

WORKERS' COMPENSATION AND INJURY MANAGEMENT AMENDMENT BILL 2017

Second Reading

Resumed from 20 February.

MR T.J. HEALY (Southern River) [12.58 pm]: I rise to make a contribution to the second reading debate on the Workers' Compensation and Injury Management Amendment Bill 2017. The bill arises from WorkCover Western Australia's 2014 review of the Workers' Compensation and Injury Management Act 1981. I commend the Minister for Commerce and Industrial Relations for bringing this bill forward. It will improve a number of things. One of them is the inadequacy of lump sum entitlements for spouses. It will tighten up the definition of who is a partner. The inadequacy of lump sum entitlements for spouses and for children will be addressed. Western Australia's compensation figures are comparatively low compared with other states and territories. It is my desire that we will never need a bill to determine whether families deserve or need to receive compensation for a work-related fatality. It would be fantastic if no family loses a family member as a result of a workplace incident or fatality. Unfortunately, accidents do happen, and when they happen it is appropriate and important that people and their families receive adequate compensation. Again, lump sum entitlements will increase as a result of this bill. I will talk about that in a moment. It is also very important to recognise that Western Australia should not be one of the lowest paying states when paying compensation to families. Again, no amount of money will replace a loved one—a father or mother—but it is important that families, couples and children have some recognition as a result of an incident and their loss and that they receive appropriate remuneration.

The clarification of de facto status is certainly significant. The definition of "de facto partner" is well overdue. It is disappointing it took so long to include it. One's partner is one's partner, whether they have been a partner for one month, one year or 10 years. Whether they are male or female does not matter at all. I am very proud that we are acting to progress this bill. I was very disappointed to learn more and more about issues like this as I transitioned into Parliament over the last year. This bill has sat waiting, essentially, to be progressed under previous governments. Since 2014, the review has awaited. I will try to make it a policy this year of not bagging the previous government too much. Although this government has a majority in the lower house, it does not in the upper house. It is a fact that the previous government had a majority in both houses, but this bill should not have been that contentious for it to be deterred from progressing. I want to commend the Minister for Commerce and Industrial Relations and the government for progressing it because it means that families will receive fair and reasonable compensation in the event that a workplace injury or fatality has not been prevented. I understand that the lump sum payable will progress from approximately \$308 000 to a maximum of around \$560 000. There is no way that we can place a price on losing a mother, a father or another loved one. I cannot imagine losing a family member. I am very lucky that I have many mums and dads. My parents split up quite early—when I was young—and I have two mums and two dads. I am very fortunate that I never lost any of them due to a workplace injury. There is no way that I would have said in those circumstances that a certain amount of money was appropriate as compensation. It is important to acknowledge that. I do not like the term "death benefit"; I think it is a complete oxymoron. Compensation for acknowledging that something went wrong and that an accident happened through human error, company error or other, and increasing that amount is important. That is what protects families. My family is reliant on the incomes that my wife and I bring in. If we lost either income, it would be devastating for my wife, my family and my child.

I also acknowledge that under this bill, partners will no longer need to prove or give further information about their financial levels. They will not need to go through an income assets test to determine what they deserve or whether they deserve it. It will allow children to have access to the payout. The previous system of requiring certain families to divulge their incomes and assets to calculate the amount of compensation they receive after the loss of their mother, father or family member was discriminatory and inequitable. It is commendable that this government has moved to change that.

This bill provides greater clarity and support for claimants. I commend the government for introducing the Occupational Safety and Health Amendment Bill 2017 last year. This bill is different. It addresses different aspects. The breadth of coverage of this legislation will increase. As I mentioned, prescribed amounts will increase. There are good employers and bad employers. On the whole, I would like to imagine that the majority of employers are good employers who look after their workers as a key part of their business philosophy. The Occupational Health and Safety Amendment Bill 2017 that was introduced last year was designed to deter companies from trying to price out or acknowledge that employers had to pay out a certain amount, and they would build that into their business plan. It was important that they knew that any workplace injury or fatality was a significant thing to avoid. The workers' compensation bill addresses that. What happens when a workplace fatality or incident occurs? Again, there will be human error and workplace error. Accidents will happen. I cannot wait for the day when we progress through a year with no workplace fatalities or injuries. As I said earlier, that will be a desirable goal. This bill will

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ensure that when fatalities or injuries occur, financial calculations are made to support the families of those left behind. This will ensure adequate compensation and it will look after those who are left behind.

I would like to mention how sorry I am for past losses and how I would feel if I lost a loved one through a workplace incident. I want to express my sorrow to those people who have lost members of their family through workplace injuries. I understand that between 2014 and 2016, 146 families lost a loved one. The fact that in this day and age we still have 20 workplace-related deaths or fatalities a year is far too many in our community. Again, those family members deserve fair and reasonable compensation. I mentioned that there are good workplaces, and workplaces that can improve. I want to commend those that do the right thing. I want to commend those that work with their union partner and who work with industry and occupational health and safety organisations and bodies to ensure that on a variety of different work sites, be it construction, schools or hospitals, every worker is safe and every worker has an opportunity to come home to their family. I acknowledge that some workplaces are not the best. I think it is important that we recognise the role that unions have played as part of that partnership. I have mentioned in this place before that I am a very proud union member. As I have said in other places, I have been a part of a variety of unions. The historical work of unions has ensured safer workplaces. Are all unions perfect? No. Are all workplaces perfect? No. In my experience when workers, through their unions and employers, have negotiated to find an ongoing dialogue to identify risks to work out issues that need to be rectified, those workplaces are the safest and the best representative. In those workplaces, the company makes more money, the workers remain employed and the workers go home to their families and come back the next day. From my experience, those workplaces are the best. It has been a great struggle over hundreds of years but that cooperation between the Labor movement and responsible workplaces has meant that more people are safe. It is important to remember that that state that I talk about has not been accepted by many people. It has been a long and hard struggle by members of unions for well over a century. They fought long and hard to even have a seat at the table and to even have an opportunity to say to the employers that they felt there was a workplace at risk. Even today there are still workplaces that refuse to acknowledge the role of unions, refuse to recognise the role of a union executive having access to a worksite as an independent third party, and refuse to recognise how that can ensure that workplaces are safe. Again, I commend good workplaces, and I ask workplaces that seek to limit union access and workplace safety reforms to improve.

Millions of union members over the decades, over the century of struggle, have brought us to a place where workplace safety has improved. I will use some examples from my former workplace as a teacher. The teaching profession is a fairly highly unionised workforce. I have not been in a situation of workplace death in that style of work, but the fact is that decades upon decades of union members have fought for our rights. When I was a union rep at my school I had a seat at the table with my principal to discuss workplace injuries that had occurred, for example, when parents or students had attacked staff or when old, mouldy, non-maintained roofs full of water either had collapsed or had created workplace health issues. Again, there were not necessarily deaths on-site, but certainly unions played a role in ensuring that that workplace was safe.

I mentioned that I have also been a tiler, a warehouse forklift driver and service station attendant. I am still a bus driver. A variety of workplace situations have been improved because the members of the variety of unions that I have been part of have sat down with their employers and business owners and found solutions. Unfortunately, there have been times when those groups have not sat down and there have been situations in which workplace safety has not improved and workplace deaths have occurred. Unfortunately, that also has created situations in which the Occupational Safety and Health Act and the Workers' Compensation and Injury Management Act have come into play and been applied because families have had to be compensated for the loss of a loved one.

I again acknowledge the many families of those workers who have sustained injuries or lost their lives at their workplace. I think it is very, very important that families have their family members return home after they finish work; I cannot overemphasise how important that is. Again, I have had more of a white-collar experience as a teacher and I have been luckier than others. I know there are so many families who have not been as lucky as I have been.

It is commendable when businesses and members of Parliament acknowledge that workers are not expendable and are not simply an asset. I would just like to quote from a speech made in this place on 31 October 2017 by the former member for Cottesloe. He stated —

Companies always say, "Our most important asset is our people." That is nice, but it is not—the most important asset is the natural resource that it gets access to. Companies can always find people from different quarters of the world or different parts of Perth ...

I know he was not saying that therefore we can kill workers on worksites, but I think it was an interesting comment to make—that the role of businesses and companies in driving the economy is superior to the workers who will build our roads, run our factories and look after us in hospitals. Our workers are as key to our economy as the companies that provide the capital. The speed of generating a product, operating a site or generating a profit should

never be at the expense of a worker's life or limb. We must make it financially difficult for employers who fail to ensure that workplace safety is always taken seriously.

To return to the Workers' Compensation and Injury Management Amendment Bill 2017, it is my desire that this bill will never have to be referred to. I look forward to a day when this government—perhaps in the thirtieth year of the McGowan government—creates a red tape committee for reviewing bills like this one because they have not been referred to in 20 years. Would that not be a glorious thing? This bill protects workers. It protects families in my electorate and in my community. Any workplace death is one too many, and as we continue to work towards a zero figure, it is important to ensure that there are procedures in place and compensation systems available.

I would like to commend the other members who have spoken on this bill; I have enjoyed their contributions: the members for Hillarys, Moore, Forrestfield, Belmont, Mount Lawley, Mirrabooka, Bassendean and Kingsley. I think there were some very large contributions. Again, I commend Minister Johnston for his contribution when the bill was introduced last year. I would like to particularly commend the member for Forrestfield for some of his comments during his speech. There was a notable part that I enjoyed reading. He referred to the member for Hillarys mentioning the premiums; I think also the member for Moore suggested that if we increased the amount of money that those families may attract, then we may need to look at increasing premiums. I commend the member for Forrestfield for saying that we can actually stop discussions about any increases in premiums by not killing people. If we do not kill people on worksites, if every family gets their family member home every night, we do not even have to worry about increases in premiums. We will not have to worry about the application of this legislation because there will have been no workplace injuries or fatalities and families will be safe.

Again, every worker has the right to come home from work to their family in the same condition as they left. Looking after working people and working families should be a priority of all governments, and I am proud to be part of a McGowan government that supports that principle. Acting Speaker, thank you very much for the opportunity to make my contribution.

DR A.D. BUTI (Armadale) [1.16 pm]: I would also like to contribute to the debate on this very important bill before the house, the Workers' Compensation and Injury Management Amendment Bill 2017, as already contributed to by previous speakers and just now by the member for Southern River.

This bill seeks to increase the financial entitlements of dependants of workers who die in work-related accidents, and to reduce some of the stresses involved in obtaining payments, particularly for people who are obliged to meet the requirements of a de facto relationship. Under the current system, such people have to go through certain complications that are no longer really in line with how our community now accepts de facto relationships.

We can all understand how a workplace death of any sort is horrific and terrible for any family. When a loved one goes off to work in the morning we automatically expect that they will return that night. For that not to happen is just devastating for the family concerned and the people left behind. Obviously there is emotional loss which, of course, is something that cannot be compensated for. Under court law there are certain compensatory criteria for emotional loss, but this legislation seeks to address and ease the financial stress resulting from the death in the workplace of a family member. The Minister for Commerce and Industrial Relations and the government should be complimented for bringing this legislation before the house, through which we are seeking to increase the lump sum payable to a maximum of \$308 339. At the moment, although we do have compensation for work-related deaths, the lump sum payable is low in comparison with other Australian jurisdictions.

This legislation is, of course, related to other legislation in the workers' compensation field, but I would like to go back a little and ask why we need this legislation. Under the common law there was no right for a person to receive damages in tort law for the death of another, but in English law there was a statute commonly referred to as Lord Campbell's Act that enacted a remedy to this situation. Western Australia adopted Lord Campbell's Act in 1849, and then of course we had the Fatal Accidents Act 1959. That provides a compensatory scheme for dependants, which of course, though, still has to go through the court system. This legislation is specific to work-related deaths, and the ability to receive a lump sum payment, which has been significantly increased, and does not have to go through the trial and stresses of common law action, which we call the court system. The fact that one is dealing with the emotional stress of losing a loved one at the workplace is bad enough, and to have that additional financial stress is something we should try to alleviate through allowing a compensation scheme, or statutory scheme, that allows for a dependant to be awarded a certain sum of money. Under this bill there will be an increase in the lump sum payment. The minister's explanatory memorandum states —

The objectives of the Bill are to:

- increase the lump sum payment to dependants;
- provide for a simple and equitable method for apportioning the lump sum between dependants;
- increase the weekly child's allowance for the care and maintenance of each dependent child;

- ensure dependent partners and children have access to the full entitlement irrespective of their level of dependency on the worker at the time of death;
- ensure dependent children can receive both the child's allowance and a portion of the lump sum;
- facilitate timely access to compensation for dependants through a clear claims procedure, support and guidance, and a single pathway for expedited resolution or claims;
- delete the outdated definition of 'de facto partner' and ensure de facto partners are put on the same footing as any married spouse for the purpose of accessing compensation as a dependant;
- simplify the legislation including definitions, the claims procedure and schedule of entitlements.

On this side of the house there is obviously a close connection between labour in the workforce and the labour movement and union movement. It was only through the collective might and strength of the union movement that we have had the improvement in conditions of consequential compensation for workplace accidents and deaths. In my own family, my father worked for 40-odd years in construction. Thankfully, he came home every night, or when he was working up north, he came home after three or four months, and once it was a year, which was when he was fly in, fly out. He had a couple of accidents at work, but thank goodness the most severe of his accidents was losing part of a finger, which is bad enough, obviously, for the person involved, but compared with not coming home that night it pales into insignificance. My mother worked as what was then called a domestic helper in the public hospital system. She had a couple of significant accidents at work that resulted in a number of operations to her neck and back. It was through the workers' compensation scheme, which has been fought for so long by the labour movement, that she was able to be compensated. I can assure members that it was not easy. As we all know, when Graham Kierath was the minister for industrial relations, or was it work relations —

Mr W.J. Johnston: Minister for Labour Relations.

Dr A.D. BUTI: The Minister for Labour Relations—that is interesting. I do not know whether he ever had a relationship with labour! Anyway, he tried to wind back the system for common law action. I was working as a lawyer at the time and he made it significantly more difficult for people to take common law action.

Mr W.J. Johnston: Do you remember the circumstances of that?

Dr A.D. BUTI: No.

Mr W.J. Johnston: He made an announcement in the house to take effect on the next day so that a member of the chamber was able to get all of his own clients to have their claims.

Dr A.D. BUTI: Was that the member for Albany at the time by any chance? I do remember now, minister. Yes, it was appalling behaviour by the minister of the day. Why we would seek to prevent people from being entitled to compensation when their means of economic reward through work have been restricted as a result of a workplace accident is very interesting. There can be no greater consequences of a workplace accident than dying at the worksite.

I turn to workplace fatalities. I am not sure whether these figures are correct but I understand that from 2012–13 to 2014–15 there was a very big jump in workplace fatalities in Western Australia. I think they went from 19 fatalities to 36 in a year, and that is heartbreaking information. The figure is now around 20 traumatic work-related fatalities in Western Australia. That is obviously 20 too many—even one is too many. The member for Southern River stated that he hoped we would get to a stage at which one day we will not need to utilise or refer to this legislation. Although that is laudable, unfortunately, I do not think we will ever get to the stage at which there will be no fatalities at the workplace, but we must do whatever we can to reduce the number of deaths at the workplace. Of course, some worksites are more dangerous and unsafe just through the nature of the work. An article published in 2016 in *The Sydney Morning Herald* quoted Australia-wide data gathered by Safe Work Australia. Members might know what the most dangerous industry in Australia is—the one with the most fatalities and injuries. Would anyone like to guess?

Mr W.J. Johnston: Agriculture.

Dr A.D. BUTI: The minister is 100 per cent right, it is agriculture. A lot of people would not think that, but if we look at it, obviously —

Mr W.J. Johnston: It is 10 times deadlier than mining.

Dr A.D. BUTI: Yes, exactly. Sometimes the WorkSafe schemes are not put in place in agriculture, but it is inherently dangerous when there are machines and so forth being operated. The dangerous industries are agriculture, followed by forestry and then fishing. Did the Minister for Fisheries know that.

Mr D.J. Kelly: Sorry?

Dr A.D. BUTI: An article published in 2016 about the most dangerous worksites in Australia —

Mr D.J. Kelly: Fishery is one of them.

Dr A.D. BUTI: Fishery is number three. It was agriculture, followed by forestry, followed by fishery. The article states —

An analysis of the most recent data set from Safe Work Australia found the agriculture, forestry and fishing industry recorded the highest number of injuries and fatalities from 2003 to 2014, with the 686 deaths recorded accounting for 23 per cent of total workplace deaths in the period.

In 2013–14 the combined industry recorded the third-highest number of worker’s compensation claims, referring to 8.6 million hours worked.

There then follows a statement by Michelle Hutchison who is a money expert. She said —

“It’s no surprise, given commercial fishing is deemed as the most dangerous job on the planet,” ...

Transport, postal and warehousing was not far behind, with 549 transport-related deaths in workplaces. These industries and those of agriculture forestry and fishing all involve some form of driving of vehicle interaction, accounting for the high number fatalities.

Vehicle-related incidents remain the biggest killer in Australian workplace incidents, with road freight transport alone killing 423 workers in the 2003–2014 period.

I asked what the most dangerous industry was and the minister rightly mentioned that agriculture has a much higher rate of workplace deaths than mining. I am not sure what the current comparison is, but for a number of years Western Australia has had some of the worst workplace statistics and fatalities in Australia.

I am not sure about the current comparison, but everyone used to say that it was because of mining. It is not because of mining; it is because of industries like agriculture. I am not sure whether members of the National Party have contributed to the debate —

Mr W.J. Johnston: They did early last night. There is an interesting issue in the agriculture sector. If a mining truck was parked up, no-one would ever think to let a child play on that mining truck. But on farms, the idea that children can play on farm equipment is actually common. This is a big issue in the rural sector.

Dr A.D. BUTI: That is exactly right, minister. The son of a friend of mine, whom the member for Girrawheen also knows quite well, died while driving a vehicle on a farm. Often kids start driving when they are very young. The minister is 100 per cent right; the safeguards that are being put in place in the mining industry vis-a-vis those in the agricultural industry are chalk and cheese. We could argue, and we need to take the position, that all workplace deaths are avoidable. That is the position we have to take. However, I would argue that the deaths in the agricultural industry are definitely avoidable. It would not be difficult to remove the unsafe practices in the agricultural industry. The problem is that often these enterprises are family operations, so people do not see them as workplaces necessarily. As a result, they do not have the workplace safety schemes that other workplaces have.

Apart from the deaths that can occur in the agricultural industry, the other consequences for people in the agricultural industry if they do not obey workplace safety regulations is that they can be prosecuted under occupational health and safety rules. The consequences are enormous, but obviously there is no greater consequence than a loved one not coming home in the evening.

[Member’s time extended.]

Dr A.D. BUTI: I think this legislation is one of the most significant pieces of legislation dealing with workers and their families to come to this house since the election of the McGowan Labor government nearly a year ago. The minister has had a number of inquiries or reviews of workplace laws in Western Australia, which are very important. It is very significant that we have decided to increase the compensation payable to a dependant. It is a shame that the previous government, which, as the member for Southern River stated, had a majority in both the lower and upper houses, which our side can only dream about, did not see this issue as significant. I am sure that the member for Hillarys would see this bill as a very significant piece of legislation to ensure that dependants of workers who die in the workplace are financially compensated.

Mr P.A. Katsambanis: Which is what I said yesterday in my contribution.

Dr A.D. BUTI: I was not here; sorry, member for Hillarys. I have not had a chance to read *Hansard*.

Apart from the increase in the lump sum payment, one of the most important aspects of the legislation is the removal of the outdated definition of “de facto partner” to ensure that de facto partners are not discriminated against within the system. As a society, we have to move on and fall in line with community expectations. There is a great need for this legislation to come before the house to ensure that lump sum payments are provided to dependants for the loss of their loved ones in workplace accidents. It is bad enough having to deal with the emotional loss, let alone having to deal with the financial stress that is then imposed, because often the loved one

is the only or the major breadwinner in the family. As you mentioned in your speech, Mr Acting Speaker (Mr T.J. Healy), you know from your own upbringing how devastating it would have been if the people you depended on for financial security had been unable to provide that financial security. The same would have applied to me. When my father started work in the construction industry in Australia in the 1950s, there was very little, if any, protection for workers against workplace accidents. I am not 100 per cent sure, but I think there was very little safety protection in the construction industry in the late 1950s and early 1960s.

For the union movement and the Labor Party, the gravity of the situation around workers' conditions at unsafe worksites was due to there being no appropriate legislative framework to ensure that workers were safe, and because the workplace was unsafe, the chances of workplace accidents and death occurring increased. There also was no appropriate compensation. Prior to the change to the common law position due to the enactment of the Lord Campbell act in Britain, there was no ability for a dependant to receive compensation as a result of the death of the person they economically depended on because they could not receive damages if the person died before proceedings commenced in the civil courts. The Lord Campbell act and the Western Australian Fatal Accidents Act 1959 were incredibly important pieces of legislation because they allowed a class of people to claim damages for a wrongful death. Of course, it was restricted to a class of person—that is, dependants. This legislation will provide dependants with greater financial compensation without their having to go through a court system.

I believe that both sides of the house will support this legislation, because no-one could say that the dependants of a person who does not come home at night or in the morning from a night shift are not entitled to receive an increase in compensation or that de facto partners should be discriminated against in their entitlement to compensation for the death in a work-related accident of someone they depended on.

I commend this bill to the house and I congratulate the minister for bringing it before the house.

MSE. HAMILTON (Joondalup) [1.38 pm]: I rise to make a contribution to debate on the Workers' Compensation and Injury Management Amendment Bill 2017. This bill has come out of the 2014 WorkCover review. I wish to take a moment to congratulate the Minister for Commerce and Industrial Relations for bringing this legislation before the house and for taking the necessary steps to modernise workers' compensation legislation and the state's industrial relations system more broadly, making the process accessible and workable and providing clarity on the fundamental aspects of the scheme. The original version of the act was introduced in 1981 and has been amended in a piecemeal way since, but it needs further amendment to ensure that it is not unnecessarily complex and that it provides equity.

Each and every Western Australian deserves to know that, when they leave their home in the morning, they will come home in the evening. The introduction of this bill, unfortunately, will not bring back the mothers, fathers, brothers, sisters or children who have passed during the course of their work, and no amount of compensation will be able to bring back their loved ones. But the intention of this legislation is to repeal and replace the provisions of the act relating to the entitlements for dependants of workers who die in work-related accidents and provide adequate compensation.

The objectives of the bill are to increase lump sum payment to dependants; provide for a simple and equitable method for apportioning the lump sum between dependants; increase the weekly child's allowance for the care and maintenance of each dependent child; ensure that dependent partners and children have access to the full entitlement, irrespective of their level of dependency on the worker at the time of death; ensure that dependent children can receive both the child's allowance and a portion of the lump sum; facilitate timely access to compensation for dependants through a clear claims process, support and guidance and a single pathway for expedited resolution or claims; simplify the legislation, including definitions, the claims procedure and schedule of entitlements; and delete the outdated definition of de facto partner and ensure that de facto partners are put on the same footing as any married spouse for the purpose of accessing compensation as a dependant. The current legislation is inequitable and discriminatory to de facto relationships. A different standard is imposed on de facto partners that has significant financial impacts on dependants left behind and it is inconsistent with community expectations and contemporary indicators of what constitutes a de facto relationship. In an article on WAtoday from 2 Nov 2017, WorkCover WA chief executive Chris White said that the Workers' Compensation and Injury Management Act defined a de facto relationship as a couple who had lived together for two years. As has already been raised in this house, there are previous cases in which people were clearly in de facto relationships but were not living together for two years and the spouse missed out by just a few days. It is inequitable, so partners of deceased workers will no longer need to prove their financial dependency and whether they have lived with their partner for at least two years.

As mentioned by numerous members in this chamber last night, the statistics surrounding the number of workers who have lost their lives on job sites is too high. We need to reduce and minimise risk and work towards zero deaths on worksites. An article in *The West Australian* of 17 April 2017, titled "One WA worker is killed every

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month”, states that although there has been a downward trend in workplace deaths in WA, one worker was killed on the job in WA every month, on average, last financial year. The article states —

Since July, nine people have lost their lives at work according to WorkSafe statistics.

Four of the deaths since July 1 were in the construction industry.

The electrical, gas, water and waste-disposal industry has had two deaths and the mining industry and accommodation and food industry one each.

The agricultural, forestry and fishing sector, which has recorded the most workplace deaths —

Which was just raised by the member for Armadale —

over the past decade, also recorded one this financial year.

Twenty-two people died in each of the past two financial years.

It is just too many. The articles continues —

WorkSafe WA Commissioner Lex McCulloch said all work deaths were tragic. Most were preventable but that the overall trend indicated they were becoming less common.

...

Among those to lose their lives on the job since June are Marianka Heumann, 27, and Wesley Ballantine, 17, who both died on city construction sites.

Ms Heumann, a German backpacker on a working holiday in Australia, plunged to her death in October after falling 13 storeys down a ventilation shaft.

...

Wesley died in January after he fell about 12m while installing glass ceiling panels in the atrium at the old General Post Office building about 4.30am.

The teenager had been working a night shift that was supposed to finish at 6am.

According to Safe Work Australia, for the year to date, as at 16 February 2018, there have already been 16 deaths at work in Australia. Although I do not have WA specific statistics at hand, these figures are indicative that a significant number of workplace deaths are still occurring. Preliminary data shows that in 2017, 181 Australian workers were killed at work, compared with 182 workers in 2016. Over 180 families whose loved ones have walked out the door on their way to work have not returned. Those deaths have an impact throughout the workplace for co-workers and staff, the community, family and friends, not to mention the immediate family. This data is compelling and these statistics are for Australia, where we enjoy very safe working conditions compared with many other countries. An article on WAtoday on 2 November last year highlighted that the amount of compensation given to Western Australian families of deceased workers was amongst the lowest in Australia. Currently, families are paid just over \$308 000 if a loved one dies in a work-related incident in WA compared with just over \$775 000 in New South Wales, \$589 000 in Victoria and \$493 000 in South Australia. The amendment bill before the house today will increase this lump sum payment. Those hardest hit by work-related deaths are the families—in this bill termed dependants—who are left behind and have to try to make ends meet all whilst dealing with the tragedy and death of a loved one.

Although I do not want to get stuck criticising members on the other side, throughout the course of this debate in this house, several of my colleagues raised that in 2014 members opposite had all that they needed to introduce legislation not dissimilar to the amendment bill we are discussing now. In eight years in office, this was not a priority for the previous government. As my colleague the member for Southern River mentioned, the previous Liberal government had a majority in both houses. On our side we are committed to delivering local jobs for the people of Western Australia. It makes sense that in doing so, we introduce this amendment bill to adequately reflect the entitlements of workers in the workers’ compensation scheme. It aims to provide not only a safe workplace for workers, but also peace of mind for families, spouses and dependants of those workers so that they can go to bed at night knowing that should anything happen to their loved one, they will receive compensation. It is also important that it will be on a level that is reflective of compensation paid in other states.

I will just take a little time to reflect, as the member for Armadale alluded to earlier, on being in a situation in which I would have to deal with the workplace death of a breadwinner in the family—either my parents or if I had a partner who was the sole breadwinner. I am the eldest of five children and my father was the breadwinner while mum stayed at home and raised all of us. It would be very difficult to imagine. This amendment will properly address changes to reflect community expectations. It is not at the forefront of anyone’s mind, whether they work in an office or a different industry—as mentioned, agriculture is high on the list of where workplace deaths occur—

when they head off in the morning to think that they will not return. Making sure that we have the right protections is important. As my colleagues have already said, we should be striving for the safest of workplaces and work towards zero workplace deaths. Although this may be slightly difficult to achieve, it is something that we need to be working towards. As I have mentioned several times, every Western Australian worker and their family should head to work in the morning knowing that they are coming home in the evening. In the most dire of circumstances, when someone passes away on a worksite, the families left behind should receive the support afforded to them through the Workers' Compensation and Injury Management Amendment Bill 2017. I hope that this is supported by both sides of this house and in the upper house. I commend the bill to the house.

MR W.J. JOHNSTON (Cannington — Minister for Commerce and Industrial Relations) [1.48 pm] — in reply: I am very pleased to rise to close out the debate at the second reading stage of the Workers' Compensation and Injury Management Amendment Bill 2017. I understand from my good friend the member for Hillarys that the opposition does not intend to take this matter into consideration in detail.

Mr P.A. Katsambanis: Assuming that you deal with the issues.

Mr W.J. JOHNSTON: Yes, assuming that I deal with them. I was coming directly to that.

I will be commenting about a number of members' contributions, but I want to, with respect, answer the two specific questions raised by the member for Hillarys and half of the opposition during the debate. The first question is about the indexation of the children's allowance and the second is about whether a lump sum that is held in trust can be accessed by a child before the age of 18.

On the first question about the indexation of the children's allowance, a regulation-making power deals with this issue. I draw to the member's attention that all the entitlements under the act are included in a schedule that is amended from time to time, basically on the basis of inflation. This amount will be indexed on 1 July each year according to the consumer price index, so that the underlying value will be protected in the same way as other elements of the workers' compensation arrangements. So, yes, it is not a static amount. We do not have to come back and deal with it through the Parliament because the regulation-making power will deal with that. Hopefully that has answered the member's question.

There is already a procedure that deals with access to a lump sum held in trust for a child. Application can be made to WorkCover's arbitration service. The specific reference is proposed new section 72I(1), which will provide the power to deal with that matter. That is dealt with under clause 6 on page 8 of the Workers' Compensation and Injury Management Amendment Bill 2017. The arbitrator has power there to make an order. That is how, if circumstances change and the child needs early access to the lump sum, the arbitrator can make a fresh order to provide access to the lump sum.

Mr P.A. Katsambanis: It might be in the act, but that provision you referred to does not specifically deal with —

Mr W.J. JOHNSTON: It does. It gives a head of power for the making of the order. It does not limit the contents of the order.

Mr P.A. Katsambanis: We'll see what happens in practice.

Mr W.J. JOHNSTON: The conciliation and arbitration processes of WorkCover are long established. The member for Mirrabooka and I were talking about it being such a long time since either of us practised there. Twenty years ago on 1 January I became assistant secretary of the Labor Party, which makes it now over 20 years since I practised at WorkCover. The member for Mirrabooka was joking with me this morning that it is a decade since she practised there. The WorkCover conciliation and arbitration jurisdiction is quite well regarded by unions, lawyers, insurers and employers as being effective and accessible. It has the requisite powers under that provision to make the orders the member referred to. If circumstances change, it can make any order necessary to deal with a child getting access to a lump sum before the age of 18.

I congratulate Chris White, acting CEO of WorkCover, his staff and the board of WorkCover who worked so well while conducting the review of the legislation in 2014 that led us to where we are today. Last Thursday during question time, I announced that cabinet had approved the drafting of a bill to replace the existing 1981 legislation. Again, that was a recommendation of the 2014 review. The intention, as I explained last Thursday, is for that to result in an exposure draft. That will not be a green bill, but rather a complete draft bill that will be circulated throughout the community, particularly to interested parties—insurers, representative bodies for employers and employees, and lawyers—to ensure that all its terms are adequate. It will then return to cabinet. It will actually go out to the community before it comes back to cabinet, so that when cabinet reconsiders the draft bill, it will be with the benefit of the results of the exposure draft having gone to the community. That is a very open and transparent methodology for developing the legislation, which, subsequent to cabinet endorsement, will be brought back to the Parliament. That will be another exciting opportunity for the Parliament to help people in this state. As

Extract from Hansard

[ASSEMBLY — Wednesday, 21 February 2018]

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Mr Terry Healy; Dr Tony Buti; Ms Emily Hamilton; Mr Bill Johnston

I explained previously, both in my media release and in my commentary last week, it is not intended to change the entitlements or other matters in the current act, but, rather, to overcome the inevitable problems with long-lived legislation, whereby it gets amended and amended and becomes harder and harder to read and deal with, particularly as a layperson. Clearly, we want ordinary people to be able to understand legislation to the greatest possible extent. The legislation we are dealing with today is very critical, but it is not the end of the legislative reform program that arose from the 2014 review. I note that the former government removed the age discrimination in workers' compensation so that people over the age of 65 years are now covered for workers' comp, whereas, once upon time, they were not.

I make the point that the workers' comp system does not put a person back into the same position as they were in before they were injured; it is simply a statutory framework to provide a minimum level of benefit. I wanted to make that very important point for a number of members who commented about the role of compensation. That is why it is important to have sufficient penalties under the occupational health and safety regime, which is obviously separate from the workers' comp regime, to ensure that there is sufficient incentive upon employers to maintain a safe workplace.

I want to comment about one other thing that a number of members have talked about—that is, human error leads to accidents. There is a theory in work safety that is about inherent safety—that is to say, we have to assume individuals will make an error, so that is not the issue. The issue is that when a worker makes an error, what are the consequences? That is the idea of inherent safety. Of course, there are safe systems of work and safe work procedures, and people are trained, but on the assumption that things are going to go wrong, what does that mean? Members will have seen photographs from the 1970s and 1960s that show a trestle bridge being built for the inland iron ore projects, with the guys who are working on the trestles wearing shorts and T-shirts—perhaps workboots, perhaps not—and no safety harnesses. It was a different environment then. That was clearly not inherently safe because if something went wrong, there was going to be a problem. It is now expected that personal protective equipment be worn. People who visit worksites now—as I am sure many people here have—are given safety briefings, required to wear PPE and, for those of us who have the disability of poor eyesight, required to wear over-glasses to protect their eyes. They are the things that we all do now as a regular part of our approach to health and safety and they are important steps on the way to zero harm in workplaces. It is not as though things will not go wrong; it is about making sure that if things go wrong, nobody gets hurt. I have a story about a warehouse from when I was a union organiser. Two steel warehouses were amalgamated and the new warehouse had new racking for the steel plates. The guys were explaining that there were no cleats. I did not work in the warehouse and had not worked in the steel industry, so it took me a little while to work out what they were getting at, but it was about the cleats at the bottom of the bracket; the steel plates could not stand at the vertical. They had to stand past the vertical.

Debate interrupted, pursuant to standing orders.

[Continued on page 407.]