighted. Giving the health and safety representative the choice to pick the best course to go on is the right thing to do. It has to be done in consultation with the person conducting the business or undertaking anyway. Taking the ambiguity out of it and clarifying that the HSR has the choice is another positive step forward. The bill also clears up when the course has to be taken and that that the HSR still gets paid. Any occupational health and safety work is viewed as paid work, so the HSR has to be given the time to do the training and be paid as per normal. These are all issues that happen on work sites. They are real issues. They are not just things that have been plucked out of the air. This bill will give clarity to a lot of HSRs going forward.

Safety committees are an integral part of the current OHS system. However, this bill proposes to ensure that an appropriate representative of the PCBU; that is, someone who has the authority to make some decisions and deal with any issues or proposals that are raised or put forward by the committee to the PCBU. Previously, a company representative might sit on one of these committees who is essentially just there to take notes but cannot contribute or help resolve anything. Ensuring that there is someone of an appropriate level who can represent the PCBU on the committee is, once again, another positive step forward.

[Member's time extended.]

Mr S.J. PRICE: I will touch on industrial manslaughter now. This bill introduces industrial manslaughter into the work health and safety system. In my first speech to this place I spoke about occupational health and safety and the need to reduce the number of deaths in workplaces. The introduction of industrial manslaughter in this bill is something that has been asked for by workers and the families of workers who have been killed at work for a very long time. I pay my respects to the many families who have lost loved ones through a workplace accident. We have heard some horrific stories tonight already. I lost five union members under my watch as union secretary. There were many others, unfortunately, who were killed in workplace accidents as well. It is one of those things you do not want to have to deal with. I find it amazing how families get through it. The people who have been killed range from 20-year-olds to 60-year-olds. They leave behind them families—brothers, mothers, fathers, wives, husbands, children and retired wives. A whole range of different lives are destroyed by something that could have been prevented. This is the bit I struggle with about some of what I am hearing from the opposition benches.

What is being proposed will do two very important things. Firstly, it will act as a very strong deterrent to those who think that flouting the law is justified and that putting workers lives at risk is an acceptable way of doing business. Secondly, it will provide two levels of charges. That is very important, because different thresholds for prosecution can be brought against someone as a result of different incidents. Everyone has said that they do not really have a problem with clause 30A. It is a difficult one. To be able to prove that someone knowingly made a decision that resulted in a worker being killed is quite challenging to prove. Unfortunately, there are bosses within companies out there who still have a bit of the old mentality that they will not get caught with these things. Having such a piece of legislation, with the penalties associated with it, will, hopefully, make those people think twice. Clause 30B is a different charge. Once again, it should make any person who is responsible for making decisions about any worker think twice about the decision. When I was on the tools and when I was responsible for people working for me, I used to always take the approach of thinking about whether I would let my children do what I was asking them to do. That is the key to it. I used to take a lot of pride in what I did because I used to take my time to make sure that no-one got hurt, whether it be me or the people I was working with. The company I used to work for was pretty good. We have some of the most dangerous industries in the world around us. Refineries are a horrendous place to work, with chemicals, high temperatures, machinery and so much going on. The fact that we do not hurt many people is a good outcome. The fact that we do not kill many people is a great outcome. The problem is that we still kill too many people. I have spent far too much time at Royal Perth Hospital visiting injured workers, whether it be people who have had amputations, been crushed, or been burnt—people who have done the right thing, but it has gone wrong based on the way they were told to do the job and the pressure that was put on them to do the job. Having something like industrial manslaughter legislation will reset people's thought patterns. I hope that nobody ever gets charged under this legislation. That is the ultimate that we can all hope for, because that will mean that we have not killed anyone. We need to have this legislation to ensure that we try to correct people's thinking—those people who think, "She'll be right. We might get away with it. If we don't, we don't." Accidents happen, and I get that. The key is to stop accidents from happening. This legislation goes a long way to make sure that people take the time to have a look at what they are asking other people to do and to review what they are doing. If necessary, they can make the appropriate changes. This legislation is good legislation. You do not want to be the person who is talking to someone, whether it be a wife at a funeral or a husband who has three kids under seven years old whose mum has been killed at work. Anything we can do that prevents that and drives a change in people's thought processes is the right thing to do. If people are scared of this legislation, they must have a reason to be scared of this legislation. If they are doing the right thing, looking after their workers and making sure that every possible issue has been addressed, they have nothing to fear. But if this is what is going to keep them up at night, there is a good reason for it. They need to change what they are doing. This is great legislation. As I said, I hope that no-one is ever charged under this bill.

Finally, I want to mention the Safety Levies Amendment Bill 2019—the little bill attached to this. The safety levies legislation is a great piece of legislation that has operated really well in the resource sector. Essentially, all this bill does is preserve the current arrangement for the way the levy is calculated through the different companies. The transition to the single bill will make the change to that. It was possibly one of the most significant changes to safety in the resource sector when it was introduced. It allowed the department of resource safety to improve the approach it took to the inspectorate when inspecting miner health and mine safety and gave it resources.

It is a good levy to keep, and will ensure that the way the levy is calculated will not change, which is great.

Everyone has their own experience of workplace health and safety issues, and not all of it is great. As the Leader of the Opposition said, her son is getting close to the age when he will go to work. Most of us have children who will end up in the workforce at some stage and we just want them to come home every day, and this legislation goes a long way to ensuring that. I commend both bills to the house.

MR S.K. L'ESTRANGE (Churchlands) [8.50 pm]: I, too, would like to speak on the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019 and add to the remarks made by members on both sides of the chamber who are very keen to improve safety on work sites, as am I, and acknowledge that there is a need to address the penalties to fit the crime when a fatality occurs on a worksite. Probably the key aspect of this legislation from my perspective is duty of care. We can think of our children, employees and co-workers and know that someone in the workplace has a duty of care for them. I think of the supervising officers and instructors when I was a young 19-year-old trainee officer and they had a duty of care over me while I participated in risky activities as part of the training program. I think also about an incident involving my young son Will, who is now 10. There was a teachers' strike one day when he was four years old and in pre-primary school. I thought we would do the right thing and drop him off at school because there would be some supervision. We thought we should do the right thing and make sure that he went to school even though there was a strike, so off he went. The school did not have enough teachers to

supervise the pre-primary children so they were grouped with the older kids and the school decided to hold a sports day. Although Will was a very active kid, and still is, he was very unaware of his surroundings at four years old. During the course of the day, he ran behind a year 6 girl who took a backswing with a baseball bat, copped him straight in the face and took out three of his teeth. It is lucky she did not take out his eye socket. His brother, who is a couple of years older, picked up the teeth and off they went to the first-aid station. I gave myself about two weeks to calm down before I saw the principal. When I sat with him in his office, I asked him to talk me through what the safety procedures were for that day. He said, "Oh, well …", and I said, "No, don't tell me what you think happened. Talk me through your safety procedures for the day. What briefing did you give your staff? In your safety briefing, how did you make sure you separated out what four-year-olds were doing from what 11 and 12-year-olds were doing? Explain that to me." He did not have an answer. I told him that Will was not seriously hurt but that he might have dental issues down the track. I wanted the principal to guarantee me that in all future activities he ran with the kids, he made sure that a proper safety plan was put in place and a proper safety brief was given to his staff. I had that conversation with him, and it was very polite and calm, but that is because I understood the context of safety from my own training in the Army.

I will now reflect on a story from my time in the Army. When I was 19, I was at a training area doing live-fire training with high-explosive grenades. Part of the training was to not only get us to know how to use the weapon properly with all its inherent risks, but also train as supervisors of a grenade-throwing activity. All the grenades had been expended but one did not explode. The captain in charge would have been about 27 years old but to me, as a 19-year-old trainee, he seemed a lot older, bigger and more dangerous to worry about than the grenade. He said, "L'Estrange, there's one out there. Go and find it." I looked at him and did a double take. I thought, "Is he being serious or is he mucking about?" He looked at me and I thought, "Righto", so I picked up a helmet and walked about 10 feet into the open where the unexploded grenade was and the others came and grabbed me and pulled me back. The reason that I share that story is that young people do crazy stuff. What I did was nuts, but I was doing it because I was told to do it by a supervisor, even though he was joking, and they pulled me out. It is a reminder that young people take risks and do not see the real danger that older, more experienced people see. We see that happen all the time. That is why in World War II, single men were put in the Spitfires and married men with kids were put in the fighter bombers. The fighter bombers needed crews who wanted to survive because they wanted to get home to their families. The Spitfire pilots were reckless, and reckless people who took huge risks were needed to beat the enemy in a dogfight.

Earlier, we heard the Leader of the Opposition reflecting on Wes Ballantine. Wes's mum, Regan, was listening in the gallery. We have to accept that young people who go into the workplace will take risks. That is why it is so incredibly important that they are well supervised so that if they are about to make a mistake, it can be prevented by a more mature, experienced adult stepping in and looking after them. When I looked at the case of Wes Ballantine and saw the images of the roof that he fell through and saw that there was no safety harness or anything, it just made me frustrated and angry. Any young person might have said, "I'll be right", just like they do when they go out and do risky stuff. They think, "Nothing will go wrong. Don't worry about me." We see it all the time. That is why making an organisation or a company accountable for their responsibility to ensure safety is so critically important. If the penalty does not match the responsibility when they fail, it will not be taken seriously. That is why I think we are hearing everyone on both sides of the chamber say that change is needed. I looked closely at this bill, although probably nowhere near as closely as the shadow spokesman for our side looked at it, which he has done. He went through it in great detail earlier. No doubt I have not looked at it in as much detail as the minister either. Nonetheless, I have looked at it and I thought the clauses of interest were 30A and B. Clause 30A addresses what most people in the chamber are concerned about, which is that previously the fines were inadequate and were not a real deterrent for operators who allowed really risky things to happen on their watch. Clause 30A provides for industrial manslaughter to become a criminal offence and imposes penalties of imprisonment for up to 20 years and fines of up to $5 million for an individual or $10 million for a body corporate. That is a huge difference from the fine previously of $30 000 or $40 000. That is significant. Under clause 30A, an offence of industrial manslaughter may be heard only in the District Court and may be prosecuted only by the Director of Public Prosecutions. It also places the burden of proof on the prosecution to establish that a person who engaged in the conduct that caused the death of an individual knew that the conduct was likely to result in death but disregarded that likelihood. I think we all agree that clause 30A is needed. I do not think that is in dispute.

Clause 30B is called a simple offence. The offence still causes death, of course, but the penalty is imprisonment for up to 10 years and fines of up to $2.5 million for an individual or $5 million for a body corporate—big offence; still big fines. But this one is to be heard in the Magistrates Court and the prosecution would be brought by the WorkSafe authority which is also the investigator, and in such cases the prosecution would simply need to prove that the person failed to comply with a health and safety duty that caused the death of an individual. Like many other

offences under the bill, the evidential burden will lie on the accused person to prove that they had a reasonable excuse. That is a significant difference between clauses 30A and 30B.

Some members may think, "So what?" I might be going down the wrong path with this, and I am happy to be corrected, but one of the concerns I have is that if clause 30B is therefore easier to prosecute, why would a prosecutor ever want to go down the path of clause 30A? In that case, a penalty of 20 years' imprisonment and a fine of $5 million for an individual or $10 million for a body corporate would be ignored in favour of prosecuting on the one that would be easier to get an outcome of 10 years' imprisonment and a fine of $2.5 million for an individual or $5 million for a body corporate. Some members might say that that does not matter; it is still good that these fines are big and people are getting done. I know that people have a view on this, and this is not taking away one iota from the significance of what I said earlier: that an organisation–employer has a responsibility to make sure their workplace is safe. But what if, by virtue of clause 30B, that burden of proof is changed and that procedural fairness is lost? A small business, for example, does not have the resources to mount a proper defence. They tried to do everything in their power to make sure their workplace was safe, but the evidence presented by the WorkSafe authority, which is also the investigator, is heavily weighted one way. The prosecutor goes into the courtroom with all of the investigation material. How much procedural fairness would exist for that small business owner–operator who has tried to do everything right but has to defend themselves in the Magistrates Court? The onus of proof is on the business owner to say that they did the right thing. The burden of proof does not rest with the person bringing the charge. I worry about the ramifications of that. If we just had clause 30A and took that business owner to court on clause 30A, and they did not have a defence, they would spend 20 years in prison. At least the District Court system would provide them with legal representation and there is more likelihood of procedural fairness. I flag that that might be something to be looked at in more detail with our learned friends in the other place. I will probably leave it to them. I am happy to receive some feedback from the minister while the bill is in this place, but that is something we probably need to look at in a bit of detail.

I will then go to the definitions on page 11 of the bill. Clause 5 specifically relates to "Meaning of person conducting a business or undertaking". Clause 5(1) states —

> For the purposes of this Act, a person conducts a business or undertaking —
>
> (a) whether the person conducts the business or undertaking alone or with others; and
>
> (b) whether or not the business or undertaking is conducted for profit or gain.

That is all good. Turning to page 12, which is still on clause 5, subclause (3) states —

> If a business or undertaking is conducted by a partnership (other than an incorporated partnership), a reference in this Act to a person conducting the business or undertaking is to be read as a reference to each partner in the partnership.

That is a significant definition because we have already heard people talk about the situation of a farming family—the mum and dad on the farm are essentially partners in the farm. Dad starts doing work on the tractor, but the tractor flips over and dad is killed. There is nobody out there with him. Who is the safety supervisor and who is culpable? I am putting it out there: does that mean that under clause 30B the wife could then be taken to court because WorkSafe could say, "No; you are a partner, your business partner has died, we believe that the tractor did not have the right safety equipment on it or it was not serviced in accordance with the owner's manual; therefore, it should not have been operated by your husband, your business partner, so we are holding you accountable for that"? She then has to mount her defence with all the resources that she can find, while dealing with the grief of her husband's death. If there are children involved, they too have to deal with supporting mum and dealing with the grief of dad dying et cetera. I am not giving this example from experience, I am not a farmer, but I went to a boarding school and some of the boys I went to school with had fathers who had been killed on the farm. The father of a guy I did officer training with was killed on the farm. It is not something that I have not heard about; it happens. I put that out there because I am not convinced that that is what this legislation is geared up to target. It might be one of those unintentional consequences of this legislation to capture that group of business owners in that way. That should be looked at in a bit more detail.

[Member's time extended.]

Mr S.K. L'ESTRANGE: Clause 5(4) states —

> An individual does not conduct a business or undertaking to the extent that the individual is engaged solely as a worker in, or as an officer of, that business or undertaking.

If a person is engaged solely as a worker in the business, they are not considered to be the person conducting the business. That is how I read that.

I go back to the case of Wes Ballantine. As I say, I do not know the case in detail, so please bear with me on this. If the safety supervisor at that worksite knew that they were operating in an unsafe way and did not change the behaviour, is that safety supervisor, under this definition, a worker and therefore not liable for the outcome; rather, the actual officer of the company is? That is something I would like clarified. It may well be that the defence of the company directors, or owners, could be, "We put in place all of these safety requirements but our safety supervisor did not carry them out." Can the safety supervisor be captured in any provisions of this bill for negligence, which I think is the intent of the bill? I am putting it out there as a question. It is not a rhetorical question; it is actually a question. These are the things that we need to look into to understand whether the intent of the bill will be achieved or not.

I will now go to clause 84 in the explanatory memorandum. Clause 84 of the Work Health and Safety Bill 2019 deals with the right of a worker to cease unsafe work. Let us premise this with the points I started this speech with, and that is that young people will take risks. I can tell members now that if a lot of young people think, intuitively, that something is risky, or just sensibly, and think they should not be doing it, but the boss is making them do it and they do not want to be seen to be a whinger or a wuss, they just crack on anyway. That happens all the time in all aspects of life, we know that, so we need to appreciate that even if the right of the worker to cease unsafe work exists, they might not seek it. Even if that provision is in the legislation, young workers may not be mature or experienced enough to know when to say no to doing something. I think that needs to be appreciated. It also needs to be understood that clause 84 sets the rights of workers to cease unsafe work. It states that a worker may cease, or refuse to carry out, work if the worker has a reasonable concern that carrying out the work would expose the worker or any other person to a serious risk to their health or safety or if a serious risk emanates from an immediate or imminent exposure to a hazard. How does that work for a fishing trawler that has gone out for a five-to-10-day trip doing whatever they do out there? A turn of weather occurs and it becomes quite serious. The boat ends up in a very severe storm, at some point capsizes and somebody is killed. No doubt, there would be a requirement under this bill for the captain of the boat to be held to account for that. That is the intent of this bill, and I support it. But if the crime of 30A is avoided by the prosecutors for the offence of 30B, we might not be getting to the bottom of the problem properly. That is something worth thinking about.

What about small business abalone divers down south? I saw a documentary recently in which the abalone divers were most concerned about the increased prevalence of great white sharks, so they were wearing a steel mesh over the top of their wetsuits while they were hooked up to their oxygen, running a line to the bottom of the sea. They are focused on doing their fishing and just hoping that a great white does not come from behind where they would not see it and attack them. We know that the Southern Ocean has great whites in it. Is the operation of that business inherently risky? Yes. Are all the safety measures in place to be able to prevent shark attack? We could argue that the wearing of the mesh might help, but I doubt it. If an 18-foot great white comes at someone at 60 or 70 kilometres an hour, I do not think much is going to help them. What happens there and how does that work? How does that work if the worker says that they are starting to feel uncomfortable about working in that environment? I would be, no doubt anyone would be, but they would probably just get on with it, because it is their job and they need to earn an income. How does that fit in this bill? If somebody got killed that way, how would it play out with the other business partner who might also be operating a boat at the same time? How would they be treated? Would it be fair for them to have to defend themselves in a Magistrates Court and look after their own defence as opposed to going through the District Court? I think that is also something worth thinking about.

The final point I want to make before I finish tonight has to do with mine site workers. There has been a fair bit of discussion certainly in this place and in the community about the mental health of fly in, fly out workers and the impact of working long shifts on mine sites and then them being isolated in the donga by themselves, the challenges that workers face by leaving family at home for extended periods et cetera. These are issues of mental health working in FIFO environments and mine sites. What happens if the mine site worker feels that they have a mental health issue and is possibly suicidal? They go to a supervisor and say they need some support. That supervisor has to then report that up the chain—I am sure they do, but correct me if I am wrong. What then? If that worker is now presented as being relatively unsafe, does it mean that the obligation is on the employer to remove them from the workplace altogether? It might be yes.

If that is the case and down the track the worker is no longer employed, will the second or third-order consequence of this situation mean that workers will not seek help when they are suffering some mental health concerns for fear of losing their job? If that were to be the case, and they did commit suicide on site or acted irrationally, which caused the death of another worker, where does the safety side back to the employer sit with that scenario? If the system was set up to look after that worker and that worker's mental health and they did say they needed help, the dangerous situation might be avoided, but if by virtue of the fact that they might be removed from the workplace altogether down the track they did not nominate themselves for support and help and that caused a death, how

would that play out? These issues are complex. There are no real answers, but I again go back to clauses 30A and 30B. Would the provisions of clause 30A be better able to handle the situation and provide a proper defence and prosecution to get an outcome that is fair and equitable, so if the employer is at fault, they get 20 years' imprisonment or fines of up to $5 million for the individual or $10 million for the body corporate?

These are the types of scenarios, and I have only touched on a few tonight, that need to be looked at in detail, because we do not want the intent of this bill to be lost in all of these situations to do with small business owner–operators ending up in the Magistrates Court having to defend themselves and it not being a fair defence. That is what we want to avoid. We want to make sure that procedural fairness is made available and that they suffer the full weight of the law if they have been negligent and cause a death. I leave it at those points. I think they are more for investigation than for anything else. I will finish with what I started with, and that is to say that all supervisors, all business owner–operators have a duty of care, as do all organisations, because this legislation covers profits and not-for-profits. All organisations have a duty of care to look after the people who work for them in any environment, so it is incredibly important that they understand that this Parliament is moving legislation through this place and then off to the other place because it takes work safety and the need for responsibility at the top to be adhered to very seriously.

MRS A.K. HAYDEN (Darling Range) [9.18 pm]: I to rise to join my colleagues and the Liberal opposition in support of the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019, but with some concerns about one particular clause. I want to put on record my gratitude to our shadow Minister for Industrial Relations, the member for Hillarys. He was across this legislation with a lot of detail and provided us all with a lot of information. I believe he gave an outstanding speech today on this legislation. He outlined the things that were great about this legislation, but also the bits we are concerned about and that we hope the government might take on board. Hopefully, during the consideration in detail process we may be able to get some amendments put through. In general, we must all remember every single one of us in this place wants to save a life. No-one in this place was to see anyone leave their home, go to work and never come home—no-one wants that. The idea of me going to work, kissing my husband goodbye and not seeing him at the end of the day would be absolutely heartbreaking and would ruin my entire life. It would ruin his children's life and our grandchildren's life. No-one in this place wants to see someone go to work and not come home. Please, what I ask for in this debate is that our concerns are not misinterpreted to mean that we do not care about saving lives. Look at the amendments that we are putting forward, look at the suggestions we are putting forward and take them on the faith that it is about improving legislation. It is about protecting everybody, including workers and small business owners. It is not about saying that we do not support that, we do. We want everyone to come home after a hard day's work. Our role in opposition is to make sure that the government has done its due diligence, it has consulted with industry and stakeholders, and that it has presented the best bill it possibly can with no unintended consequences, and it will not have a negative impact on a certain sector, without consultation or considering it. I will go into that a bit later, but that is my main issue of concern, for the minister's point of view and this part of the legislation.

As I said, consultation is one of the major processes of any legislation. No matter who is in government, part of the process is that it must consult. During my time in the upper house when we were in government, we were berated by members opposite who are now in government about consultation and how important it is that we consult with stakeholders. How can we bring in legislation and change laws if we have not consulted with the very industry or stakeholders it will affect? That is why I am a little surprised, to be honest. I know that the minister is normally very interested in consultation, so I am extremely surprised that we are seeing this legislation with two parts that were not part of the consultation process, and I would like to understand why. I hope the minister will be able to address that in his reply to the second reading debate. Why has the government decided not to undertake that stakeholder engagement?

Members have stood and reflected on the electorate that they represent and I have to tell members that the people of Darling Range are subcontractors, own small businesses, and work in manufacturing. They are the people who are either going to benefit or not benefit from this legislation. As I said, do not misquote me or misinterpret that I do not support people being safe at work. I need to make sure that subcontractors, small business owners and people who run manufacturing businesses will not be affected by this legislation because there has not been consultation and the government has not thought about the unintended consequences. I will go through the lack of consultation. In 2008, there was national reform with the Council of Australian Governments and it formed a Workplace Relations Ministers' Council to find harmonising legislation for occupational health, work and safety across the whole country. This is serious legislation and everybody in Australia should be abiding by the same rules. If someone will not look after their workers, neglects occupational health and safety, and knowingly puts their workers in harm's way, they deserve the maximum penalty they can get. If they take someone's life because they simply did not care

to follow the rules and safety regulations to protect their staff, they deserve to go to jail. The harmonisation started in 2008. It did not once bring in manslaughter legislation; it was not part of the consultation process. In 2009, COAG formed the Workplace Relations Ministers' Council, and that is when it came up with that harmonisation legislation, the Model Work Health and Safety Act. That was finalised in 2011, with the aim, as I said, to have a national approach. We then saw the minister, who is with us today and introduced this bill, form the ministerial advisory panel. I believe the member for Mount Lawley commented during his speech that he was on that panel. During that panel and that time of going out and consulting, not once was industrial manslaughter mentioned. I have spoken to numerous stakeholders, associations, industries, and chambers of commerce and business operators who were involved in that consultation period, and they said that industrial manslaughter was never discussed or consulted on. We go from 2008 through to 2018 after all this consultation and work on legislation, and when the legislation was drafted and put back to those stakeholders, there are two new clauses that were never discussed. It was not taken back to stakeholders for feedback, it was just presented. The problem is that there are unintended consequences. I want to refer to a letter from one of the associations, the Master Builders of Western Australia. In a letter to the minister in September 2019, it states —

> … is disappointed about the lack of prior consultation by the McGowan Government on what is a very contentious issue, especially given its far reaching effects for all employers across Western Australia at all levels. Given the Premier, in … 2018, publicly committed to consulting with the community, business and union movement on this matter, Master Builders is unaware of why the business community was not consulted as expected.
>
> Master Builders is unable to support this proposed penalty regime on the basis of there being no tangible evidence that penalties such as these do anything to contribute towards lives being saved in the workplace.

Master Builders went on—I will not read it all out—but the part that we need to look at states —

> … the Education and Employment Committee Report of October 2018 into workplace fatalities, referred to in the WA Government joint media release of 24 August 2019, announcing the intention to introduce industrial manslaughter, at page 47-48 contains the following observations:
>
> Paragraph 5.20
>
> *"The Department of Jobs and Small Business (the department) stated the introduction of the offence of industrial manslaughter is "unwarranted" and inconsistent with the "philosophy of WHS legislation …..*
>
> Paragraph 5.21
>
> *"…..Additionally, a punitive approach is counterproductive and less effective than encouraging employers and workers to work together—it will be less of a deterrent and more of a punishment."*

Here we have in the 2018 report of the Standing Committee on Education and Employment the former Department of Jobs and Small Business stating that it is unwarranted to introduce industrial manslaughter. It is not needed or required, yet, without consultation, the government is bringing it in. The letter goes on to say —

> … Master Builders has received feedback from smaller building contractors and subcontractors expressing their deep concern, and anguish, of ever having to contend with such an eventuality. Apart from the very obvious trauma surrounding a serious workplace safety incident which impacts on all in the workplace along with associated family and friends, the prospect of a small employer facing such a charge is overwhelming. Given 97% of all Western Australian businesses are small … enterprises …

They employ over 500 000 people in Western Australia. We are talking about small businesses that contribute to our economy and create jobs. We are introducing legislation that will hinder them, and make them the victims of clause 30B. My issue is clause 30B.

The Master Builders Association of WA contacted the minister to show its disappointment. The end of its letter states —

> Master Builders is more than happy to meet with you and your staff to further explain our position on the very real concerns held across the industry on this recent announcement.

The letter was written in September and the minister replied in October. The minister wrote —

> In 2017 and 2018 the Ministerial Advisory Panel for WHS Reform developed proposals for the introduction of the model WHS Act, which were then subject to an extensive public consultation process.

We all agree that that happened, but industrial manslaughter was not part of that consultation process.

Mr W.J. Johnston: Yes, it was.

Mrs A.K. HAYDEN: I would like the minister to explain that. His letter continues —

> Following this process and after consideration of the full range of stakeholder views, the Government made a balanced decision about the Western Australian WHS Bill. Please note that the decision to include industrial manslaughter in the WHS Act is one of a number of amendments that arise from our consultations with the community.

He went on to explain consultation with stakeholders and quoted the Senate inquiry, the Boland review and the recommendations from the national body, none of which, as I said earlier, consulted on industrial manslaughter. Neither of the reviews mentioned by the minister consulted on industrial manslaughter. The minister did not take up the offer to meet with the Master Builders Association of WA to discuss the bill or consult with it. Consultation is a vitally important part of being a minister and bringing in legislation. If the minister had conducted that consultation, we might not be standing here today.

The other big thing we need to consider, other than consultation, is proof and evidence. Why do we need to bring in this legislation? We have a lot of issues in WA that need urgent attention, so why do we need to bring in this legislation, and why is it so vitally important that clause 30B is included? There has been a drop in the number of fatalities across Australia. We had a massive peak in 2007 and in 2003 there was quite a high rate of workplace fatalities. However, from 2008 to 2018 there was a massive decline. It has gone from three deaths per 100 000 to 1.1 deaths per 100 000 across Australia and one death per 100 000 workers in Western Australia. That decline has occurred without this legislation, so I am trying to understand why we need to bring in clause 30B and put businesses at risk. As I said, if they have done something wrong—if they have been negligent or deliberately ignored the safety of workers—the government should get them under clause 30A and the Criminal Code Act and send them to jail. However, when there is a decline in the number of deaths and fatalities in the workplace, why does this clause need to be brought in? The problem is that no other state in Australia is bringing in a provision similar to clause 30B. We have been talking about harmonising the legislation. The member for Mount Lawley stood and said that this bill is about harmonising the legislation, but it is not; the government is introducing a new part that no other state has introduced. We are actually being the guinea pigs for a whole new section that has not been consulted or worked on or adopted by anyone else around Australia. Member for Mount Lawley, we are not harmonising the legislation when we are actually making different legislation. Harmonising is about being the same. If we take out clause 30B, we will have harmonising legislation.

As I said, my biggest concern for small business is that if an accident happens—and we know that accidents do happen—clause 30B will take the matter into the Magistrates Court and will reverse the burden of proof. That is the big issue. Small businesses will have to prove that they are not guilty, instead of the prosecutor or the state having to prove that they are guilty. That has to occur under clause 30A, but it is swapped in clause 30B—it reverses the burden of proof. A lot of small business owners have their hands on tools and work with their staff. They could have regulations and safety procedures in place, but they cannot watch their employees every second of the day. If an employee does one thing wrong or makes a mistake and slips up, that small business owner will be held responsible for the accident and the death of that worker in the workplace, through no fault of their own. They will have to prove that they are not guilty.

[Member's time extended.]

Mrs A.K. HAYDEN: Most small business owners do not have the resources that big companies do. They do not have access to legal advice and support. If they do access it, it will cost them a lot of money. Whether they can afford to do that is another question. I would say that, no, they cannot. A lot of businesses will either go to the wall or plead guilty, because they do not have the finances or resources to defend themselves. I will relay a story about that in a moment. I spoke to representatives of the Cabinet Makers Association of Western Australia this week on another matter and raised this legislation with them. They were totally unaware of it coming in; they did not know a thing about it. The Cabinet Makers Association of WA represents a pretty big subcontractor group that will fall under clause 30B of this legislation. One of the gentlemen I was speaking to said that they use lathes and saws and so forth. He said that he worked on the tools with his staff. He said that he has many safety regulations in his workplace, but it would need only one accident to occur and he could end up in jail under this bill. He said he would take on fewer trainees and apprentices because he could not afford for an accident to happen in his workplace if the result was that he could end up in jail. We need to be very careful not to penalise the wrong people. We want to save lives. We do not always need to use a stick to save lives. Why do we not instead support small businesses by providing them with training and extra information and help with safety in the workplace? Why do we not do that instead of introducing a stick? The stick of sending someone to jail will not save a worker's life. Why not stop

that person from dying at work? What about supporting businesses to create a safer environment so that there are no deaths at work, instead of penalising them if a mistake happens in their workplace? As I said previously, if they were negligent, they deserve punishment, but accidents do occur and my concern is that small businesses will have to prove their innocence, which is a lot harder to prove than that they have done something wrong.

I want to quickly relay a story given to the Legislative Council Standing Committee on Public Administration during its inquiry into WorkSafe. It was a letter from a wife who was talking about her husband and their business. She stated —

> Brad and I run a family business with one employee … Brad is the crane operator —

She described the staff member as the dogman and said that she does the administration. The letter continues —

> On the morning of 13th April, 2015 Brad and —

The staffer —

> had an incident onsite in Cottesloe where they came too close to powerlines which caused a flash over resulting in minor burns … and a wave of electricity through Brad. I have attached a copy of the material statement of facts from WorkSafe WA which outlines the series of events of that morning. Please note that I consider these facts biased to WorkSafe WA as they are the ones who documented these and we did not have the funds to continue our legal defence to correct these. The main point that is omitted from the statement of material facts is that Brad did conduct a visual inspection on the morning of the incident. WorkSafe WA was unwilling to negotiate this fact without going to a trial of the facts. I felt that there was no choice other than to enter a plea of guilty. It basically came to a decision that we could not afford to fight this case. The final result was close to $20,000 in legal costs, $3,577 in court costs and $15,000 in fines. For a low income family with two children, it is impossible to fight these cases without the funds required. There is no legal help in these cases.

For members' reference, the person did not die on the job, but they did have to go to hospital with serious burns. The letter goes on to say —

> My husband, Brad, has been in the construction industry for thirty years without any other incidents occurring either before the 13 of April 2015 or after. He is extremely safety conscious and the judge did respond saying that this matter was out of character … The judge also concluded that the long process involved caused significant mental health issues for both Brad and myself. Brad had his medication (… anti-depressant) increased in dosage and I was prescribed an anti-depressant after being off medication for 16 years. Brad was also referred to a psychologist. The Judge also communicated that this was purely an accident and that no-one would intentionally put themselves in a position knowing that they would also be injured.

The judge said that this was an accident, but because this business did not have access to the funds or resources to defend itself, it pleaded guilty because of an accident. I want members to understand that it is terrible when someone loses a loved one at work, but it is also terrible when a person loses their life and their future because they have been accused of something that was an accident and that they were innocent of because there was no intention to cause harm. She goes on to say —

> I ask that you imagine yourself making a mistake at work. That mistake is the only one you have made in thirty years. That mistake then results in a criminal conviction that will forever be on your record. There is no possibility of a spent conviction. Brad is an outstanding citizen, father, husband and employer who has never been in trouble with the law. He can no longer be free to travel and apply for a visa. He will be judged by people who do not have the full story.

We are here to save people's lives at work, not to take people's lives away from them because of an accident. This employer has lost his quality of life and so has his wife and their children. The last thing we want to do is create further unemployment in this state. We really need to support our small businesses and our subcontractors; otherwise, they will be employing fewer trainees and apprentices.

In summary, no other state has a provision like clause 30B. Why does our bill have it when no other state has it? This is meant to be harmonising legislation. The industry and stakeholders were not consulted during this whole process. Why are we going ahead with this without having talked to the industry? Changes were made to the legislation only 12 months ago to increase the penalty from two and a half years to five years, yet we are bringing in more legislation to change that. Surely we should see how that works first and then, if needed, consult with industry and tweak the legislation and improve it. As I said, we should be investing in saving lives, training people and

creating safer workplaces. I agree with the member for Perth. It is devastating when someone is lost. One person lost is one too many, but it also works the other way around; an innocent person should not be put in jail because a simple mistake has been made.

Nationally, we have seen a decline in the number of fatalities, yet we are increasing the penalties. There has been no research and no consultation, and there is no proof. Clause 30B is not required. Remove it and we will have harmonising legislation. Do not risk our jobs or businesses. I am asking the minister to remove clause 30B. Let us consult further, get the right information and see whether this is required. Let us support small businesses and subcontractors.

I have one more question I would like the minister to answer in his reply. How far will this bill go? It refers to a business or undertaking. Will it apply to the staff in members' electorate offices? Will it apply to cleaners employed in people's homes or businesses? Will it apply to babysitters? I know that members do not employ their electorate staff personally—it is done through the Department of the Premier and Cabinet—but we are not in our offices every day watching them. We do not know whether they are doing everything correctly. A lightbulb might blow and they might not want to wait for a workman to come out and change it, so they might stand on a chair to change the lightbulb and fall off and break their neck. Will that fall under this legislation? How far will this undertaking go? Is this going a little too far? I would like the minister to consider that genuinely. Hopefully, we can pass this legislation with the removal of clause 30B.

MS C.M. ROWE (Belmont) [9.45 pm]: I rise this evening to make a brief contribution to the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019. The Work Health and Safety Bill was borne out of extensive consultation and a number of national views. I am incredibly proud of the Minister for Industrial Relations for bringing to this place the most comprehensive reforms to WA's workplace health and safety laws since the very first of its kind was introduced, the Occupational Safety and Health Bill 1984. With this bill, our government is aiming to modernise our state's workplace health and safety laws by bringing workplace health and safety for all workplaces in WA under a single act. It is based on the national model, and that bill was introduced in the majority of Australian jurisdictions in 2011 and 2012. This has been adapted to suit WA's unique economy and geography.

The element of the bill that I would like to focus on in my remarks is the introduction of two offences for industrial manslaughter. The current laws that deal with workplace fatalities are outdated, ineffective, unjust and most definitely unacceptable. It is a fundamental right of every worker that they should come home safe every day. No-one should die at work. It is really clear that this is not the reality in WA. We have failed workers, and I wish to take this opportunity to express my deepest sympathy to the families who have lost a loved one in a workplace accident. Along with unions, a number of grieving families have been powerful and vocal advocates to bring about changes to the law to protect other families from suffering as they continue to do.

As we have already heard this evening, in January 2017, Wesley Ballantine tragically fell 12 metres from the roof of the site that he was working on in the Perth CBD. It had been identified that there was no adequate fall-prevention system for Wesley and his manager to connect their safety harnesses to, yet work continued. This was grossly negligent on behalf of the employer. A young man with literally his whole life ahead of him paid the ultimate price for his employer's appallingly unsafe work environment. This is an absolute disgrace. This young man went to work and never returned home, and his family will never recover from this loss, as we heard in the contribution by the member for Perth. I found it very difficult to hear about the grief that Wesley's mother is still enduring. Importantly, this was totally avoidable. This young man's death was entirely preventable if the employer had done what they should have done—protected their worker. Worse still, Wesley's parents suffered through two years of investigation and a trial, only for the company responsible to receive just a $38 000 fine.

I will quote from an article in *The West Australian* of 26 June 2019 in which Wesley's mother is reported to have said —

> "Is the value of life considered the same on a work site versus any other ordinary citizen who acts negligently? No it's not," …
>
> "If you are convicted of a high level of negligence causing death on a workplace you are fined, which your insurer pays out on, and you can just continue on operating your business and being responsible for employees. How is that equitable.
>
> "It is grossly unfair and grossly inadequate and this is why there needs to be reforms to place equal value on the life of ever human no matter where they are killed. It's time that we level the playing field and treat every life with the same respect and value."

I certainly cannot disagree with any of those sentiments.

The Work Health and Safety Bill 2019 is a product of extensive consultation. This includes the Ministerial Advisory Panel on Work Health and Safety Reform working to adapt the national model Work Health and Safety Act for use in WA, public consultation on the 43 MAP recommendations and additional government recommendations and key national workplace health and safety inquiries, such as the Boland report and the commonwealth Parliament's Standing Committee on Education and Employment report. This government takes consultation very seriously and listens intently to the voices of, most importantly, the families who have tragically lost members in a workplace death.

The heartbreaking death of Mr Ballantine is unfortunately not an isolated incident. In April 2018, as we have already heard from other members, Robert Cunico died while working for Civmec Construction and Engineering at its wastewater treatment plant in Perth. His daughter Ashley was quoted in a 30 August 2018 PerthNow article as saying —

> "Whilst my family and I went about our lives as normal, my dad was dying in the arms of a work colleague ten metres up in the air," …
>
> "There are no words to express the pain and suffering my family has endured since that day, not limited to emotional distress but also financial suffering."

There should be zero tolerance for negligent behaviours on our worksites for individuals and corporations alike. This cannot be achieved through self-regulation and must be made law.

In 2019, 162 workers in Australia were fatally injured while working, which was up from 144 in 2018. As of 30 January this year, 15 workers have been fatally injured, which is on par with the figure from 2019. This bill places the onus on the employer to produce a working environment that sufficiently protects and cares for its workers. This legislation will protect workers by introducing two offences for industrial manslaughter—an indictable offence and a simple offence with significant penalties. Individuals and corporations that compromise worker safety deserve to be punished according to the gravity of the incident that occurs as a result of their negligence. By implementing harsher penalties for negligent work practices, we are ensuring that there are strong deterrents to employers ignoring safety issues, of which we have seen examples that have led to death, and that those who fail to address these issues are punished accordingly and ultimately go to jail.

The industrial manslaughter provisions will carry a maximum penalty of 20 years' jail for an individual and a fine of $10 million for a body corporate. This is a massive increase in severity compared with the current penalties. The prohibition of insurance for monetary penalties will stop companies from absolving themselves from financial a penalty that is incurred as a result of their negligence. Companies will not be allowed to compromise on worker safety and have this covered by insurance, as they have been able to do in the past. This will ensure that all companies have a strong focus on workplace safety. It will need to be embedded in their culture and practised daily. Industrial relations are at the heart of the labour movement and it is a cornerstone of our party. Labor is the party for workers' rights and I acknowledge the hard work of unions in WA fighting for safer worksites for their members. In 2017, we committed to modernising our work health and safety laws and we are delivering on that promise. I am so proud to be a part of the McGowan Labor government that is committed to improving the working conditions of all Western Australians.

I will finish by returning to the case of Wesley Ballantine. I implore members to consider how different that situation could have been if stronger penalties had been in place. These penalties are strong because we do not want to see any more lives lost at work. Evidently, we cannot rely on self-regulation and therefore we cannot sit back and allow this to continue to happen. We must act and legislate for industrial manslaughter as the crime that it is. I commend the bills to the house.

MR P.J. RUNDLE (Roe) [9.55 pm]: I rise to make a short contribution to the second reading debate on the Work Health and Safety Bill 2019. I think everyone in this chamber agrees that we need safe workplaces and we all want our workers to come home safely each night, and many members have expressed that. I have a few concerns. Firstly, I think this legislation is tailored to larger mine sites and construction sites. Some of those large companies have many safety officers and so on. My focus is on our small businesses, such as farmers, those in the transport sector and other small business sectors. We all want to have best practices. I have been at my farm in Katanning, where I raised my two children, for well over 30-odd years. We have had no real farm accidents of any sort. A lot of that was about putting in a big effort—always being cautious about backing out, parking backwards and making sure we are driving out and keeping an eye out for the kids. We check out what is happening with our workers, whether it be in the shearing shed, harvesting or whatever the case may be. I think it is really important that all small businesses, farmers and any business, to be honest, checks out the safety of their workers.

My first question is about the levels of consultation. I think many members here have expressed their concern about the levels of consultation. We have heard about the Boland report. It focuses on industrial deaths and the larger industrial sites. At no stage have I heard any members opposite talk about the Western Australian Farmers Federation, the Pastoralists and Graziers Association or Safe Farms WA. Safe Farms WA is a key provider and promoter of farm safety. I was hoping to hear the minister talk about his consultation with Safe Farms WA. I certainly did not see anything about it in the second reading speech.

My biggest disappointment is that the government is introducing this legislation when the government-majority Standing Committee on Public Administration in the upper house has been working on an inquiry into WorkSafe since 2017 and is due to report later this year. I see Hon Darren West over there, who is a sitting member of that committee. The terms of reference for the committee to report on are —

a) WorkSafe's performance against the objects of the Occupational Health and Safety Act 1984

b) funding and resourcing of WorkSafe

c) adequacy of WorkSafe's training, oversight and accountability processes

d) adequacy of administrative processes, including complaints, investigations and prosecution processes

e) adequacy of WorkSafe's audits of training providers delivering occupational health and safety training

f) timely implementation and public education of coronial inquest recommendations arising from a workplace death

g) legislative and jurisdictional issues

h) any other relevant matter.

Paragraph (g) applies here.

An upper house committee is working on all those factors and will report to Parliament later this year. It is a majority government committee, I might add. Hon Adele Farina is the chair, Hon Jacqui Boydell is the deputy chair, and Hon Darren West, Hon Kyle McGinn and Hon Ken Baston are also on the committee. Three government members are on that committee yet the government is introducing legislation about exactly what that committee is working on. That is a real question mark for me and I look forward to hearing the minister's response. What is that committee doing and why is the minister attempting to put this legislation through without waiting for the committee to report?

The SPEAKER: Order, member for Riverton! You walked in front of the Chair.

Mr P.J. RUNDLE: Many members have talked about industrial manslaughter. I certainly have concerns about that and will talk about a couple of examples. The first is a farm where a shearing contractor is coming to do the shearing. On the farm is a farmer, the shearing contractor, the shearers, the wool presser and the shed hands et cetera. The farmer has fixed his wool press and his shed is in order and meets WorkSafe standards. Does the farmer have to be in the shed for the whole time the shearing is happening? That is probably not possible because he would need to muster the sheep. My question to the minister is: Who is responsible? Is it the farmer? Is it the contractor? Is it the workers? Are they responsible? Under clause 30B, I would like some clarification from the minister in this example about who is responsible and what are the consequences. To me that is a grey area because the shearing contractor is responsible for his shearing team. However, my interpretation of this legislation is that the onus could be put back onto the farmer under clause 30B.

Another example I have is that a couple of weeks ago there was a fire at Katanning. I was there with my fire outfit trying to protect the likes of the Western Power station and many other properties. My neighbour jumped onto the back of a ute with a hose to put out the fire on Western Power assets and farmland. If he fell off and died, could I be prosecuted under the industrial manslaughter laws of clause 30B? We were out there trying to help our community during a fire. I would like some clarity on that.

I think the weaknesses of clause 30B are about the burden of proof being on the defendant who may not have the resources to meet that burden of proof. The member for Riverton gave us a very good example of a farmer and his neighbour in New South Wales who were doing work when the neighbour was killed in a tractor accident. The farmer was prosecuted for his neighbour's death and had to raise $1.2 million, with the help of his neighbours, including the wife and family of the neighbour who passed away, so that he could defend himself. The matter was referred to the High Court. I do not think it is in any way acceptable for the Magistrates Court to deal with cases for which the magnitude of imprisonment is up to 10 years in jail. I believe that is a weakness in this legislation. A person has no ability to appeal and the prosecutor is WorkSafe, which is also the investigator. So WorkSafe is

the judge and the jury. I really worry about family structures and family partnerships in which a husband and wife are working together. If the husband is out on the tractor and has an accident, whether it is through the power take-off or some other sort of accident that happens on a farm, will the wife be held responsible, because at that time she may be back in the house, working in town or the like? The wife could be potentially facing not only the loss of her husband, but also a 10-year sentence and $2.5 million fine. To me, that is a concern. We have what I would call unintended consequences and I think there is a real weakness here. I hear what the minister is saying and there have been many examples of the loss of life in the agriculture, fisheries and forestry industries. Certainly, we are always striving to improve those numbers.

Finally, I would like to mention the Australian Institute of Company Directors, which has expressed concerns. The member for Hillarys spoke earlier about the lack of consultation and said that this legislation has not demonstrated a carefully balanced approach and that we have moved away from the principles of the model law without appropriate consultation. To wrap up, minister, I want to know about this committee with Hon Darren West as a member that has been working on the WorkSafe legislation and those many elements since 2017. Why did we not wait for that committee to report later on this year before we introduced this legislation? None of us in this chamber would argue about the value of having the right legislation for the safety of our people in the workforce and their right to come home safely every night. I look forward to those explanations and to consideration in detail of the bill.

MR V.A. CATANIA (North West Central) [10.07 pm]: I rise to make a contribution to this very important debate on the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019. Is it not great that we can say that there is probably general consensus in the house from all sides of politics in support of ensuring that people who go to work come home alive? I think that is paramount and that is what this legislation is intended to do. The legislation ensures that workplace practices are of the highest order so that people go to work and come home alive. The intent of the bill is to protect the health and safety of workers, improve safety outcomes in the workplace, reduce compliance costs for businesses and improve efficiency with regulatory agencies. It will also harmonise our legislation with that in other states, which has been done over a period. The legislation will bring Western Australia in line with the other states, harmonising that legislation. I also see this legislation as modernising legislation that reflects our modern practices in things like fly in, fly out and the consequences of mental health in the workplace, and also realises that, unfortunately, there has been a casualisation of the workforce and we have a high number of contractors. In my opinion, this legislation does provide a modern way. Work safe practices have probably had to move in this direction but have not over a period of time. I would like to, for want of a better word, congratulate the government on bringing in this legislation.

When it comes to memorials, particularly in the resources sector, one that I have been associated with since 2004 is the Eastern Goldfields Miners Memorial. I know that the Minister for Mines and Petroleum knows it well. He has been a part of that journey since 2004, back in the days when I used to belong on that side of the fence, along with a candidate by the name of James Donnelly, who was the first chair. Eastern Goldfields Miners Memorial honours the lives of those lost in mining as well as serving as a reminder of the importance of mine safety.

Mr W.J. Johnston: I think that something like three or four of my wife's family are on that.

Mr V.A. CATANIA: The minister has a very close connection to what has been achieved there. It is amazing that it took so long to actually have a dedicated memorial in Kalgoorlie. I will go on quoting from the website —

> The memorial honours those who have died in mining accidents in the Goldfields since 1892.
>
> The wall, located at the Western Australian Museum in Kalgoorlie, is more than 10 metres long and 2.5 metres high. The wall currently contains the names of 1484 individuals including two women.
>
> The concept of an Eastern Goldfields Miners Memorial was first conceived in 2004 by Mr James Donnelly and he was the inaugural chairman of the committee. Over the years Mr Donnelly was well known for his involvement in the Mine Rescue competitions on the Goldfields.
>
> The committee decided that only those deaths that occurred due to accident on a mine site in the performance of their duties within the following nine goldfields fields:

The list comprises east Coolgardie, Coolgardie, north Coolgardie, north-east Coolgardie, Broad Arrow, Yilgarn, Dundas, east Murchison and Mt Morgans.

I would like to say that I have played a small role since the inception of the miners' memorial. If members go there, they will see a bench, which former member for Kalgoorlie Wendy Duncan and I contributed to, so that people can sit and reflect on those people who have lost their lives.

I have not seen this, but the member for Collie–Preston might be able to enlighten the house: the Collie coal miners' union erected the Collie Coal Mining Memorial. About 55 people who lost their lives are commemorated there.

They are just a couple of examples. Travelling around the mining and pastoral region, there are a lot of old graves to visit in towns that had a lot of mining activity.

Mr W.J. Johnston: Have you been to the national monument in Broken Hill?

Mr V.A. CATANIA: Yes, I have. It is a very good one. I went to Broken Hill a few years ago for a federal National Party conference and our first port of call was to see it. It is fantastic how they are paying respects to those people who have lost their lives. That is probably where the concept was developed, as Broken Hill is very similar to a place such as Kalgoorlie. These are people who have lost their lives through mining activities. It is quite prolific as one travels throughout the resources areas. The agricultural and mining industries are probably the two biggest contributors when it comes to workplace deaths in WA.

There have been fantastic speeches. We have heard from members about people who have come to them. They have listened to people who have lost loved ones. We should not lose loved ones, but, unfortunately, these incidents occur. When it comes to agriculture and mining, my only criticism at the moment, minister, is that perhaps there needs to be more consultation when it comes to agriculture. The member for Roe highlighted, when he talked about the Western Australian Farmers Federation, the Pastoralists and Graziers Association, Farmsafe Western Australia and the fishing industry, that it would be nice to know what consultation has occurred with those organisations.

As I said, I am quite supportive of this legislation, but we want to be able to bring everyone together to ensure we can lift the standard in the workplace. The real intent of this legislation is how we raise that bar. My kids are nearly at an age at which they will start to go to work. We want to make sure that when they go to work in their part-time job, they will come home at night. I think every parent wants to see their children come home. Unfortunately, we have heard a lot of examples of when that has not occurred and that is very sad. As I said, the majority of this legislation is harmonising. I think everyone agrees that 99.9 per cent of this legislation needs to occur. Obviously, small businesses have some concerns about its impact. Often small businesses, especially those in regional Western Australia, do not have the resources to go to a place 400, 500 or sometimes over 1 000 kilometres away to receive the necessary training. The cost of upskilling is often prohibitive for the business owner, their partner in business or maybe one employee. That is why some of this legislation is quite onerous for small business.

It is good that the member for Roe brought up the Standing Committee on Public Administration, which has been inquiring into WorkSafe in the other house for quite a while, but has not yet reported. The inquiry has the following terms of reference —

a) WorkSafe's performance against the objects of the Occupational Health and Safety Act 1984

b) funding and resourcing of WorkSafe

c) adequacy of WorkSafe's training, oversight and accountability processes

d) adequacy of administrative processes, including complaints, investigations and prosecution processes

e) adequacy of WorkSafe's audits of training providers delivering occupational health and safety training

f) timely implementation and public education of coronial inquest recommendations arising from a workplace death

g) legislative and jurisdictional issues

h) any other relevant matter.

Perhaps, minister, we can look at how we can provide more resources for WorkSafe, especially for small businesses, so that WorkSafe can go around the regions to provide that information and talk to small businesses one on one, or at least have an opportunity to go to places such as Carnarvon and Exmouth and further into the Pilbara and the Kimberley or down south. One of the biggest issues the government faces is making sure WorkSafe is properly resourced to offer advice and knowledge to ensure that this legislation is never acted on. We want to make sure that it is safe to go to work and safe to come home. We also want to ensure that this legislation never has to be applied. We want to make sure our small businesses and the agricultural sector are fully up to speed and compliant and are doing the right thing by ensuring WorkSafe has the resources to educate those in regional areas. That is currently not the case because the onus is on small business to seek information. As I said, if a business owner in Carnarvon wants to fly to Perth, it will cost $1 000 return, plus accommodation, plus time off work. It can be a very expensive process. I know how hard it is to get my staff to come to Perth for training days that either the party or Parliament offer. For one individual, it could cost me around $2 000, let alone find someone to cover the

absence in the office. I know that clause 30B has been brought up by this side of the house, and I think there are some legitimate concerns. In consideration in detail the minister can elaborate on those concerns. I know he has been taking notes but one thing on my mind is why the Magistrates Court was chosen in clause 30B and not the District Court. The minister could provide some reasoning behind that and educate me and others, because I understand that there is quite a difference between those two courts in terms of appeals and having a judge and not a magistrate presiding over a case when someone could be confronted with the very serious charge of industrial manslaughter. I think that is critical.

In the National Party we are able to voice what we believe in. As a former member of the Construction, Forestry, Maritime, Mining and Energy Union it is my heritage and the way I have been brought up, and because of the fact that I was a grano worker in my early life after leaving school, I understand how important it is to make sure that work safety is paramount, particularly on construction sites. I can tell of many occasions when things might have gone completely pear-shaped and one could have got hurt. I fully understand how important it is, especially in the construction industry and the resources sector. I think there are legitimate concerns with the legislation and how those fears are allayed for the small business sector and regional communities. It is important to ensure that the agricultural sector fully understands how this legislation will impact on the way it operates. It needs to ensure that it can raise that bar, which is what we hope all businesses can do so we can protect our workers.

The beauty of hearing these speeches tonight is that I think we are all on the same page. I find it quite remarkable that we are on the same page. There are questions and examples that a lot of members have raised that need clarification, because there is a bit of misinformation out there, but there are some legitimate concerns. The minister needs to allay some of those fears, because as we know in this place, there are good intentions to have legislation to protect workers or to deal with crime, but unfortunately there are always unintended consequences of legislation that this house passes. Sometimes we do not see those consequences until later on, whether it be five, 10 or 20 years down the track. That is why it is important that we look at other opportunities to fully vet legislation and make sure that we have captured all those unintended consequences to the best of our ability. That is perhaps something the other place needs to look at more in-depth.

As the spokesperson for industrial relations for the National Party, I am quite comfortable with the majority of the legislation, but I share some of the concerns that my colleagues on this side of house have, and I am sure the minister will answer the questions that have been raised. I look forward to also asking further questions in consideration in detail once we get to it.

MR D.T. REDMAN (Warren–Blackwood) [10.23 pm]: I rise to speak on the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019. One of the great privileges of a modern First World nation is that we have a fundamental right to be safe at our workplace, and we should continue to strive to ensure that that is the case. When we reflect on accidents and issues that happen as a consequence of someone’s actions or behaviour, we need to make adjustments to ensure that we do as good a job as we possibly can so that those in that situation are safe and come home, as many people have said tonight.

My electorate, like most other electorates, has a whole range of workplaces. I have a reasonably strong fly in, fly out workforce that operates out of Margaret River, Denmark and Walpole, and down through Bridgetown and Manjimup and out through Busselton. That workforce is engaged in the mining sector, which has been somewhat of a focus in some of the discussion tonight. I also have a strong agricultural community, which again has been a big part of the discussion tonight about the potential impact of this bill on that particular sector. I also have wineries, again fairly risky workplaces, and civil contractors. I have a whole range of work environments that throw up somewhat of a risk. Therefore, it is certainly appropriate to respond to this bill and ensure that we put in place the most robust legislation to deal with those workplaces and that world’s best practice is in place.

As the member for North West Central has just highlighted, a big part of what we are talking about tonight is harmonising our legislation with that of the other states. That is absolutely appropriate. However, a number of questions need to be asked. The big concern in broader National Party circles is that there may well be unintended consequences for farming communities and the small business sector in particular. It is very hard to determine that. It is very hard to understand the legal thresholds of proof and the blurry lines that exist between what is indeed an accident and what is an act or omission that leads to an accident or to a person’s death, which is a terrible tragedy and one that we do not want to see.

We all have examples of people who have lost family members to industrial accidents. I want to put on the table tonight a couple of my own experiences.

The SPEAKER: Member for Darling Range!

Mr D.T. REDMAN: In no way does any of my commentary tonight reflect a lack of desire by me to ensure that we achieve a good, robust outcome. However, it is appropriate for us to interrogate the bill before us to ensure that it is robust and delivers the intent that it is meant to deliver. I want to give a couple of examples of unintended consequences. These are somewhat blurry lines, and I expect a fairly robust discussion during consideration in detail to tease out some of this. One is strata councils or strata arrangements and prescribed body corporates in strata companies. I am involved with a strata council in the unit in which I live when in Perth. In fact, my wife is the chair of that strata. The Mounts Bay Village strata was put up as a good reason for strata reform. The Mounts Bay Village strata is a range of interconnected groups that have some involvement with each other. The strata management employs people to do particular jobs. The concern is that if something were to happen that caused a person's death, where would the lines of responsibility start, because those lines of responsibility stretch through the complex arrangements of a group of stratas that interact in many different ways. There are a few blurry lines.

In my electorate I also have a fairly big visa workforce that operates in the horticultural areas in and around Pemberton and Manjimup in particular. Many of the accidents that occur in that area are road accidents. A case could be made that those accidents are due to the environment these people come from and their lack of knowledge and understanding of our driving environment, the fact that they might be driving on what for them is the wrong side of the road, or the time of day at which they are driving. A whole range of issues could extend the responsibility to the employer who brought in those people from an overseas nation to work in Western Australia. It could be argued that there might be an extension of a duty or responsibility in those circumstances. I do not know. It might not be connected. However, there have certainly been some terrible tragedies with visa workers from overseas.

I also have a number of examples in the farming community. My colleague the member for Roe talked about that, and no doubt there will be further discussion as we interrogate that. I also have a small business community. The concerns certainly from myself, and no doubt from other members of the National Party, are the unintended consequences that might flow from what we are seeing here in black and white as a new piece of legislation. As the member for Roe highlighted, there is an inquiry on this issue by a committee of the upper house. I would have thought it would make a bit of sense to see the outcome of that inquiry prior to putting this legislation through. We have just dealt with voluntary assisted dying legislation in this house—massively important legislation. I do not think that any bit of legislation has had that level of interrogation—a joint select committee and other groups were put together to have a close look at it. Getting the benefit of our parliamentary committees and committee system to scrutinise the best way to take this forward makes a bit of sense. Just like the member for Roe, I am a little bewildered about why we did not wait for the outcome of that inquiry before this legislation was introduced.

I will reflect on a couple of circumstances from when this legislation was put up. One is personal. My grandad died in a farm accident in about 2004. He was in his early 90s and my grandma was 87 or 88 years old. My grandad had his licence taken away, or he did not have a driver's licence, but of course he was able to drive on the farm in a farm utility. I think their business unit was either a partnership with their son and/or sole trader; basically, it was a private business. He went out to check stock at a distant part of the farm, probably three or four kilometres from where the homestead or house is. After checking the stock, he came back through a cocky gate, parked the ute, got out, went back to close the cocky gate and the ute rolled back over him. Anyone at that age, their early 90s, is very fragile, and sadly he died under that ute. The family reflected that this was a person who was brought up in the bush. He was a bushman in many ways. He had a lot to do with the Stirling Range and its conservation. The last place he would have wanted to be would have been in a big centre in a home of some sort. He died out on the farm. That is just about the best thing that probably could have happened. All the family reflected on that. Because it happened on a farm and it was an accident, WorkSafe was engaged, quite rightly; I understand that. At the time, because I am one of the eldest sons, with a bit of family support around I engaged with the people concerned—the police and others. What went through my mind was: "If someone finds something wrong, and there were issues with the brakes or something that might have been fundamentally wrong in terms of negligence or whatever, what's going to happen? Is my grandma going to be charged? Will she be held to account? Is that the consequence of that?" Thankfully, some very mature people were part of that, and I acknowledged one of those people a long time ago in a speech in this place. I think it was the right outcome. I am pretty certain that that circumstance does not come under the jurisdiction of this legislation, but it highlights something: what outcome is in the best public interest in that circumstance? I know the outcome that landed was in the best interest of all concerned, despite it being a death on a farm and an industrial death. I think that is something to reflect on.

The other example is that of a constituent, and I would extend that to them being a friend. I will not mention their name, because I have not sought their permission. Their son died in a farm accident in either his late teens or early 20s while working on a piece of machinery on an isolated part of the farm. There was an issue with a bit of machinery. They turned off the tractor, got off, and the bit of machinery fell on him and killed him. It took me a little while, but I talked to a couple of friends to get some advice about whether I should ring him up and have a talk to him, given that this legislation is before us. I rang him up tonight. I am really pleased and so was he; he was rapt.

I said, "This is what we're dealing with. How do you reflect now on what happened to you and your child in a farm accident?" It happened a number of years ago now. I asked, "How do you reflect on it? Do you think there was sufficient interrogation of the issues? Do you think that there were sufficient consequences for perhaps negligence on the part of the farmer who owned the property and was the employer?" I asked where his thinking was at, given that this had happened some time back and he had had a long time to reflect on it. He genuinely viewed it as an accident, and that was the assessment. He felt that he and his wife were kept in the dark; they did not get access to either workplace reports or coroner's reports. He did not get to see much of that.

I talked a bit about what is in the bill, and he certainly reflected on the importance of this bill and the fact that we can trigger entities, whether they are business, corporate or otherwise, to shift their centre of gravity and their focus on health and safety in the workplace. It is important. We cannot cover absolutely everything because accidents do happen, but we need to make it as robust as we can. He certainly reflected on that.

I then told him the example of my grandad. He said that he could understand in those particular circumstances that there might be a slightly different reflection on the outcomes. I do not know how those examples apply to this. No doubt that will be discussed during consideration in detail. However, I raised it to point out that in many cases there is a bit of a blurry line in some of these things, and it is important that when we put something down in black and white, the process is very robust to ensure it does not have outcomes that we do not want to see and are not in the public interest. I think there are a fair amount of those.

Given the time and the desire to see the end of the second reading debate, in summary, I think this is really important stuff. It is really important that we make sure that workplace legislation that protects workers is absolutely robust, but it is also important that we get it right. The job of the opposition is to interrogate that, as we will, and to make sure that the government does as good a job as it possibly can to make sure that it works.

DR A.D. BUTI (Armadale) [10.36 pm]: I rise to make a brief contribution to the cognate debate on the Work Health and Safety Bill 2019 and Safety Levies Amendment Bill 2019, which have been stated by a number of people to be the greatest reform to work safety since the 1984 legislation, brought in by a Labor government, to establish the Commission for Occupational Safety and Health. Legislation was also passed in 1986 to ensure the coverage of waterside workers in respect of asbestos diseases, because, of course, they were exposed to asbestos while working on the waterfront. Labor governments of various persuasions have a lot to be proud of in this space.

The member for Darling Range mentioned that we need to support small businesses. Yes, we do, and there is a bill on the notice paper, the Pay-roll Tax Assessment Amendment (Thresholds) Bill 2019, which I suppose we will bring on tomorrow. The government supports small business, but this bill supports workers. We have a fundamental obligation as a Parliament to support workers. A number of members have mentioned that we want people to go to work and to come home at night. We do not want them to end up in hospital. We do not want them to end up in intensive care and we do not want them to end up in a morgue. We want them to come home. Anything we can do in a legislative format to improve the chances of people coming home at night should be applauded and passed. I compliment the Minister for Industrial Relations for bringing this legislation to the house.

This is very complex legislation but some of the debate on the other side tonight has mirrored juvenile university debating points. They have put up consequences and what may happen: what if this or that happens? We are not talking about that. We are talking about legislation that has been very carefully drafted and on which there has been extensive consultation. The allegation that there has not been enough consultation is, I must say, quite surprising. There has been extensive consultation on this bill. I am sure the minister will mention that in his response.

The member for Roe said that this bill moves away from fundamental common law principles. I am not 100 per cent sure what he means. I assume he means reverse onus of proof.

Mr P.J. Rundle: Modern law.

Dr A.D. BUTI: What? What is he referring to?

Mr S.A. Millman: I don't think he's sure either.

Dr A.D. BUTI: He made a statement that this legislation is moving away from modern common law principles. I just wonder what he means. I am sure he will be able to tell me at some stage. The member for Darling Range talked about reverse onus of proof.

Mr S.A. Millman: No, reverse burden of proof.

The SPEAKER: Members!

Dr A.D. BUTI: That is not unknown. There is legislative reform in many areas where we have reverse onus of proof or reverse burden of proof.

Mr W.J. Johnston: It is not in this bill.

Dr A.D. BUTI: It is not in this bill in the legislated format. When it gets to a court case, we will always have the swaying of onus and burden of proof. That is what happens in a court case, member for Darling Range. The member can shake her head and smile, but this is serious stuff. We are dealing with worker safety.

Mrs A.K. Hayden interjected.

The SPEAKER: Member for Darling Range!

Dr A.D. BUTI: The member can go on about small business.

Mrs A.K. Hayden interjected.

The SPEAKER: Member for Darling Range, you have had your go!

Dr A.D. BUTI: We are doing a lot for small business, but there can be no more important matter than trying to protect workers, and that is what these bills seek to do.

These bills are not just about industrial manslaughter; I will get on to that in a minute. These bills, as mentioned by the member for Mount Lawley and others, seek to harmonise our legislation with federal legislation in the work health and safety arena, and they include a primary duty of care. I do not think anyone can argue that employers have a primary duty of care to their employees. The bills seek to require certain employers and certain operations to have a primary duty of care; therefore, as far as reasonably practicable, to ensure the health and safety of the workers and others who may be affected by their undertakings. The bills require that there should be due diligence by the employers. They also deal with consultation with work health and safety in the workplace and with protection against discrimination, against those performing or exercising their work health and safety functions or rights. It is not just about industrial manslaughter.

There were some issues raised on industrial manslaughter at clause 30(b), which is the industrial manslaughter simple offence. What is going to be the consequence if this happens or that happens?

The SPEAKER: Members!

Dr A.D. BUTI: What members forget to understand is that there has to be neglect. It is not just the fact that someone dies in the workplace; there has to be neglect, or the officer—the employer—has engaged in consenting to behaviour that would be considered to be neglectful. It is not just the fact that someone dies in the workplace; there has to be neglect. If someone is neglectful in the workplace and someone dies, there should be consequences. People just do not see this in the abstract and go back to base politics, saying that we are not helping small business. It is not just small business. Often, this will relate to major corporations, more so than small businesses, especially in the mining industry. We are not talking about small businesses in the mining industry; we are talking about major corporations. Why should there not be consequences if someone dies in the workplace due to the neglectful behaviour of the employer?

When the Minister for Industrial Relations introduced the Work Health and Safety Bill 2019 to the house, towards the commencement of his speech, he said —

> I specifically want to recognise the families with us today and their loved ones: Mr Des Kelsh … Mr Luke Murrie … Mr Chris Patrick … Mr Jayden Zapelli … Mr Lee Buzzard … Mr Wesley Ballantine … and Mr Robert Cunico, …

Those people all died in the workplace between 2002 and 2018. That is the driving motivation behind trying to improve work health and safety in the workplace and the introduction of manslaughter charge provisions in this bill. There cannot be a more important role than we have to ensure that our loved ones return home at night from the workplace. Rather than putting up arguments that are quite far-fetched and will not be caught up in the industrial manslaughter provisions, take this legislation on face value. It has been very carefully drafted after extensive consultation. The member for Darling Range can shake her head, but there has been extensive consultation. There has also been a report and an inquiry.

Mrs A.K. Hayden interjected.

The SPEAKER: Member for Darling Range, you had your chance.

Dr A.D. BUTI: The member for Darling Range's contribution was quite interesting because not once did she show any sympathy for the people mentioned by the minister in his second reading speech who did not come home at night time.

Mrs A.K. Hayden: Yes, I did.

Dr A.D. BUTI: Rubbish, you did! Rubbish, rubbish, rubbish.

The SPEAKER: Member for Armadale, through the Chair, please.

Dr A.D. BUTI: The member for Darling Range's contribution was appalling and showed a complete disrespect for those who have been severely injured or, even worse, have died in the workplace, and their loved ones.

Mrs A.K. Hayden interjected.

The SPEAKER: Member for Darling Range, it does not matter. You had a crack at everyone before.

Dr A.D. BUTI: That is the motivation behind this bill. The bill has been carefully drafted. At last, Western Australia will have provisions to deal with serious incidents in the workplace, including death. If the member for Darling Range is not moved by that and does not understand the provisions in the bill, which are not far-fetched nor a radical departure from common law and modern law principles—if they are, Parliament has the legislative force to modify the common law; indeed, Parliament is all about introducing statutory provisions—I am not sure what planet she is on.

I commend the minister for introducing this bill and I look forward to his considered response in consideration in detail.

MS J.M. FREEMAN (Mirrabooka) [10.45 pm]: I, too, rise on the Work Health and Safety Bill 2019 and the Safety Levies Amendment Bill 2019. I welcome the modernisation of the Occupational Safety and Health Act 1984. I have worked with that act for many years and the WHS bill has been a long time coming. There has been continual debate in the community about many aspects of the bill before us, including industrial manslaughter. The bill before us illustrates that WA Labor is committed to worker safety and the wellbeing of workers' families. Indeed, this legislation puts health back into the system as the primary focus. Having worked on the fly in, fly out report for the Education and Health Standing Committee, the mental health of workers is paramount in the way we structure work. The reminder in this legislation that risks to psychological health must be considered alongside risks to physical health is timely. It is certainly to be commended that this legislation includes the camps, which meets the recommendations of the report. I am sure past chair Dr Graham Jacobs, a previous Liberal member of this house, would be proud to see his leadership in this area respected. I am very proud that the committee's recommendations have been put into this legislation.

Having represented workers who had been exposed to the Department of Health's phenol-based cleaning products, which caused respiratory diseases and meant that workers were unable to continue their careers as patient care assistants and cleaners, which had the consequential impact of a loss of income, and having worked with the occupational health and safety legislation, it became clear to me that the object of the act to protect workers and other persons against harm to their health, safety and welfare through an elimination or minimisation of risk arising from work relies on an employer to meet their responsibilities, and that requires a strong and focused legislative framework, which is what the bill before us will deliver. For the residents of Mirrabooka, who predominantly work in retail, nursing homes and the health sector, or who labour on construction sites, ensuring that health and safety embraces long-term and repetitive heavy work is their primary concern in meeting the demands of workloads and long hours, and that is also covered in the bill before us.

The expanded definition of "worker" is welcomed. As a previous advocate for and a member of the workers' compensation board, I can tell this house that the workers' compensation legislation has a similar broad definition of "worker". I assure members that the expanded definition under this bill will ensure that clarity, fairness and clear coverage will be afforded to all workers in the prevention of injuries, and it is to be applauded.

I want to commend the minister for bringing all workplaces in Western Australia under what will be one act. I was a member of the WorkCover commission when the mining and general workforce sectors were under the one act and successfully operated and collaborated under that act. I was completely dismayed when the Barnett government ripped workplaces in the state, where mining is such a major industry, in two. It tore them in two simply because of the folly of the Minister for Mines and Petroleum, who wanted control and did not want to work with the Minister for Industrial Relations at the time. Indeed, what came out of that, as was illustrated in the fly in, fly out report delivered by the Education and Health Standing Committee, was how ineffective the separating of the two sectors was. It created confusion because legislation covered workers in some circumstances and not others, which was, effectively, to the detriment of their health.

The bill before us is very current. Yesterday I met with a passionate young woman who is championing the creation of safe and inclusive workplaces for those in our community dealing with the debilitating consequences of epilepsy. She is fighting for employers to adjust to and embrace the differences, but not difficulties, that a worker with epilepsy brings to a workplace, with a view to delivering a safe and healthy workplace. Occupational health and safety is about systems. Those systems should be inclusive for all. In the case of epilepsy, this can include flexible

shifts, leave to accommodate appointments or treatment, workplaces without obvious hazards in the event of a seizure, awareness of how to deal with seizures and avoiding lone working practices, if appropriate. This bill fosters such systematic responses. This bill enhances as well as simply harmonises the laws with those in the rest of Australia. I have been in this field, and around the debate about the harmonisation of laws, for a long time. We have waited eight long years to have legislation that is contemporary and reflective of what is going on in the rest of Australia. Now, because of the WA Labor government and its commitment to occupational health and safety, we will be the leaders. It took the McGowan government and this minister to deliver that. The many other people who should be congratulated include the advisers who are here tonight.

Every week in Australia, around four people are killed in their workplaces and many more are injured. Throughout my time in this Parliament, I have strongly stated my support for industrial manslaughter legislation. I express my sympathy to all the families that have had to experience the unbearable grief of the death of a husband, wife, brother, sister, daughter, son, nephew, niece, friend, colleague or other significant relation—the death at work of a dear person. It is worse for the families of those who are, effectively, killed at work only to see minimal fines and consequences imposed for their loss. As the minister said very well in his second reading speech, workplace injuries and deaths are caused by choices. If something is preventable but it occurs, it is not merely an accident.

My family is one of the families that has suffered the shattering consequences of a workplace death. On 10 March 1976, my 29-year old uncle was killed in a rockfall at the Silverlake mine in Kambalda. His eldest son was the same age as I was at that time; he was 11 years old. His and his younger brother's and sister's lives were broken apart. My aunt was left with little and has recounted the neglect by the company that she suffered. She was supported only by the embrace of her community and her family. It was, indeed, a tragedy for our whole family. I still recall the intense grief and unfairness that occurred at that time. I talked to my aunt recently and she recounted being completely bereft and without support, recourse or response. Thankfully, those times have passed, but when we hear stories such as the member for Perth talked about today, and those of others, it is clear we need a system that provides a just and equitable response to what is, effectively, a crime. Based on my personal reflection and professional background, I assure the house that this is a good law that is being introduced after consultation and with consideration of other state legislative frameworks. It also takes into account the independent review of safety laws in Australia by Marie Boland, a former executive director of SafeWork South Australia, whose recommendations included the introduction of an industrial manslaughter offence in occupational health and safety laws.

As outlined by the minister, the intent of the legislation for industrial manslaughter is clear: no person conducting a business or undertaking, or an officer, has anything to fear from these laws if they do the right thing for their workers and comply with their duties. This legislation ensures that when there has been a blatant disregard for, or a gross deviation from, a reasonable standard of care, community expectations will be met and those grossly negligent individuals and companies will be held to account. This government is committed to workers' safety, having significantly increased the number of workplace inspectors, increased educational resources and undertaken a community awareness campaign. This legislation is a further testament to this commitment to the people of Western Australia. WA Labor is committed to the health, safety and wellbeing of our community. I say that with pride and I thank the many people who have brought this legislation before us today.

MS M.M. QUIRK (Girrawheen) [10.55 pm]: The gestation of the Work Health and Safety Bill 2019 has been a long one, as we have already heard. I am loath to cause any further delay but I will make a few observations. The first of these is to congratulate the McGowan government and, in particular, Minister Johnston, for translating into legislation a commitment to Western Australian workers' health and safety. I also acknowledge the work undertaken by the member for Mount Lawley in his role as a member of the ministerial advisory panel.

The next observation I make relates to comments made by the minister in the second reading speech on 27 November 2019 when he noted —

> I will now turn to one of the key reforms previously announced by the government relating to new offences for industrial manslaughter. Before Lord Robens completed his report into health and safety at the workplace, the phrase "industrial accident" was in common use. The problem with that phrase is that it implies no causality and no culpability. An accident is simply something terrible that occurs, resulting in significant injury or loss of life but with no error or responsibility to be assigned. Work health and safety professionals no longer refer to "industrial accidents" because, decades after Robens, they know that systems of work are subject to catastrophic failures due to poor system design, bad behaviour, improper choice of tools or a combination of factors. Workplace injuries and deaths are caused by choices. If somebody makes a choice or decision that inevitably leads to the death of a worker, it is appropriate to

call that behaviour "industrial manslaughter". If something is foreseeable, it is preventable. If something is preventable, if it occurs, it is not merely an accident.

Framing the debate in this way is very important. It is analogous to road safety when the words "car accident" are replaced with the words "car crash". In that context we say that using the word "accident" implies that it is inevitable rather than preventable. Most traffic fatalities could be prevented if it were not for drunk or distracted driving, poor road conditions, lack of vehicle maintenance, or negligence by one of the drivers. In the same way, using the words "industrial manslaughter" rather than "accident" in this context conveys the notion that with proper systems, training, safe materials, fatigue management and vigilance, workplace deaths are preventable rather than a matter of providence or good fortune.

The construction and mining industries are often cited in the context of worker fatalities but the issue is far wider than that. For the purposes of convenience, I seek leave to have incorporated into *Hansard*, pursuant to standing order 86, a table by Safe Work Australia that lists worker fatalities for the states and territories numbered by deaths and industries, with the highest number of fatalities between 2014 and 2018.

Leave granted.

The following material was incorporated —

Table 1: Worker fatalities: number by state/territory of death, 2017, 2018 and five year average (2014 to 2018)

State/Territory	**2017**	**2018**	**5yr average (2014–2018)**
New South Wales	61	47	56
Queensland	44	39	46
Victoria	36	32	37
Western Australia	21	13	24
South Australia	14	8	13
Northern Territory	7	3	4
Tasmania	5	1	5
Australian Capital Territory	1	1	1
Total	**189**	**144**	**186**

Table 2: Worker fatalities: fatality rate by state/territory of death, 2017, 18 and five year average (2014 to 2018)

Based on the location of where the fatality occurred, over the five years from 2014 to 2018, the Agriculture, forestry and fishing industry accounted for the highest number of worker fatalities in Queensland, Victoria and Tasmania. The Transport, postal and warehousing industry accounted for the highest number of worker fatalities in the other states and territories.

State/Territory	**2017**	**2018**	**5yr average (2014–2018)**
New South Wales	1.6	1.2	1.5
Queensland	1.8	1.6	1.9
Victoria	1.1	1.0	1.2
Western Australia	1.8	1.6	1.9
South Australia	1.7	0.9	1.5
Northern Territory	5.1	2.2	3.0
Tasmania	2.0	0.4	2.2
Australian Capital Territory	0.4	0.4	0.3
Total	**1.5**	**1.1**	**1.5**

Table 3: Worker fatalities: number by state/territory of death and industries with the highest number of fatalities, 2014 to 2018 combined

Industry	**New South Wales**	**Queensland**	**Victoria**	**Western Australia**	**South Australia**	**Tasmania**	**Northern Territory**	**National total* (2014–2018)**
Agriculture, forestry and fishing	61	61	63	23	16	8	5	237
Transport, postal and warehousing	67	57	38	30	20	6	8	226
Construction	58	36	33	18	9	1	..	156

Manufacturing	24	14	6	11	1	3	..	59
Mining	7	10	2	16	2	1	2	40
Arts and recreation services	7	12	5	4	2	..	1	32
Administrative and support services	4	10	6	4	2	1	..	27
Public administration and safety	9	4	4	4	3	1	1	26
Other services	4	5	3	5	3	1	..	22
Electricity, gas, water & waste services	4	4	7	4	2	..	..	21
All other industries	37	16	17	2	3	4	3	82
5 year total (2014–2018)	**282**	**229**	**184**	**121**	**63**	**26**	**20**	**928**

Note: The Australian Capital Territory was not included separately due to the low number of fatalities, however, the total includes the Australian Capital Territory.

Table 4: Worker fatalities: number by jurisdiction and public road status, 2018

Jurisdiction*	**Not on a public road**	**On a public road**	**Total**
New South Wales	37	9	46
Queensland	27	11	38
Victoria	23	6	29
Western Australia	11	1	12
South Australia	6	1	7
Commonwealth	..	4	4
Northern Territory	2	..	2
Australian Capital Territory	1	..	.1
Tasmania	..	..	..
Aircraft incidents**	5	..	5
2018 total	112	32	144

* Jurisdictions may include a number of different regulatory authorities.

Ms M.M. QUIRK: Members will note from this table that the highest number of fatalities are in agriculture, forestry and fishing, with 23 over four years, and transport, postal and warehousing at 30. Before seeing that table, one might have guessed that construction or mining might have attracted higher numbers of fatalities, but those industries are at 18 and 16 respectively. This figure is unacceptably high nevertheless but comparatively lower. One could speculate that the reason those numbers are lower is that there has been a major focus in both the construction and mining sectors on worker health and safety.

To ensure safety, worker training and skills are essential. For that reason, the lowering of TAFE fees, hiked by the previous government, is important to maintain that skills base so that workers have a good grounding in safety issues. A corollary of this is that hiring backpackers to work on a building site for 20 hours a week at $20 an hour is fundamentally inconsistent with the notion of a safe workplace. At a safe workplace, skilled employees know what is expected of them and know how to undertake those duties carefully.

I want to refer to two recent incidents, Mr Speaker. The first involved the death of two young Irishmen in Goderich Street in East Perth. I refer to an article published on WAtoday on 17 May 2018 titled “Perth contractor fined $160,000 after the death of two workers in 2015”, which says —

> A Perth trucking contractor has been fined $160,000 over an incident in 2015 where two workers were crushed by falling concrete panels at an East Perth construction site.

> Axedale Holdings … in Perth Magistrates Court … over the incident, which led to the deaths of Irish workers Joseph "Joe" McDermott and Gerard "Gerry" Bradley.
>
> …
>
> Four workers had taken a break in an area adjacent to the trailer popular for smoke breaks, however the spot had not been set up as an exclusion zone and panel lifting works had already begun.
>
> Six panels—each weighing more than three tonnes—had not been individually restrained and as the third panel was lifted by a crane, the remaining panels slipped and crashed onto the area where the workers were taking a break.
>
> Mr McDermott and Mr Bradley died as a result of their injuries while the other two workers were unharmed.
>
> Axedale was one of three parties charged over the incident, and pleaded guilty to failing to ensure the safety of workers.
>
> The two other parties charged pleaded not guilty and will have their cases heard separately.

I will talk about that in a minute. The article continues —

> WorkSafe commissioner Ian Munns said the handling of tilt-up panels was well known in the industry as being especially dangerous during the loading, unloading and positioning stages.
>
> "There are laws in place, a long standing code of practice and Australian Standards to ensure pre-cast panels are dealt with in a proper and safe manner …
>
> "Axedale did not have proper systems in place to restrain every panel until the crane safely took the weight.

Ironically —

> "Additionally Axedale had the correct ratchets and straps available but did not use them due to the lack of safety systems and procedures."

That article mentions that other charges were laid in relation to that incident. Reporter Tim Clarke's article "Jaxon Construction site manager not to blame for Irish workers' deaths" was published on PerthNow on 14 December 2018.

It states —

> A former site manager with Jaxon Construction—who was charged over the death of two Irish tradies who were crushed by a massive concrete panel—has been cleared of any blame by a magistrate.

Worksafe alleged it was the manager's dereliction of duty that contributed to the deaths by failing to ensure an exclusion zone was set up in the area where the pair was smoking before they were crushed. The prosecutors said the manager had failed to ensure the order in which the panels were being unloaded from the truck did not cause a risk, after the court was told three panels on the road side of the truck were taken off, causing three others on the opposite side to tip off. The magistrate said the WorkSafe prosecutors had not proven their case beyond reasonable doubt, and acquitted the manager.

During the trial, two other workmen on the site who were seated with Mr McDermott and Mr Bradley when the panels fell towards them described how they ran for their lives. Through questioning from the manager's lawyer, the court was told how the main responsibility for ensuring exclusion zones were set up should have been the specialist crane hire company employed to do the lifts. The health and safety manager also said it would have been the responsibility of the crane operator to ensure the area was taped off. He said it would not be practical for a site manager to be aware of every practice of every subcontractor on a busy site. Accordingly, there was no conviction in this case. Frankly, it beggars belief that in an operation of that kind, the building manager would not have some responsibility for the exclusion zones.

The other case that I want to raise is the death of a young German girl who was not wearing a harness. A report in WAtoday titled "German worker who plunged to death in Perth 'was not wearing harness'" indicates —

> A woman who was working just metres away from German woman Marianka Heumann when she plunged to her death from the 15th floor on a construction site in Perth said the young woman was not wearing adequate safety equipment at the time of the horrific accident.

The woman claimed she was working in close proximity to the German worker who died. What I think is significant in this context is that the co-worker said, according to the article —

> "I can't take the image off my mind," …
>
> "Many people saw her lying there."

Ms Heumann had completed her work for the day. After taking off her safety harness, she realised that there was a strip of silicon missing from the airshaft. She went back to fix it, without her harness on, and the inevitable happened and she fell down the shaft. The co-worker said the accident had left her shocked and that her heart broke into pieces. The article states the co-worker said —

> "I remember that feeling so clear, was the worst thing that could ever happen," …
>
> "For a moment I thought it was a joke, a terrible joke."
>
> "I just started to cry and all the people were going crazy."

Although during the week there had been some focus on workers wearing safety harnesses, up until then there was a casual attitude on the worksite about wearing harnesses. That latter case demonstrates the awful impact that an industrial fatality has on fellow workers, and that should not be minimised. I have often spoken in this place about the toll of trauma and witnessing a colleague's death would invariably lead to post-traumatic stress disorder and, I imagine in some cases, a real fear or reluctance of ever returning to a building site.

I observe also that this bill refers to not only physical but also psychological health. In industries such as transport, enormous pressure is exerted to cut corners in order to meet unrealistic deadlines. This can result in fatigue and failure to take rest breaks, thereby jeopardising driver safety and, in fact, all other drivers on the road at the same time. It is no wonder that this is one of the industries that has an unacceptably high fatality rate, as I mentioned earlier. This is coupled with a lack of amenities to ensure that rest breaks are taken. In a recent letter to all parliamentarians, Tim Dawson, the secretary of the WA branch of the Transport Workers' Union, states that he wants —

> … to bring to your attention the situation regarding the lack of reasonable rest facilities for truck drivers on Western Australian Highways.

The union conducted a survey of its drivers and the responses were as follows —

1. Western Australia needs more truck rest areas.
2. Truck rest areas need to have parking for multiple trucks and road trains. This includes Road Train Assembly areas which are large enough to park, and to safely manoeuvre trucks with multiple trailers.
3. Truck rest areas should have
    a. Separate male and female facilities, with showers and toilets, which are regularly cleaned; and
    b. Outdoor rest facilities at truck rest areas, such as benches, and tables for meals.
4. Truck rest areas should have signs that indicate that it is a *"Truck Only Rest Area"*, so that they are not taken up by caravans, and by the general public.
5. Truck rest areas should have emergency communication equipment which could be accessed in an emergency and/or if there is poor mobile coverage. That communication equipment should be powered and self-sustainable, for example, by way of solar PV with a battery backup.
6. Roadhouses should supply clean showers and toilets at no cost to a truck driver, and also provide food that is healthy.

As this letter went to a number of members, I will not labour the issue, but he goes on to say —

> Do you believe that truck drivers should have to squat behind a truck, or in the bush, when they need to go to the toilet, or they should have to go for several days without having access to clean showers? Should truck drivers have to skip rest breaks because the truck rest area is taken up by holiday makers? *If you do not, then you need to do something about this.*

I mention that in the context that safe systems of work also require some decent infrastructure that may need to be invested in by the state or federal governments.

[Member's time extended.]

Ms M.M. QUIRK: I should be able to finish in the time remaining, thank you, member for Midland!

I am heartened to hear that in order to robustly enforce this bill, the McGowan government has provided an additional 26 WorkSafe inspectors. It is said that these laws will not deter errant or delinquent persons conducting a business or undertaking, or,as they are known, the PCBU. The provision of these additional inspectors, together with the capacity for the WorkSafe WA Commissioner to conduct thematic reviews, are welcome.

Although the imposition of large penalties, including imprisonment for industrial manslaughter, is a demonstration of the opprobrium with which the community regards the conduct of offenders, the certainty of being caught is a vastly more powerful deterrent than the punishment. The extra WorkSafe firepower of increased oversight and capacity will create a potent deterrent.

We have already heard about the Senate inquiry into industrial deaths in Australia, which reported in October 2018. It referred to a submission by the Australian Institute of Company Directors, which states —

> The Australian Institute of Company Directors made clear it had several concerns regarding industrial manslaughter offences, including that it led to a misdirected focus on punishing wrongdoing (away from the core objective of WHS laws); that it undermines the efficacy of harmonised WHS laws; and that it would overlap with general law manslaughter offences.

I think this is an unsophisticated interpretation of what the mischief of laws like this is. There would be little satisfaction in a harsh penalty being imposed in the event of death. I am sure a bereaved family would rather have their loved one still living than have an employer harshly punished. This is all about preventing injury and death, not about wreaking vengeance after the event.

There is no guarantee of this in any event, because the standard of proof beyond reasonable doubt requires that a person or entity has a duty of care; their duty of care was not complied with and as a result of that noncompliance there was a causal connection to an employee being killed. In other words, for the most serious offence to be made out requires that the death was foreseeable in the event safety standards were flouted.

There are three final issues in the bill that I want to highlight. The first of those is the prohibition against insuring for any monetary penalties imposed. This prevents the noncompliant company from viewing such penalties as a mere expense of doing business. I consider that this augments the deterrence aspects of the laws.

Next under the bill, I am pleased that a union is given standing in review applications to represent a worker or a group of workers. An individual worker who alerts of a safety concern is in a vulnerable position not dissimilar to that of a whistleblower, and may be threatened, lose employment or be blacklisted from getting a job anywhere else.

Finally, under clause 232 I notice that the limitation period for prosecution is limited to two years after the offence first comes to notice. I think this is important, for example, when materials are initially considered safe, but subsequently found to cause injury or disease after two years has expired. It is nevertheless possible sometime later to prosecute under the act. This clause also permits an offence to be prosecuted up to one year after a coronial inquest has ended when it was apparent that an offence might have been committed. This is not just academic. In fact, I can recall in a former life that I appeared at an inquest at Southern Cross acting for a mining company where a death occurred. I have to say that it is a week I will never get back. Southern Cross is an interesting place! The inquest occurred at a time well after the limitation period had expired for any work, health or safety prosecution to be brought, so my role there was somewhat academic, and I was solely there to identify any mitigating factors in the event that civil proceedings were commenced.

When people assert that they do not know what Labor stands for, I will be proud to cite this bill. It is a fundamental right of all workers to return safely home at the end of the day and to labour under safe conditions that are not inimical to their physical or psychological wellbeing.

MR W.J. JOHNSTON (Cannington — Minister for Industrial Relations) [11.18 pm] — in reply: I rise to wrap up the debate. I think it has been a very good debate and I look forward to making some detailed remarks about each of the contributions of members, but because of the hour and the fact that I am relying on the agency to clarify a few details so I can provide complete answers for opposition members in particular, I seek leave to continue my remarks.

[Leave granted for the member’s speech to be continued at a later sitting.]

Debate thus adjourned.