

INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL 2020

Remaining Stages — Standing Orders Suspension — Motion

MRS M.H. ROBERTS (Midland — Minister for Police) [10.11 am]: I move —

That so much of standing orders be suspended as is necessary to enable the Industrial Relations Legislation Amendment Bill 2020 to proceed through all remaining stages without delay between the stages.

MR Z.R.F. KIRKUP (Dawesville) [10.12 am]: The opposition supports the motion moved by the acting Leader of the House to ensure that we can get the Industrial Relations Legislation Amendment Bill 2020 through this place today and hopefully before we commence the motion for Hon Bill Grayden. We look forward to supporting the motion so we can make sure we get it to the other place.

Question put and passed.

Consideration in Detail

Resumed from 19 August.

Clause 27: Part II Division 3AA inserted —

Debate was adjourned after the clause had been partly considered.

Mr P.A. KATSAMBANIS: When we discussed this clause yesterday, we basically exhausted the area of forum shopping. Section 725 of the commonwealth Fair Work Act 2009 essentially tries to limit the capacity for people to forum shop or double-dip in relation to workplace bullying. Is there an intention to introduce a similar provision in the Western Australian legislation or is it even necessary?

Mr W.J. JOHNSTON: Member, that is not actually what the Fair Work Act provides. The Fair Work Act provides a limitation when a matter has been dismissed, but it does not prevent the making of multiple applications, so it does not quite work the way the member described.

Clause put and passed.

Clauses 28 and 29 put and passed.

Clause 30: Section 52A inserted —

Mr P.A. KATSAMBANIS: Clause 30 inserts proposed section 52A, and a couple of other amendments follow in the subsequent clauses, up to clause 33, to tidy up what proposed section 52A will do. The new section relates to counterpart federal bodies. Can the minister provide an explanation of why this is necessary and what is the scope of this proposed section?

Mr W.J. JOHNSTON: Proposed section 52A relates to organisations registered in both the state and federal system. Of course, organisations cannot be registered in both systems; they have to have a separate existence in the federal system and a separate existence in the state system. However, a long-understood practice is that a federal body can be declared to be a counterpart federal body. This applies only to employee associations.

I will give members a few examples. The Rail Train and Bus Union has a federal existence and a state existence, and at the moment the federal secretary of the WA branch is not the same person as the state secretary of the state union; however, the branch secretary of the Shop, Distributive and Allied Employees Association of WA—one that I am very familiar with—is the secretary of the state union. On the other hand, the union now called the United Workers Union has a long history of amalgamations and its counterpart federal body, when it was called United Voice, had a section 71 certificate. A section 71 certificate holds that the election for the federal body is deemed to be the election for the state body; therefore, the person who occupies the position of secretary of the federal branch is deemed to be the secretary of the state union.

This is not controversial; this has been happening for decades. The problem is that the history of the federal body is now diverging from the state union, and so the federal union is amalgamated with what used to be called the National Union of Workers to form a union called the United Workers Union. The issue with the United Workers Union is that it does not have state branches; it has functional branches, such as a branch for enrolled nurses and health workers, a branch for cleaners and gardeners and a branch for warehouse workers, so it no longer has an equivalent federal branch in Western Australia. Therefore, the old section 71 arrangement is no longer relevant for that union, so we have to provide a system for the new structure, or the federal union, to be recognised by the state act.

Through these amendments, we are providing a system not for the automatic recognition of the federal structure, but rather for the right for the commission to recognise the parallel office that is deemed to be the equivalent office of the state. Another example is the Food Preservers' Union of Western Australia, which has a long history in Western Australia. Another union, registered under the federal act, was called the Confectionary Workers' and

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Food Preservers' Union, but they had nothing to do with each other. They had a similar name, but they were not related. The federal Confectionery Workers' and Food Preservers' Union of Australia amalgamated with the Automotive, Metals and Engineering Union to form the Australian Manufacturing Workers' Union, whereas the Food Preservers' Union of Western Australia had always been associated with Manufacturing Grocers' Employees Federation of Australia, which amalgamated with National Union of Workers. Members can see that there might not always be alignment, even though they might have similar activities. Through all these amendments we are providing the Western Australian Industrial Relations Commission with the power, not directing it, to recognise that the federal union might not have a state branch and therefore it has to identify a different office to be the equivalent of the state secretary.

Mr P.A. KATSAMBANIS: To paraphrase that, this is really about union housekeeping to take into account the modern version of how unions evolve differently in different jurisdictions and are tending to move towards a federal-style or national-style structure rather than the old craft-based, state-based unions. Is that where we are heading?

Mr W.J. Johnston: Sort of.

Mr P.A. KATSAMBANIS: Sort of. So, essentially, this is to deal with internal union arrangements. I take it from that answer that it will not give additional powers to anyone in any way throughout the industrial relations system; it is just a matter of recognising where the appropriate office-bearers are in a circumstance in which the constitutional arrangements of a particular union do not align with the very structured nature of our recognition of counterpart bodies in the state system. Is that correct?

Mr W.J. JOHNSTON: Yes, the second half of the member's commentary is correct. It is not to direct, but to provide the commission the power, where it believes it is appropriate, to determine which office is the counterpart office. It is not quite the way the member described it; it is because there is a different process for certain unions. Let us take the Rail, Tram and Bus Union as an example. Generally speaking, it could ask for a section 71 certificate to be issued, and then whoever is elected to the federal office would be the secretary. But if it chooses not to, it is not required to change that, so the federal union can do whatever it wants and there is no impact on the state system because there is a state entity. It is only when there is a history of the state entity already having a section 71 certificate and the person elected to that office is deemed elected to the state office that an issue arises. Now we have to allow the commission the power when the federal union no longer has a state branch. If it has a state branch, it is not a problem. But if it no longer has state branches, it moves to a national organising platform. It is not about craft coverage, because we could have a craft union that also adopted a national structure; it is about being able to recognise that national structure in state legislation. As I said, it is not a direction; it is a power, and the commission can exercise that power when it sees fit. If the commission is not satisfied that it is proper, it will not exercise that function.

Clause put and passed.

Clauses 31 to 33 put and passed.

Clause 34: Part IIAA inserted —

Mr P.A. KATSAMBANIS: Clause 34 inserts a new part IIAA into the Industrial Relations Act 1979. This part was discussed at length during the second reading debate and the minister's summing up. It enables the minister to declare an employer to not be a national system employer. I think we traversed the history of this. The move from the old-style federal industrial relations system relied on the interstate nature of a dispute to bring parties to the Industrial Relations Commission to use of the corporations power under section 51(xx) of the Australian Constitution and the express provision incorporated in section 14 of the commonwealth Fair Work Act to enable states to do this for a very limited class of employers. It does not say that the states have to do it, but it gives them that power. It contemplates that states can do that, and the minister is doing that.

The minister has brought this provision to bear and made his intentions clear. I will give him a tick for that. He has been very transparent. He is doing this because he intends to bring the Western Australian local government sector from the federal system, where most local governments have been for many years, and into the state system. That is his express intention.

Mr W.J. Johnston: That's not quite right. That not quite what I'm doing. I will explain it in a second.

Mr P.A. KATSAMBANIS: The minister might explain it later, but he has made it extremely clear that he believes that local government employment relations ought to be dealt with within the state system and that constitutionally they ought to be there. The minister has made that clear.

Mr W.J. Johnston: You're not actually properly putting my position, but you give your speech and I'll give mine.

Mr P.A. KATSAMBANIS: The minister can put his position. It is stated throughout the minister's second reading speech that he intends to use the powers contained in clause 34 to declare local governments across Western Australia

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not to be national system employers so that they come into the state system. The minister believes that is right way to go. The Western Australian local government sector has objected strenuously to that. Through its representative body, the Western Australian Local Government Association, the local government sector has written to all members of Parliament and had significant interactions with the minister. The sector has made it clear that it is happy where it is. A lot of local governments have been in the federal system since the 1980s or 1990s. Including regional councils, there are more than 140 local government authorities in Western Australia, and 121 of those have their industrial relations governed in the federal system. That is around 87 per cent of the sector. There are 114 federally registered enterprise agreements applying to 75 local governments and regional councils compared with 12 state industrial agreements. Quite clearly, the local government sector is more heavily involved in the federal industrial relations system, and it tells us it is happy with that. It is concerned about spending an inordinate amount of time and money, which is ratepayers' money because local government does not have a magic money tree—no government has a magic tree; all government money is taxpayers' or ratepayers' money—simply moving its industrial relations system from the federal to state system. The local government sector has expressed those concerns quite forcefully to us and made it very, very clear that it does not want that.

Like the minister, I believe that that power should be in the Fair Work Act.

Mr A. KRSTICEVIC: I would like to hear more from the member for Hillarys.

The ACTING SPEAKER: Extension granted.

Mr P.A. KATSAMBANIS: Like the minister, I believe that there should be this power envisaged by section 14 of the Fair Work Act. It is only a matter of how a minister, or government, would exercise that power. When we talk about employee–employer relations, we need to rely primarily on the spirit of good faith, and reciprocity and mutuality; otherwise, the whole system breaks down. We are proposing with the amendment that I will move in a minute that if the minister does exercise a power to bring employers away from the national system and deem them not to be employers under the national system, that would be done only with the consent of the employer. In the minister's summing up of the second reading debate, he said that is unfair because the employer would have to consent but the employees would not. The minister is not bringing the employees into the system directly, only indirectly. Number one, it is the employer that will be deemed to be a national system employer. Number two, and most importantly, if the minister did have that intention and the employees wanted to be brought into the state system, they could directly petition the minister or ask him to do it. I do not know about other members of Parliament, but as shadow Minister for Industrial Relations I have had lots of representations from the trade union movement, both from the peak body here in the state and individual trade unions, and I continue to have, I think, cordial relations. We might not agree on a lot of things, sometimes we might not agree on very many things at all, but we have cordial relations. I have not had one trade union knock on my door, ring me, write to me, email me or text me and say that they would like local government in Western Australia to be taken out of the federal system and brought into the state system. Like local government, I do not think too many trade unions want to spend a hell of a lot of time or effort reinvigorating provisions in the state system that work perfectly well in the federal system. This is not about states' rights. We are agreeing that the minister can bring in this provision, and the Fair Work Act envisages it. All we are saying is that if the minister is to use this power, he ought to consult with the people he is bringing back into the system to see what they think, which is why we have debated this at length at the second reading stage. I think we will agree to disagree on this, which is why I would like to move the amendment to clause 34 standing in my name. I move —

Page 42, after line 27— To insert —

- (3) The regulations may make a declaration only if the Minister is satisfied that the employer has consented to the declaration.

If the minister thinks this is the right way to go constitutionally, he can contact the employers. Obviously, the employee representatives would have a similar ability to contact the minister, but the minister could not drag an employer kicking and screaming back into the state system if they do not want to do so and they are happy to be where they are. The employer would need to consent. If there is a constitutional issue, as the minister says, let the minister argue the constitutional issue. If he truly believes that there is a genuine constitutional issue to be addressed here, let him address the constitutional issue with the commonwealth government through the federal Fair Work Act. Let him address that constitutional issue, because clearly the local government sector does not believe that there is a constitutional issue, the trade union employees in the local government sector do not believe that there is a constitutional issue and, more particularly, the Fair Work Commission does not think there is a constitutional issue, because it continues to issue these enterprise agreements and register them federally. We do not think that stacks up, but if the minister does have a constitutional issue, there are other ways he can deal with it. We think dragging an employer body and all the employees—the hundreds of thousands of employees—back into the state

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system, causing dislocation, causing concern, causing costs and increasing costs to ratepayers, particularly at this difficult time, should be done only with the consent of the employer the government is trying to drag back in.

Mr V.A. CATANIA: I thought I would get up so the minister can respond. The Nationals WA supports the amendment moved by the member for Hillarys. As he succinctly put, representations to the National Party from the Western Australian Local Government Association are clearly against this legislation because of the impact it will have on local governments right across Western Australia, and particularly regional WA. I believe there are 10 local governments under the state system, and the rest of the local governments are under the federal system. This is where we must allow for that choice to occur for local governments. Given the fact that this Labor government has put a freeze on the ability for local governments to increase their rates, this is a cost burden. This is not what local governments need at this present time. Local governments need to work out the huge impact they have borne, particularly in regional WA, where their revenue sources have been cut, whether it be through airport landing fees or something else. A lot of local governments have lost a huge amount of money, which has meant that they have had to trim back a lot of their costs. In some cases, they have had to offload quite a few employees to balance their budgets because of their inability to raise rates to deal with this financial problem that a lot of local governments have. The Minister for Local Government's response was that they should spend their reserves. A lot of local governments do not have reserves to spend, so they are in a financial pickle. Members in this house, local governments, particularly in smaller towns in regional WA, do not have the ability at the moment to increase rates, which is their revenue source, and other revenue sources have dried up. This amendment allows for that choice. It is all about being fair and equitable and having that choice.

We do not want to keep on imposing costs on local governments. Over time, local governments have seen a cost shift from federal and state governments, and it is now increasing more than ever because of the way this government is imposing a lot of pressure on them to spend up. Rather than the state spending up in regional towns, local governments have spent up using every cent they have. What happens when they run out of money, if they do have money?

Dr A.D. Buti interjected.

Mr W.J. Johnston: Tony, let him speak.

Mr V.A. CATANIA: I am happy to have the member for Armadale's interjection, because not all local governments are in a good financial position. This clause will impose further costs on local government. When there are 21 000 local government employees who have to switch from the federal system to the state system, there is a cost involved. I plead with the minister to please understand that a lot of local governments, particularly regional local governments, are not in this financial position, especially when the minister in his other portfolio has increased costs for local governments in the Horizon Power network by 10.6 per cent for street lighting. That is another cost burden on local governments when they have been told that they cannot increase costs and pass them on to the ratepayer, but the state government can. The hypocrisy that exists in this government is astounding. This is another problem that will impose a huge financial burden on local governments around Western Australia.

Mr W.J. JOHNSTON: I understand the bleating from the member for North West Central, and how ridiculous. This provision does not increase costs on local governments. In fact, it gives local governments an opportunity to save money. This is an opportunity to reduce their reliance on the expensive legal services that they are using in the Fair Work Commission. They can get away from that and come back to the simple layperson's jurisdiction of the state commission, and the government will help them with their industrial relations if they want. Further, member for North West Central, this provision has been designed in detailed consultation through a task force that included WALGA representatives to make sure that there is a simple transition by which the existing terms and conditions continue to apply. Every Western Australian Local Government Association representative will tell the member that because WALGA was involved in the design of the transition arrangement.

Let me turn to the member for Hillarys' amendment. Local governments are not constitutional corporations, which means that they are ineligible to be regulated by the commonwealth. We know that because during the former government's period, it passed legislation to specifically regulate the employment of the chief executive officer of every single local government in Western Australia and they are currently regulated by a provision of the Salaries and Allowances Tribunal. That was done by the Liberal government, and the only way that that could have occurred was if the Parliament of Western Australia had the authority to regulate the employment of workers in local government, and that means that the former government did not believe that they were constitutional corporations.

The next thing is that nobody—not a single representation from any local government—has asked me not to proceed with this provision. On the other hand, a number of local governments have said that they want me to proceed with this provision. I accept that WALGA does not want to do it, but is it not interesting that when I first met with WALGA councillors after I announced that we were following this pathway, they accepted that this was a good idea? I agree that the paid officials are opposed to this. I meet with local governments constantly. I met with several

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local governments over the last three weeks and never once did they raise this issue with me. This is not an issue for local government. I agree and accept that it is an issue for WALGA, but it is not an issue for local government.

Instead of moving this amendment, the member for Hillarys should have moved an amendment that provides that any local government that holds a plebiscite that asks to remain in the federal system is allowed to remain in the federal system. This is not a question for WALGA; this is a question for the people of Western Australia. I believe in the right of Western Australia to assert its control over local government and not have Canberra regulate local governments because, let us understand, if local governments in Western Australia are saying that they are constitutional corporations, that means that the commonwealth Parliament can exercise any right to regulate them in any way that it sees fit, not just in respect of industrial relations but in any regard, including the election system for councillors of local government and the rates of pay for the elected officials of local government. They cannot be part pregnant—they are either in or they are out. If local governments are constitutional corporations—if that is their argument—then they are constitutional corporations and the commonwealth can do what it likes. But they are not. I point out to the member that if local governments want to give up their rate power and no longer collect taxes—because that is what a rate is—they would then become constitutional corporations. But they cannot have it both ways. They cannot collect rates that are given to them by the Parliament of this state but not be regulated in other ways by this Parliament. It cannot happen.

Division

Amendment put and a division taken, the Acting Speaker (Ms L. Mettam) casting her vote with ayes, with the following result —

Ayes (18)

Mr I.C. Blayney	Mr P.A. Katsambanis	Mr J.E. McGrath	Mr D.T. Redman
Mr V.A. Catania	Mr Z.R.F. Kirkup	Ms L. Mettam	Mr P.J. Rundle
Mrs L.M. Harvey	Mr S.K. L'Estrange	Dr M.D. Nahan	Mr A. Krsticevic (<i>Teller</i>)
Mrs A.K. Hayden	Mr R.S. Love	Mr D.C. Nalder	
Dr D.J. Honey	Mr W.R. Marmion	Mr K.M. O'Donnell	

Noes (33)

Ms L.L. Baker	Mr W.J. Johnston	Mr P. Papalia	Mrs J.M.C. Stojkovski
Dr A.D. Buti	Mr D.J. Kelly	Mr S.J. Price	Mr C.J. Tallentire
Mr J.N. Carey	Mr F.M. Logan	Mr D.T. Punch	Mr P.C. Tinley
Mrs R.M.J. Clarke	Mr M. McGowan	Mr J.R. Quigley	Mr R.R. Whitby
Mr R.H. Cook	Ms S.F. McGurk	Ms M.M. Quirk	Ms S.E. Winton
Ms J.M. Freeman	Mr K.J.J. Michel	Mrs M.H. Roberts	Mr D.R. Michael (<i>Teller</i>)
Ms E.L. Hamilton	Mr S.A. Millman	Ms R. Saffioti	
Mr T.J. Healy	Mr Y. Mubarakai	Ms A. Sanderson	
Mr M. Hughes	Mrs L.M. O'Malley	Ms J.J. Shaw	

Pair

Ms M.J. Davies

Mr D.A. Templeman

Amendment thus negated.

Clause put and passed.

Clauses 35 to 53 put and passed.

Clause 54: Part VIB inserted —

Mr P.A. KATSAMBANIS: The issue I want to raise relates to the last insertion in clause 54, which is contained on page 82 of the bill. It inserts new division 4, section 97H, which prohibits certain types of advertising. Proposed subsection (1) states —

A person must not advertise the availability of employment at a rate of pay that is less than the minimum wage applicable to the position under the MCE Act —

That is the Minimum Conditions of Employment Act 1993 —

or an award, order of the Commission or an industrial agreement.

Proposed subsection (2) makes a contravention of subsection (1) not an offence, but liable to a civil penalty. The basis for the prohibition is sound. A series of minimum wages is applicable to various occupations, some of which are set by award, some of which are set by agreement and some of which are set by the order of the commission in minimum wage

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cases and the like. There is bipartisan acceptance that nobody should be paid less than the minimum rate that they are entitled to, and if someone wants to pay them less than the minimum rate, they should be precluded from doing so.

The question about this provision that has arisen from a number of stakeholders is the situation in which there may well be an inadvertent breach. I will give the minister an example. For instance, someone might have a standing agreement to run an advertisement because they have regular need for workers. The applicable wage rate might be \$25 or \$30 an hour and they might advertise in April, May and June. On 1 July, the rate might change to \$25.37 or \$25.90 or whatever it is, but the ad was renewed in the middle of June and it ran for a monthly period to the middle of July, and it inadvertently indicated the incorrect wage rate because it had changed in the middle of the advertising period. First of all, the employer had no intention of advertising the wrong rate; and, second, there is no evidence that the employer ever paid the wrong rate, and, if they had paid the wrong rate, they should be liable for penalty in the same way as they would be in any other case. In relation to inadvertent breaches, particularly during a change in the wage rate, how will proposed section 97H deal with that or will there be a need for us to look at this provision between the houses to ensure that some form of intent is written into it? Otherwise, it would personalise inadvertent breaches, and I do not think anyone wants to penalise inadvertent breaches that are simply technical in nature.

Mr W.J. JOHNSTON: Thanks for the very reasonable question. I do not believe any amendment is required. Firstly, it is not creating an offence; there is no criminal element to this. The only penalty would be if an industrial magistrate determined that a penalty was appropriate, and it would of course be a civil penalty, not a criminal penalty. There are two levels of protection: the first is that it is not a criminal matter and the second is that the industrial magistrate would have to believe that a penalty was appropriate. If it was inadvertent, I do not know how an industrial magistrate would be satisfied that a penalty was appropriate.

This legislation is clearly trying to remind everybody that they should comply with good practice. This is a specific recommendation from Tony Beech's inquiry. He found that it was an important change. Industrial inspectors in Western Australia are aware that people in the horticultural industry, for example, are advertising work as a "life experience" and are taking advantage of people in the backpacker community and others. That is clearly not appropriate, and I know that the member would not agree with it. That is what this provision is aimed to prevent. Remember, if someone contravenes this provision, there are two levels of protection for them: firstly, it is not a criminal matter, so they cannot be criminally penalised; and, secondly, they would be penalised only if the industrial magistrate was satisfied that it was appropriate in those circumstances. I am sure that the member, as a former lay tribunal member, can accept the capacity of not just a lay tribunal member, but a magistrate to make a decision in these sorts of cases.

Mr P.A. KATSAMBANIS: I certainly think that once it gets to a magistrate, the magistrate will apply commonsense and will read in *Hansard* what the minister has just said about the intention. The concern, of course, is that often the punishment is the process. For a small business to be dragged to the Magistrates Court in itself is significantly costly and time consuming, which is why I think it may be worthwhile contemplating between the houses simply inserting words like "a person must not deliberately or recklessly advertise the availability of employment at a rate of pay", or whatever, to ensure that it is limited and that small business people are not punished by the process of going to the Magistrates Court. Clearly, there is no infringement notice condition in this proposed section; it will be handled by process rather than by infringement notice. We do not want people to be inadvertently caught up.

I agree with the minister; if someone deliberately advertises a rate of pay that is lower than the minimum, it says one of two things to me: firstly, they are ignorant of the rate of pay that they should be paying, which means that they are paying the rest of their employees wrongly as well; or, secondly, they really do not care what the minimum rate of pay is, and that is wrong too. I have no sympathy for those people—none whatsoever. It is totally bipartisan. I have read what Tony Beech and other inquiries of the like have said in this space and I understand how a very small minority of employers may not be acting in good faith. But when someone does act in good faith and still gets caught up in this and ends up in the Magistrates Court, I think it is cold comfort to say, "Go to the Magistrates Court and plead your case", because they have to give up work time, they have the stress of being served with papers, and they have to seek legal advice, because small business people are not lawyers. Yes, I am sure that the magistrate would take that into account: "I booked the ad on 15 June. It was the right rate then, but it changed on 1 July. When I rebooked my ad on 15 July, I changed the rate. I had no intention of doing the wrong thing. I didn't pay anyone wrongly." I am sure that the magistrate would accept that. Again, I raise this matter because it has been raised with me by a number of stakeholders who have concerns that people will be inadvertently caught by something like this and that they might win in the Industrial Magistrates Court, but the process of getting to the court itself is an unfair burden on someone who was trying to do the right thing and had no intention of doing the wrong thing and got caught up by accident.

Mr W.J. JOHNSTON: I understand the member's position; I just do not agree with it. This is a pretty simple provision. As the member says, the provision is fixing a genuine harm. Firstly, I trust that the inspectorate will not unnecessarily burden small business employers, just as it does not unnecessarily burden small business employers

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in other matters already. The legislation will provide additional authority to the industrial inspectorate to use the tools under the Fair Work Act and our state legislation so that they do not have to prosecute in every case. This is not providing for a criminal penalty. If the member wants to say something about it being deliberate, let us make it a criminal penalty and have a criminal sanction. If he is talking about prosecuting only those people who do things deliberately, that would make it a criminal matter, and we are not trying to do that. Seriously, there are many options for prosecution under the act today, but they are not leading to hundreds and hundreds of prosecutions. Those prosecutions that do get to the industrial magistrate are not leading to injustice.

I do not accept the basis of the criticism. I understand that a couple of employer associations are raising this. As the member has said, we are trying to do something important. If we find in five years' time that it is being misused and that all these small businesses are being dragged into the Magistrates Court, I will be very happy to look at it then. Unless the member is suggesting that we should criminalise the behaviour, which we are not proposing, I think the provision is exactly the way it should be.

Clause put and passed.

Clauses 55 to 57 put and passed.

Clause 58: Section 98 amended —

Mr P.A. KATSAMBANIS: This clause seeks to amend section 98 of the principal act. This part of the act gives powers to industrial inspectors—not trade union officials, but industrial inspectors employed by the department—to enter business premises to inspect certain things. Industrial inspectors have pretty broad-ranging powers now. However, the concern is that with the extension of the definition of “employee” to “domestic workers”, we need to provide an additional level of protection for industrial inspectors who enter into someone’s home. The term used in proposed section 98(3A) is “premises principally used for habitation”. The premises are principally used for habitation, but a business is also being conducted on those premises. The new provision requires that at least 24 hours’ written notice be given for the proposed entry. That is good. We support that. As I have said, the powers of inspectors are quite broad. They are not powers that are required more generally when they are entering business premises.

The proposed subsection provides that there are two ways of getting around the 24 hours’ written notice. The first, which is spelt out in paragraph (a), and which we do not support, is that —

the owner or occupier is carrying on an industry at the location or premises; ...

The second, which is spelt out in paragraph (b), is that —

the Commission has made an order waiving the requirement under this subsection to give the notice.

I will get to the second part in a minute. The first part is “carrying on an industry at the location of the premises”. We had this argy-bargy during the second reading debate. I said at that time that the term “carrying on an industry” is not defined. The minister said it is defined in section 7 of the act. The term “industry” is defined in section 7 of the act. However, it is defined extraordinarily broadly. The term “carrying on an industry” is not defined. I do not think the minister is a lawyer, but he has had significant involvement in legal-style proceedings, particularly in industrial relations. The minister would know that those terms have a specific meaning. The words “carrying on an industry” need to be defined, and they are not defined. Therefore, there would need to be jurisprudence around that.

Secondly, we are talking here about entering someone’s home. Therefore, we need some form of notice period, unless it is really, really serious, and in that case an order of the commission is justified. I am not saying we should not have an order; we agree with the order. However, we do not think an inspector should be given the power to enter someone’s home simply because they think someone in those premises is carrying on an industry. As I have said, that term has not been defined. The term “industry” itself is extremely broadly defined. It can mean almost anything that relates to work.

We have also turned our minds to how the commission can make an order. Interestingly, proposed section 98(3C) states —

The application may be heard in the absence of the owner or occupier of the industrial location or business premises.

The industrial inspector can go to the commission and seek an order to enter someone’s home, and the home owner does not have to be heard. The matter can be heard *ex parte*. Already, the inspector has decided to not use the 24-hour notice period. We believe the 24-hour notice period is fair and reasonable.

Mr V.A. CATANIA: Madam Acting Speaker, I like what the member is saying and I seek that he be given an extension.

The ACTING SPEAKER: Extension granted.

Mrs Michelle Roberts; Mr Zak Kirkup; Mr Peter Katsambanis; Mr Bill Johnston; Mr Vincent Catania; Mr
Stephen Price; Deputy Speaker

Mr P.A. KATSAMBANIS: Thank you, member for North West Central.

We have a circumstance in which an inspector has decided not to use the 24-hour notice period to enter someone's home and instead go to the commission to seek an order. The home owner does not even get a chance to have their say. Obviously, the inspector wants to seek some information. The inspector wants to inspect the premises, or find documents within the premises, because a business is going on at those premises, as well as it being a home. What rights should a home owner expect when their home is being entered into by an inspector? A 24-hour notice period seems reasonable. We are happy with that. In any other circumstances, we are proposing that the industrial inspector should be able to go to the commission. However, the home owner should have the right to be heard. The home owner does not have to be heard if they do not want to, but they should have the right to be heard. They should not be denied natural justice. This is a recurring theme. A home owner should not be denied the natural justice that comes with being in quiet possession of their own home, where their family and children live, and perhaps where elderly relatives live. A home owner should be allowed to be heard before an inspector can march into their home without notice.

Moreover, we are saying that the information sought by the industrial inspector should be the sort of information that cannot be obtained in any manner other than by entry into the industrial location or business premises. As we said in relation to entry by authorised representatives, obviously bringing the parties to the commission would enable the concerns of the industrial inspector and what they are looking for to be ventilated, and that might get the business owner and home owner to provide that information, or simply to consent to entry. A person's home is their castle. If an industrial inspector wants to march into those premises, the least they can do is give people notice. If they want to barge in, with no notice whatsoever, they should at least give those people an opportunity to be heard and to provide the information that is being sought in some other way if they do not want their premises, their home, entered into. If in the end that cannot be resolved, the commission will make an order, and the industrial inspector will be able to enter the premises.

In the amendments that I am about to move, the inspectorate will be pushed down the pathway of having to give 24 hours' notice. We think that is the least they should be required to do for entering someone's home. Yes, I understand that there may be some egregious circumstances. However, we think that is the least they should do.

I seek advice about whether I can move both of my proposed amendments to clause 58 contemporaneously.

The DEPUTY SPEAKER: Members, is leave granted? Leave is not granted.

Mr P.A. KATSAMBANIS: I move —

Page 85, line 30 to page 86, line 3 — To delete the lines and substitute —

proposed entry unless the Commission has made an order waiving the requirement under this subsection to give the notice.

This amendment provides that an inspector will not be allowed to enter a premises simply because they believe the owner or occupier is carrying on an industry at the location of the premises, without first giving 24 hours' notice. We believe that if an inspector does not give 24 hours' notice, they should not be able to enter unless they get an order from the commission. That is the essential difference between the minister and ourselves. That is the position that we are putting. That is what this amendment seeks to do.

Mr W.J. JOHNSTON: The reason I want these two amendments to be dealt with separately is that although I do not agree with the amendment, when the bill goes between the houses I will be proposing an amendment to clarify the provision in proposed section 98(3A)(b) to place an obligation on the commission to act only in exceptional circumstances. I will go back to explain why I do not agree with what the member is proposing. Proposed subsection 98(3A)(a) reads —

the owner or occupier is carrying on an industry at the location or premises;

That is the existing law; that is not new law. That is simply translating the existing rights of the inspectorate to the new structure of the act. Let me make that clear. That is why we are not proposing any change. That is the existing law as it stands in Western Australia today, as has been the case for a long, long time—40 years plus. As a number of employer associations have said to me, it is the job of government to enforce the law. That is why that provision is there—to allow the government to do exactly what industry associations tell us is the responsibility of government.

Proposed subsection 98(3A)(b) is the new provision to allow for, effectively, an emergency situation. This is for circumstances that are not in respect of an industry. As the member said, we know what “industry” means. Therefore, in proposed subsection 98(3A)(b), we are talking about domestic service. That states that if there is an emergency situation in which the inspectorate would have its task defeated if it gave 24 hours' notice, then it can go to the Fair Work Commission and seek entry in those circumstances.

Mrs Michelle Roberts; Mr Zak Kirkup; Mr Peter Katsambanis; Mr Bill Johnston; Mr Vincent Catania; Mr Stephen Price; Deputy Speaker

I am happy, because I think it is sensible, to clarify the responsibility there so that it is clear that it is for emergency situations. Let us take the example that we have talked about of the Sydney person who is currently being prosecuted for paying somebody \$2 an hour. Is the member honestly telling me that the inspectorate has to tell that person 24 hours in advance so that they are given 24 hours to get their books written up, deal with the person that they have been stealing from and get their affairs in order before the inspector arrives? There is nobody in the world who would think that is a sensible idea. Nobody in the real world thinks it is a good idea to say that before the government inspector exercises the function of saving somebody from slavery, they need to give the slaver 24 hours' notice. Nobody agrees with that; I do not agree with that, either. However, I am very happy—I will do this between the houses—to come up with an amendment that will make subclause 98(3A)(b) clearer about what the commission needs to do. It might be that we do it by including some new drafting. That will deal with the issue that the member has raised. Clearly, nobody with a brain thinks that we need to tell somebody involved in modern slavery that we are coming to check their books. Nobody thinks that is a good idea. I do not, and I am sure that the member does not, now that he has realised the challenge. I am happy to fix the problem that has been identified—that it is not clear enough that this is for exceptional circumstances—but we are not supporting this amendment.

Mr P.A. KATSAMBANIS: I am partially heartened by that response. However, I think that, fundamentally, in the example the minister has used whereby we have evidence that somebody is being paid \$2 an hour, I do not think any inspection in the world would matter in that particular case, because there is already evidence of the payment of \$2 an hour. The inspectors have seen the payments and understand the payments; they have the affidavit work. Barging into someone's home in those circumstances may well be justified. There would be other criminal activity that is associated with it, and I would argue that the right authority to barge into a property in that situation would be the police, because there would be other criminal activity being conducted in the case of modern slavery. If our Criminal Code in Western Australia does not deal with modern slavery adequately enough as a criminal offence, let us bring in some laws to fix that. But let us not use an outlier to confuse what this legislation is about. This is entry into someone's home by industrial inspectors who have been given the not-so-onerous task of providing 24 hours' notice to the person whose home they are entering—they do not have to give reasons; they just have to give notice, "We're coming in"—or to go to the commission, but, no, there is this third limb. It may have been in the law previously when domestic work was not included in the Industrial Relations Act, but now that domestic work is included and therefore the number of homes that could be subject to this provision is so far increased, we look at this provision and we think that it is not right. We believe that a home owner's rights to quiet enjoyment of their property and to their home being their castle are important, and they should not be trampled over, so we will insist on this amendment. If the government does not support it, it does not support it.

Mr W.J. JOHNSTON: Let me make this clear: the provision at proposed subsection 98(3A)(a) already exists in law. It has been in place longer than 40 years. That is not controversial. There is no industry association in Western Australia that has ever come to me to complain about the existing law, and if anybody is complaining about it now, it just shows what a disgrace they are. Nobody is complaining about proposed subsection 98(3A)(a).

In respect of proposed subsection 98(3A)(b), I accept that that should only be exercised in the most exceptional circumstance—for example, if somebody has been paying somebody \$2 an hour to work in their home. I tell the member that I will proudly vote against his motion and then I will proudly vote in favour of the bill. I have promised that, between the houses, I will bring in an amendment that clarifies that this is in those sort of exceptional circumstances. Then the member can decide whether he supports this or not. I tell the member that if he wants to vote against that, what he is saying is that he wants to give 24 hours' notice to somebody who is paying \$2 an hour so that they can concoct paperwork to cover up their crime. I reminded everybody on Tuesday night when I gave my second reading reply speech that this is being watched by people around the world. If the member wants to support people who are involved in modern slavery by giving them the opportunity to create evidence, falsify information and make it harder for the government employees who are asking to deal with this matter, and if the member wants to make it harder to prevent modern slavery, he should go ahead and do that. The member should proudly say that he is supporting people who are paying \$2 an hour, because that is what he is proposing. He cannot have this both ways.

I accept that this is a provision that should be used only in those exceptional circumstances—not in ordinary circumstances—where the inspectorate has some information that leads them to think that they need to take action like this. I have already said that if we need to clarify the law on that, I am happy to do so. It is the inspectorate's job to enforce these provisions—provisions that we need to insert to allow Australia to sign on to the Forced Labour Convention. If the member is saying to me that he is going to vote against Australia taking action to enforce that, then I am proudly against the member.

Mr P.A. KATSAMBANIS: This is either the minister being tricky; the minister not actually understanding the law; or, thirdly, full recognition of my point that "carrying on an industry" is not well defined. The minister will say to me, "That's well defined; that's the existing law."

Mr W.J. Johnston: That's right!

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Mr P.A. KATSAMBANIS: Is someone who employs a nanny carrying on an industry?

Mr W.J. Johnston: No.

Mr P.A. KATSAMBANIS: Is someone who employs a domestic worker carrying on an industry?

Mr W.J. Johnston: No.

Mr P.A. KATSAMBANIS: The minister is saying no to both of those. Is someone who hires a carer to look after them in an aged care or disability circumstance carrying on an industry?

Mr W.J. Johnston: In an aged-care facility, of course.

Mr P.A. KATSAMBANIS: Not in a facility; in their own home.

Mr W.J. Johnston: No.

Mr P.A. KATSAMBANIS: If an individual hires a carer in their own home?

Mr W.J. Johnston: No.

Mr P.A. KATSAMBANIS: No. This power would not be enlivened if they were being paid \$2 an hour. If they were being paid \$2 an hour, this power would not be enlivened. This would not work in the example the minister is using. I think the minister is picking up the Sydney example of someone who was working in a cafe for \$2 an hour and also working in someone's household and the like.

Mr W.J. Johnston interjected.

The DEPUTY SPEAKER: Minister!

Mr P.A. KATSAMBANIS: I have five minutes. The minister does not have to answer right now.

The minister is trying to conflate two separate issues, which proves that “carrying on an industry” is not properly defined. Even if someone were being paid \$2 an hour to do domestic work, which we do not think they should be and we oppose, this clause could not be used. The application to the commission could be used. I am heartened by what the minister has said about looking at proposed section 98(3A)(b), which we have a concern about, and the interaction between that and proposed sections 98(3C) and (3D). I am very heartened by that. At this stage of the proceedings, given the commitment the minister has given after having seen the amendments that we have proposed to this clause, to look at this between the houses, the last thing that I would want is to have half-baked clause, so I am prepared to take the minister at his word that he will look at this proposed clause. It is clause 58, but we are talking about the insertion of proposed section 98(3A). We would be very happy to look at what the minister proposes. The debate can be enlivened after we have seen what the minister proposes between the houses. On this occasion, I am happy to take the minister at his word on that.

Let us not conflate these things. We do not support modern slavery. We oppose it, and are at one with the federal government and the Western Australian government. We should never be accused of not opposing modern slavery. We want that practice to be abolished in this country. This legislation will not solve the problem. It will help, but we need more than just legislation; we need a real focus on that issue. I will not accept in any way that we are party at all to that horrible, nasty and nefarious activity. Based on what the minister has suggested, I am happy to look at a new construction of proposed section 98(3A) and the rest that flow on from that. We will look at the construction the minister comes up with between the houses and see whether it meets our requirements. I have moved the amendment, but on that basis, we can revisit this after we have seen the rewrite. I am glad that the minister has given us that assurance.

Mr W.J. JOHNSTON: Let me make it clear: I am proposing an amendment to only proposed section 98(3A)(b). There may be consequential amendments that lead to some other contextual rewrites. I am not proposing any change to proposed section 98(3A)(a). These are two separate powers. The inspectorate already has the right to enter a home without notice if an industry is being conducted at that site. That is not new law. As I keep saying, I do not believe that anybody in Western Australia opposes the maintenance of the existing law, which is what proposed section 98(3A)(a) is, and I will not accept any amendment to that provision. It is not as though I read every single word of a bill. It is a long bill, and I take advice and all those things. Having had this drawn to my attention, I am very happy to make it clearer that this is about exceptional circumstances. Let me make it clear: we need a provision that says the inspectorate can do something without notice. Imagine if we were talking about the police enforcing their part of the Criminal Code. Should they say, “By the way, I’m going to come tomorrow to see whether you’ve been involved in a fraud”? Should they say, “I’m going to come tomorrow to see whether you’ve been involved in a conspiracy”? Should they ring up the bikies and say, “Tomorrow, I’m going to come and see whether you’ve got any drugs”?

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Stephen Price; Deputy Speaker

That is what this provision is. In exceptional circumstances, in order to do exactly what industry associations have asked us to do, which is to have the inspectorate enforce the law, it has to have powers to do things in exceptional circumstances. That is what proposed paragraph (b) does. Let me make it clear that proposed paragraph (a) will not be amended. I do not believe that the Liberal Party, after 40 years, will now wind back existing law. I will clarify proposed paragraph (b) between the houses.

The DEPUTY SPEAKER: Member for Hillarys, are you wanting to withdraw your amendment?

Mr P.A. KATSAMBANIS: It should be put, but we will not divide.

Amendment put and negatived.

The DEPUTY SPEAKER: The member for Hillarys also has a second amendment on the notice paper.

Mr P.A. KATSAMBANIS: A second amendment to clause 58 is on the notice paper. Based on the minister's undertaking to look at this issue while the bill lays over between the houses, I am happy to have it noted that the amendment was on the notice paper so that everyone is aware of what we are proposing. I am very interested to see the minister's proposal. At this stage, I will not move this amendment, and the clause 58 can be put.

Clause put and passed.

Clauses 59 to 61 put and passed.

New clause 61A —

Mr W.J. JOHNSTON: I move —

Page 88, after line 30 — To insert —

61A. Section 112A amended

After section 112A(3) insert:

(3A) Subsection (3) does not apply to a disqualified person.

(3B) In subsection (3A) —

disqualified person means a disqualified person as defined in the *Legal Profession Act 2008* section 3 except that —

(a) it includes —

(i) a person whose name has been removed from a foreign roll as defined in section 3 of that Act; and

(ii) a person in relation to whom the grant or renewal of a local practising certificate as defined in section 3 of that Act has been refused;

but

(b) it does not include —

(i) a person whose name has, for reasons other than or in connection with disciplinary action, been removed from an Australian roll or foreign roll as those terms are defined in section 3 of that Act; or

(ii) a person whose local practising certificate as defined in section 3 of that Act has, for reasons other than or in connection with disciplinary action, been suspended or cancelled.

This amendment is made at the request of the industrial registrar. Very late in the drafting process, the industrial registrar drew to my attention a challenge that has come up about a person who is registered as an agent at the commission, but was previously disqualified under the Legal Profession Act 2008. At the point when they make their application, the registrar can refuse the registration, but if they have been registered and it is subsequently discovered that they were a disqualified person under the other act, the registrar cannot then withdraw the registration of the lay advocate. The registrar has asked for this provision to be included. It will give the registrar power to subsequently remove the person from registration.

Sorry. I will clarify that. It has the same effect. If the person has been disqualified, they are not allowed to be indemnified to act as a civil agent. Therefore, they will still be acting in a legal capacity and will, therefore, be in breach of the Legal Profession Act 2008. Sorry, I got that wrong. I apologise. It has the same impact because the

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person would not be able to practice as a registered agent as they would be carrying out legal services. Because they are prevented from carrying out legal services, under the Legal Profession Act 2008 they cannot be a registered agent in the Industrial Relations Act.

Mr P.A. KATSAMBANIS: This is an interesting provision and we support it. The intention is not to have people who have been debarred from legal practice continuing to act in a legal or quasi-legal capacity in the industrial relations system. It is interesting who is disqualified and who is not disqualified. I want to explore that area to make sure that we are doing what we are intending to do. If someone has been disciplined and has been told that they either cannot practice anymore or cannot practice for a particular period of time, we do not want them acting. It includes a person whose name has been removed from a foreign roll, which is a roll of any other state as well as other nations, or the grant or renewal of a local practising certificate has been refused or their name has been struck off a roll, but it does not include someone who took themselves off a roll or someone who has had their local practising certificate suspended or cancelled for reasons other than in connection with disciplinary action. There could be a number of reasons why a person had their practising certificate suspended or cancelled that are not connected with disciplinary action. One of the main reasons is they have not provided a current certificate of insurance. Do we want those people to be continuing to practice?

Conversely, as we are dealing with people who not only have a practising certificate, but have their name on a roll, there are loads of people who have their name on a roll who do not have a practising certificate for many reasons, such as by choice. When a person is admitted to practice, they get on a roll. I am one of those people. I do not have a current practising certificate. I do not think I should. Some people when they enter Parliament choose to have a current practising certificate and some do not. I do not need to have that conflict brought up when I am giving advice to someone in my electorate office, whether it is legal advice or advice as a member of Parliament, but some people choose to keep their certificates and some people do not. As I understand it, someone who is on a roll but does not have a current practising certificate can continue to act as an agent. We are not attempting to go to those people; we are only looking at those people who have been barred for disciplinary action, and no more than that. I seek that clarification from the minister.

Mr W.J. JOHNSTON: I apologise for getting the advice wrong originally. This is a very narrow class of people. It is important to remember that under the act, except for an unfair dismissal, there is no automatic right of appearance for a lawyer; it is only done by leave; therefore, there has to be this other category of people. Traditionally, when there was an 80 per cent to 90 per cent unionisation rate, employees did not go to the commission, only unions went, and employers were usually represented by an employer association. But as the unionisation rate has fallen, there have been all these other people starting to appear in the commission, many of them former union officials who are able to appear because it is a lay tribunal and it is designed to not have lawyers.

Having said that, I cannot remember the last time a lawyer was refused leave to appear and it is becoming much more legally orientated than it was 30 years ago when I was down there. But one way or another, there has to be this other category of people. If those people are lawyers, they are not able to appear in the tribunal except by leave, even if they are employed by, say, a bargaining agency, as those are registered.

If they are legally trained like the member for Hillarys but without a practice certificate, as the member just described, there would be no issue with that person—other than good character—getting their registration.

Mr P.A. Katsambanis: And any form of indemnity for the client—well, that's not an issue that they initially concern themselves with.

Mr W.J. JOHNSTON: That is a separate issue and is not dealt with by this provision. That is a separate area of debate. One way or another, an agent is not supposed to be a lawyer. A person may no longer be a lawyer because they have been excluded from the roll of lawyers, and so this provision outlines that they also cannot be an agent because they are, effectively, presenting matters on behalf of their clients, which is legal work. They are excluded under the Legal Profession Act 2008.

New clause put and passed.

Clause 62: Section 117 inserted —

Mr P.A. KATSAMBANIS: There are two amendments in my name on the notice paper in relation to clause 62. They are consequential amendments to the first amendment that I moved yesterday in relation to the removal of proposed section 37D. Given that that substantive amendment was defeated, obviously these two amendments are not required and I remove them. I do not intend to move them.

Clause put and passed.

Clauses 63 to 104 put and passed.

Title put and passed.

Third Reading

MR W.J. JOHNSTON (Cannington — Minister for Industrial Relations) [11.38 am]: I move —

That the bill be now read a third time.

MR P.A. KATSAMBANIS (Hillarys) [11.38 am]: I will be brief. I think that was a useful consideration in detail—in particular, the commitment that the Minister for Industrial Relations made in looking at clause 58 and the new sections being added, post-section 98(3). We look forward to seeing the product of the ministers' deliberation between the houses. We still have some serious concerns with this bill. Let us be frank, we made those concerns very, very clear in the second reading stage. We are particularly concerned about union right of entry to people's homes. We recognise given the changing landscape and the inclusion of domestic work that there may be a need to provide for that right of entry in extraordinary circumstances, but we believe it should be properly calibrated. A serious concern remains, obviously, about the Western Australian local government sector's direct objection to being forcibly removed from the federal industrial relations system, where it appears to be very happy, and put into the state industrial relations system.

I outlined in my contribution to the second reading debate that if those concerns were not addressed materially, we would not be in a position to support the passage of the bill. That is disappointing because we support large aspects of the bill. We support the modernisation of the language. We support the modernisation of the Western Australian industrial relations system. We support a lot of the changes to notifications for long service leave and the like. In particular, we support all the clauses that will ensure we have an industrial relations system that can properly react to the horrible curse of modern slavery. We do not support modern slavery in any way. We abhor it and we want to tackle it. We want to work with everybody to remove it from our society. As I said in one of my contributions, we do not think the Industrial Relations Act is the panacea to deal with that, but we do need provisions in the Industrial Relations Act. Perhaps we need stronger criminal penalties as well. We need to look at the Criminal Code in relation to that. We also need strong enforcement at both the state and the federal level and a lot more cooperation internationally to resolve modern slavery, but we need to address it, and we support any measure that addresses it. In particular, we want to make sure that our federal government can sign up to the International Labour Organization protocols that protect against modern slavery.

Although we support so many aspects of the bill, we are disappointed that there are serious issues that remain unresolved, and in its current form we cannot support it.

MR V.A. CATANIA (North West Central) [11.42 am]: As I put on the record in my contribution to the second reading debate, the Nationals WA do not support the Industrial Relations Legislation Amendment Bill 2020, although, as the member for Hillarys outlined, there are lots of aspects that we do support. We do not support modern slavery at all. I want to put that on the record. We are not opposing ways in which we can introduce laws to get rid of modern slavery. I want to make quite clear that the Liberal and National Parties do not support modern slavery.

The National Party does not support this legislation. The member for Hillarys moved a few amendments that the National Party supported, but the Labor government rejected. We knew that would be the case, but I hope that the minister can reflect on the debate in this house and perhaps make some changes to legislation in the other place. The major reason for that is the lack of consultation with industry and, in particular, local government. As I highlighted in my contribution to the second reading speech and during consideration in detail of the bill, that this will put another cost burden on local governments that are under pressure, particularly our regional local governments. They have been hit quite hard with COVID-19. Like I said, their income streams have been hit and they have been told that they cannot increase rates to cater for that loss. Local governments have been told to spend their reserves, yet the government continues to impose costs that make that even more difficult. I believe this legislation will impose further costs on local governments. As I said, there has been a 10.6 per cent increase in the cost for local governments on the Horizon Power network to provide street lighting. The COVID-19 recovery and the portrayal of fees and charges not being imposed or increased is smoke and mirrors, because we all know it is happening by stealth. The public has a right to know this is occurring. The danger is that when a government believes its own popularity, it rushes in legislation, like the industrial relations bill.

Point of Order

Mr S.J. PRICE: The debate has to be relevant. The member is off on some obscure little tangent that has nothing to do with the bill.

The DEPUTY SPEAKER: Thank you, member for Forrestfield. I think it is probably appropriate that I remind the member for North West Central that this is the third reading debate, so he can only reflect on issues he has raised already.

Debate Resumed

Mrs Michelle Roberts; Mr Zak Kirkup; Mr Peter Katsambanis; Mr Bill Johnston; Mr Vincent Catania; Mr Stephen Price; Deputy Speaker

Mr V.A. CATANIA: In my contribution to the second reading debate, I raised the issue of the legislation being rushed in without consultation because of the perceived popularity of the Premier, which has enabled him to do and say as he pleases. That is why it is important for the opposition to scrutinise legislation, push back and say, “Yes, there are some good things in the industrial relations bill and, yes, we need to modernise the legislation, but the lack of consultation prevents the National Party from supporting this legislation.” I hope the minister can reflect on that and do some further consultation with industry, as I outlined in my contribution to the second reading debate, to make sure that we have good legislation that is robust and that we look at unintended consequences.

Issues were raised by industries, including the building industry, the Western Australian Local Government Association, local governments and small business. As I said in my contribution to the second reading debate, small businesses are critical for our recovery in Western Australia. We talk a lot about industry and the resources sector, but this government is failing small business—the mums and dads and sole traders in the Western Australian economy. The National Party is here to protect our small businesses and the rights of employers and employees. We will do that without fear or favour. We are happy to oppose legislation if we feel it is not right based on our consultation with industry. I urge the minister to properly consult with those industries that have raised concerns to make sure that we have the best legislation, because that is our job in this place. The opposition needs to be able to scrutinise a government that is going off on a tangent because without proper scrutiny, that is a danger to democracy in this state at the moment.

MR W.J. JOHNSTON (Cannington — Minister for Industrial Relations) [11.47 am] — in reply: In the short time I have left to me, I want to first come to this rubbish about not consulting. On 22 September 2017, the inquiry was announced. On 18 February 2019, the wage theft inquiry was announced. On 11 April 2019, the final report was released with a detailed list of the recommendations we were going to take forward in the legislation. The Western Australian Local Government Association participated in a task force that I set up to design the words of the bill, but the member said that WALGA did not know about it; WALGA co-designed the legislation. On 6 December 2019, the outcome of the wage theft inquiry was announced. On 25 June, we introduced the legislation. On 3 July this year, we announced grants for combating wage theft. The wage theft inquiry consulted extensively. There were the interim and final reports of the Ritter review. I point out that organisations such as the Master Builders Association had extensive discussions with Mark Ritter in that process. They had extensive discussions backwards and forwards about details and got right down into the weeds. The idea that there was not consultation is a complete and utter furphy, and I reject it completely. It is the argument of the weak person when they do not have an actual reason to oppose something, so they say they were not consulted. It is not a genuine criticism of the legislation, and it is embarrassing for the Western Australian Local Government Association. It co-wrote the bill. It co-designed the bit of the bill that affects local government, so nobody should suggest that WALGA was not aware.

Effectively, the Liberal Party opposed three things, and the Nationals WA supported the Liberal Party. I will go through them in the reverse order. The first was the access of industrial inspectors to people’s houses in extraordinary circumstances, and I have accepted that that could be clarified.

The second was the use of modern technologies by union officials. I make the exact same statement that I made earlier. I am looking forward to talking to people about what they want to see in the bill that will allow union officials to use modern technologies. As the member for North West Central outlined in quite some detail, there are already videos circulating around the place. That has nothing at all to do with this legislation. The problem of that happening today will not change with this legislation. Not one word of this legislation has anything to do with the issues raised by the member for North West Central. This is about how we will regulate what is already happening. I keep saying that I accept that we could do with some amendments in that space. It is not like the union movement is running to my door and saying that we are doing a really good thing. They are not saying that at all. If employer associations want to tell me the parameters in which the twenty-first century technologies should be used by union officials, they should do so. They cannot say that they are satisfied with the current arrangements, because they are all complaining about them, and the member for North West Central outlined those complaints in his contribution. That is the second issue that was discussed. I will leave aside local government.

The third issue was the question about the commission’s capacity to lead the rewrite of the scope clauses. This is not a matter of controversy. I know that some organisations have spoken to the shadow minister about this, but the commission already has the power to take action under the existing act. I am indebted to the staff of the department, who tell me that the commission has had the power to take action on its own motion since 1925. I do not understand why anyone would suggest that a power that has existed for 95 years is a controversial change. Somebody has to be in charge of the process that will lead to the new clauses. There are two alternatives. The alternative that I have adopted is the same one that was adopted by Graham Kierath when he was then Liberal Minister for Labour Relations—that is, to have the commission lead this process. I remember the Kierath changes because I lived through it as an industrial officer, so I will remind members that the Kierath changes forced every single award to be amended. This provision allows the commission to program it at its choosing. Eight awards have about 90 per cent of common

Mrs Michelle Roberts; Mr Zak Kirkup; Mr Peter Katsambanis; Mr Bill Johnston; Mr Vincent Catania; Mr Stephen Price; Deputy Speaker

rule coverage. They are the awards that we need to deal with because they are becoming unenforceable. Unless the employers are saying that they want them to be unenforceable, which perhaps is their agenda, something has to be done with the scope clauses. Who will lead it? There are two choices. If the Liberal Party wants me to do it, it should support the amendment it proposed in the other house, because that will be the consequence. But if the Liberal Party wants it done independently of my office, it should support what I have proposed, which means that the minister will not be in charge of the proposed rewrite. Remember, I am a section 50 party and can therefore propose amendments to every award. Let us see what would happen then. I could get the lawyers in and bury the private sector employer associations with evidence. If that is what they are asking me to do, fine, but I think they would prefer a system that they co-design and are in charge of instead of me.

I will finish on WALGA. Let me make it clear: no local government has ever said to me that it is opposed to this provision. I agree that WALGA has, but no local government has ever said it. In fact, local governments have told me that they support the proposal. The final issue is that it is not about whether we agree or disagree; it is about the facts. The facts are that local governments are not constitutional corporations. Let us understand what that means. I could take action to cancel those agreements through the courts. That would cost millions of dollars and tie up ratepayers' money. Instead, I have had WALGA co-design the transitional arrangements, and that is what we want to do.

At the end of the day, the Liberal Party can give as many platitudes as it likes about wanting to end modern slavery, but we will see how its members vote. If the Liberal Party votes against this legislation, we will hold it to account. On the genuine issues that have been raised with me during this debate—the first being the question of the right of entry of union officials and the second being the right of entry of the inspectorate into homes in exceptional circumstances—I am happy to talk about amendments and perhaps we will be able to suggest something between houses. But when Liberal Party members vote, they are either voting for action on modern slavery or against it. It is their choice—go ahead.

Division

Question put and a division taken with the following result —

Ayes (33)

Ms L.L. Baker	Mr W.J. Johnston	Mr S.J. Price	Mr C.J. Tallentire
Dr A.D. Buti	Mr D.J. Kelly	Mr D.T. Punch	Mr P.C. Tinley
Mr J.N. Carey	Mr F.M. Logan	Mr J.R. Quigley	Mr R.R. Whitby
Mrs R.M.J. Clarke	Mr M. McGowan	Ms M.M. Quirk	Ms S.E. Winton
Mr R.H. Cook	Ms S.F. McGurk	Mrs M.H. Roberts	Mr B.S. Wyatt
Ms J.M. Freeman	Mr K.J.J. Michel	Ms R. Saffioti	Mr D.R. Michael (<i>Teller</i>)
Ms E.L. Hamilton	Mr S.A. Millman	Ms A. Sanderson	
Mr T.J. Healy	Mrs L.M. O'Malley	Ms J.J. Shaw	
Mr M. Hughes	Mr P. Papalia	Mrs J.M.C. Stojkovski	

Noes (17)

Mr I.C. Blayney	Mr P.A. Katsambanis	Mr J.E. McGrath	Mr D.T. Redman
Mr V.A. Catania	Mr Z.R.F. Kirkup	Ms L. Mettam	Mr A. Krsticevic (<i>Teller</i>)
Mrs L.M. Harvey	Mr S.K. L'Estrange	Dr M.D. Nahan	
Mrs A.K. Hayden	Mr R.S. Love	Mr D.C. Nalder	
Dr D.J. Honey	Mr W.R. Marmion	Mr K.M. O'Donnell	

Question thus passed.

Bill read a third time and transmitted to the Council.